



Registry Document No.: 26

Date: April 21, 2020

Matter: CT-2020-003 – *The Commissioner of Competition v NuvoCare Health Sciences Inc. and Ryan Foley*

DIRECTION TO PARTIES (from Mr. Justice Gascon, Chairperson)

FURTHER TO the Notice of Application for a Temporary Order (“**Application**”) filed on March 4, 2020 by the Commissioner of Competition (“**Commissioner**”) against NuvoCare Health Sciences Inc. (“**NuvoCare**”) and Ryan Foley (“**Mr. Foley**”) (together, the “**Respondents**”), and the Commissioner’s affidavits of service filed on March 12, 2020;

AND FURTHER TO the Notice of Hearing issued by the Tribunal on March 16, 2020 scheduling the hearing of the Commissioner’s Application for March 23, 2020 and informing the Respondents that they had until the end of the day on March 18, 2020 to serve and file any responding materials to the Commissioner’s Application (including any affidavits and memorandum of fact and law);

AND FURTHER TO the Direction issued by the Tribunal on March 16, 2020 granting permission to the Commissioner to serve his memorandum of fact and law on the Respondents and to file it with the Tribunal by March 17, 2020, and extending the deadline given to the Respondents to serve and file their memorandum of fact and law and other responding materials to March 19, 2020;

AND FURTHER TO the Direction issued by the Tribunal on March 19, 2020 informing all parties that, following an e-mail from counsel for the Commissioner advising the Tribunal that the Department of Justice did not consider it urgent that the Commissioner’s Application be heard on March 23, 2020, the hearing scheduled for that date was adjourned and postponed to the earliest possible date as soon as the Tribunal’s normal activities resumed;

AND FURTHER TO the exchanges that took place by e-mail and by telephone on March 19, 2020 between the Tribunal’s Registry Officer (“**Registry**”) and Mr. Foley, in which Mr. Foley acknowledged having received the Notice of Hearing and the Directions from the Tribunal;

AND FURTHER TO the e-mail received by the Registry from counsel for the Commissioner on April 16, 2020, informing the Tribunal that the Commissioner now considers that his Application

needs to be decided during the Suspension Period (as defined in the Tribunal's April 15, 2020 *Updated Notice regarding the COVID-19 Pandemic* ("**COVID-19 Notice**"), and that there is urgency to hear his Application;

AND FURTHER TO the e-mail sent by the Registry to both parties on April 16, 2020 whereby the Tribunal: 1) informed all parties that, in light of the reasons outlined by counsel for the Commissioner in her April 16, 2020 e-mail, the Tribunal was satisfied, on a preliminary basis, that this is an urgent matter as contemplated under the COVID-19 Notice; 2) asked Mr. Foley, if he disagreed on the urgency of the Commissioner's Application and had any submissions to make in that respect, to send them to the Registry by e-mail by the end of day on April 20, 2020; 3) informed all parties that, unless Mr. Foley convinced the Tribunal that this is not an urgent matter, the Tribunal intended to proceed with the hearing of the Commissioner's Application by way of telephone conference during the week of April 27, 2020; 4) asked Mr. Foley to advise the Registry, by e-mail before the end of day on April 20, 2020, as to his availability for a hearing by telephone conference during the week of April 27, 2020; and 5) reminded Mr. Foley that the deadline to serve and file responding materials had passed but that, if he intended to file any responding materials to the Commissioner's Application (such as affidavits and/or memorandum of fact and law), he should let the Registry know no later than the end of day on April 20, 2020;

AND FURTHER TO the e-mails exchanged between Mr. Foley and the Registry on April 20, 2020, whereby Mr. Foley informed the Tribunal that he was requesting an "extension on this matter" and an adjournment of the proposed urgent hearing of the Commissioner's Application;

AND FURTHER TO today's e-mail from counsel for the Commissioner opposing the Respondents' request for an adjournment and in which counsel states that "the Respondents have had notice of the Commissioner's intention to proceed with a temporary application in this matter for close to 7 weeks, and have been made aware of the concerns relating to the representations that they were making for close to 1 year";

AND UPON considering that the Commissioner filed and served his memorandum of fact and law on March 17, 2020;

AND UPON considering that neither Mr. Foley nor NuvoCare have served and filed any responding materials by the initial due date of March 19, 2020, and have not indicated to the Registry an intent to file responding materials since then;

AND UPON considering that, on March 20, 2020, Mr. Foley had confirmed to the Registry that he accepts service of all Tribunal's communications in this matter by e-mail;

AND UPON considering that, in his e-mails sent to the Registry on April 20, 2020, Mr. Foley has referred to a request for "an adjournment of this matter, coinciding with the verdict of the civil lawsuit that will be referencing this matter and/or after this time", and indicated that he would not be prepared and received "little lead time";

AND UPON considering that the Commissioner has not asserted that the Respondents' alleged reviewable conduct has abated since the filing of the Commissioner's Application;

AND UPON finding that Mr. Foley has not responded to the specific questions raised by the Registry in the April 16, 2020 e-mail, has not provided any submissions outlining his reasons for disputing the Commissioner's claim about the urgency of his Application, and has not offered any details regarding the "civil lawsuit" he refers to as an apparent ground to adjourn this matter;

AND UPON finding that, since the filing of the Commissioner's Application on March 4, 2020 and the various Directions issued by the Tribunal in March 2020, Mr. Foley and NuvoCare have had ample opportunity to respond to the Commissioner's Application;

AND UPON determining that Mr. Foley has not provided convincing reasons to persuade the Tribunal that this matter should be adjourned;

THE TRIBUNAL DIRECTS AS FOLLOWS:

Mr. Foley's request for an adjournment of this matter is denied.

Since Mr. Foley had apparently not received all materials which were attached to the e-mail sent by the Registry on April 16, 2020 until PDF versions were resent to him on April 20, 2020, the Tribunal agrees to give Mr. Foley an additional and ultimate delay, until noon on Thursday, April 23, 2020, to respond to the questions asked by the Tribunal with respect to the urgency of the Commissioner's Application and his availability for a hearing, and whether he intends to serve and file any responding materials to the Application.

Given that, further to his e-mails of April 20, 2020, Mr. Foley has approached counsel for the Commissioner to explore ways to "comply with all matters", the Commissioner shall inform the Tribunal, by noon on Thursday, April 23, 2020, as to whether he still intends to proceed with an urgent hearing of his Application in light of those discussions.

If the Tribunal is not convinced by Mr. Foley's submissions with respect to the urgency to hear and consider the Commissioner's Application, and if the Commissioner still intends to proceed with the urgent hearing of his Application, the Tribunal will, by the end of the day on April 24, 2020, issue a Notice of Hearing fixing the hearing of the Commissioner's Application for Thursday April 30, 2020 at 9:30 am, by telephone conference, for a maximum duration of half a day.

Annie Ruhlmann
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