

**IN THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 97 OF THE SECURITIES
SERVICES ACT, 36 OF 2004**

CASE NO: **11/2008**

In the matter of:

THE DIRECTORATE OF MARKET ABUSE

The Referring Party

and

AH-VEST LIMITED

First Respondent

10 **(Formerly known as All Joy Foods Limited)**

PATHER, MASLAMONEY THEEGARAJAN

Second Respondent

PENALTY DETERMINATION

I shall now proceed to give short reasons for coming to the conclusion to be announced. This committee decided, as appears from its written reasons, that the company and Pather
20 had, in two respects, contravened the provisions of Section 76 of the Act. The question of the administrative penalty was deferred and it was dealt with this morning.

Counsel for the respondents asked for and was granted leave to call evidence and a hearing of those witnesses ensued. Thereafter submissions were made and the Committee now has to deal with the matter. I shall firstly deal with what I conceive to be the significance of the evidence adduced this morning. It was mainly to establish that there was a complete restructuring

of the company; a new Board, a new Chairman, new investors and probably new shareholders.

To my mind the most important significance of that evidence is in the context of the deterrent effect of an administrative penalty. It has frequently been held that the imposition of a penalty of some sort is designed firstly to deter the wrongdoer himself from repeating conduct of that sort and secondly to serve as a deterrent to others who might be minded to conduct
10 themselves in that sort of fashion.

In regard to the deterrent effect on the company itself, it is, I think, reasonable to suppose that in the light of the complete restructuring there are good reasons for concluding that a repetition by the company itself is unlikely and that factor will be considered in fixing an amount of administrative penalty. The evidence was also that of the personal circumstances of the respondent and those circumstances will be taken into account in fixing what the Committee considers to be an
20 appropriate administrative penalty.

I turn now to an aspect, which was debated, and that is whether there is any difference between the two counts. In our view there is some difference. The conduct found under the heading of count 1 differs in a certain respect to that found in relation to count 2. The misrepresentation in count 1 in question was soon unearthed and was rectified. It nevertheless

stands out and follows, I think, from our findings and the evidence adduced that the potential of harm was less than that referred to in count 2.

It is also necessary that I should say a word or two about the amounts involved in count 2. In our assessment the potential profit, which was misstated, is of the order of R300 000.00 and that is a factor to be taken into account in assessing an appropriate administrative penalty.

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The relationship of the two respondents is a factor that has to be borne in mind. The company has to be dealt with against the background of the fact that it was mainly administered by Pather and Carrol. The Board of Directors nevertheless carried the responsibility of ensuring that the books and records were properly kept and maintained, and the company and its Board cannot be heard to say that it delegated its functions to a person whom they trusted and that's the end of the matter.

20 We are here concerned and have to bear in mind the requirements of sound corporate governance. It is a serious factor to be considered that the company lacked in carrying out its responsibility and in our view in apportioning blame for what took place, it is difficult to find that the liability or responsibility of the company was less than that of Mr Pather.

The seriousness of making misrepresentations of the nature found against the respondent is a very important aspect to be considered by the Committee. The company was listed on the Alternative Exchange and its shares were traded. Falsitas such as dealt with in these two counts can affect potential investors detrimentally. The contravention is serious and the seriousness should be reflected in the quantum of the administrative penalty.

- 10 The deterrent effect of the imposition of a substantial penalty arose for consideration in the early matter of Berman's inquiry. It was found and confirmed on appeal that deterrence is a factor to be considered and seriously considered. It would be unwise if this Committee were to leave the message that falsity of the sort will not be dealt with seriously.

In addressing the Committee, Mr Cassim referred to the administrative penalty settled or fixed in the Wellco Health matter. The penalty there imposed was substantially less than
20 that urged on behalf of the Directorate of Market Abuse in the present case. In our view, however, the circumstances of the Wellco Health Limited company case are markedly different from that of the other.

In any event, each case has to be considered on its own merits and its own circumstances. While consistency in awards or a penalty fixed by the Enforcement Committee is an ideal to be

sought, it's never possible to achieve exactly that and while we take note of the penalty fixed in the Wellco Health Limited case, we consider that it differs significantly from the facts of the present case.

Having said all this, it becomes necessary to translate our views of the seriousness in the various counts in question. We think it necessary to fix separate penalties in relation to each respondent in relation to each of the counts. In our judgement
10 the administrative penalty on the company in count 1 should be R500 000.00. The administrative penalty imposed on Mr Pather on count 1 should likewise be R500 000.00.

In regard to count 2, the administrative penalty imposed on the company is R1 million and the administrative penalty imposed on Mr Pather personally is R1 million. That is the conclusion, which we reach. I thank the parties for the way in which this was conducted and for the fact that we were able to come to a conclusion fairly rapidly. Thank you.

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CHAIRPERSON**7 September 2009**