



Australian Government

Takeovers Panel

**Reasons for Decision
Print Mail Logistics Limited
[2019] ATP 9**

Catchwords:

Association – association hurdle – decline to conduct proceedings – family relationships

Corporations Act 2001 (Cth), sections 606, 671B

Guidance Note 4 - Remedies General

Bullseye Mining Limited [2018] ATP 16, World Oil Resources Limited [2013] ATP 1, Mount Gibson Iron Limited [2008] ATP 4

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Richard Hunt (sitting President), Ian Jackman SC and John McGlue declined to conduct proceedings on an application by Southland Stokers Pty Ltd in relation to the affairs of Print Mail Logistics Limited. The application concerned whether a director of Print Mail was associated with his son, a fellow director of Print Mail and a Print Mail shareholder. The Panel considered that there was an insufficient body of material to justify the Panel making further enquiries in relation to the alleged associations.
2. In these reasons, the following definitions apply.
Alleged Associates Mr Benjamin Elias, Mr Percy and the Selling Shareholder
Applicant Southland Stokers Pty Ltd
Print Mail Print Mail Logistics Limited
Selling Shareholder As defined in paragraph 4

FACTS

3. Print Mail is a company with over 50 members. It was delisted from the National Stock Exchange on or about 18 January 2019. Messrs Nigel Elias and Stuart Percy are directors of Print Mail.

APPLICATION

Declaration sought

4. By application dated 4 April 2019, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted that Mr Nigel Elias was associated with a substantial shareholder of Print Mail (**Selling Shareholder**) because (among other things):

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- (a) Mr Nigel Elias agreed to acquire 2,600,000 Print Mail shares in two tranches from the Selling Shareholder on 22 August 2018. The acquisition price was 5 cents per Print Mail share, which was not economically and commercially rational in circumstances where the shares had traded on-market at 2.5 cents per Print Mail share and Mr Nigel Elias had acquired Print Mail shares from other shareholders at 2.5 cents and 2.6 cents per Print Mail share.
 - (b) The Selling Shareholder had provided loan funds to Print Mail.
 - (c) The Selling Shareholder is a substantial shareholder of a subsidiary of Print Mail that is currently in liquidation. Mr Nigel Elias is the sole director of that subsidiary and is also a shareholder.
5. The Applicant submitted that Mr Nigel Elias was associated with Mr Percy because (among other things) Mr Nigel Elias had acted on Mr Percy's behalf in an attempt to sell the Applicant's Print Mail shares to Mr Percy. They also had some common directorships and there were other structural links, including that Mr Percy was Mr Nigel Elias's solicitor. The Applicant also submitted that Mr Nigel Elias was associated with his son (Mr Benjamin Elias).
6. The Applicant submitted that as a result of the above associations, Mr Nigel Elias had voting power in the following shareholdings in contravention of s606:

Shareholder	%
Mr Nigel Elias	19.38
Selling Shareholder and related entities	14.96
Mr Percy	2.03
Mr Benjamin Elias	0.29
Total	36.66%

7. The Applicant also submitted that Mr Nigel Elias's substantial holder notices dated 28 December 2018 and 9 January 2019 were deficient.

Interim orders sought

8. The Applicant sought interim orders restraining (a) Print Mail from processing share transfers involving Mr Nigel Elias and the Alleged Associates and (b) Mr Nigel Elias and the Alleged Associates from acquiring any additional Print Mail shares or disposing of their Print Mail shares.
9. The substantive President considered the request for interim orders. He decided not to make any interim orders, noting that the question of interim orders could be revisited by the sitting Panel. He considered final relief could adequately remedy any acquisitions or disposals by Mr Nigel Elias and the Alleged Associates if unacceptable circumstances were found, noting that Print Mail was not listed.¹

¹ see Guidance Note 4 - *Remedies General* at [12(c)]

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Final orders sought

10. The Applicant sought final orders including vesting shares held by Mr Nigel Elias and the Alleged Associates in ASIC for sale and corrective substantial holder disclosure.

DISCUSSION

11. Messrs Nigel Elias, Benjamin Elias and Stuart Percy made a preliminary submission. They submitted, among other things, that Mr Nigel Elias's acquisition of shares from the Selling Shareholder was part of a settlement of a dispute between them in the Supreme Court of Tasmania.
12. The legal settlement involving Mr Nigel Elias and the Selling Shareholder provides some context for the acquisition by Mr Nigel Elias at 5 cents per share. We consider that even without this background, the mere acquisition of shares at a premium without more does not necessarily mean the acquisition is not economically or commercially rational.
13. Similarly, Mr Nigel Elias acting for Mr Percy in the acquisition of Print Mail shares from the Applicant does not in itself lead us to an inference of an association between them, noting the size of Print Mail and that it is delisted.²
14. We consider that there is an insufficient body of material to justify making further enquiries.³

DECISION

15. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

16. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Richard Hunt

President of the sitting Panel

Decision dated 12 April 2019

Reasons given to parties 23 April 2019

Reasons published 26 April 2019

² See *Bullseye Mining Limited* [2018] ATP 16 at [13]-[14]. We do not draw anything from the fact that Mr Nigel Elias, Mr Benjamin Elias and Mr Stuart Percy used the same solicitor, noting that their solicitor only provided a preliminary submission, see *World Oil Resources Limited* [2013] ATP 1 at [190]

³ *Mount Gibson Iron Limited* [2008] ATP 4 at [15]

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Advisers

Party	Advisers
Applicant	AJ & Co Lawyers Pty Ltd
Mr Nigel Elias, Mr Benjamin Elias and Mr Stuart Percy	Tierney Law