

L. Kamerman) Friday, the 28th day
Mining and Lands Commissioner) of November, 1997

THE MINING ACT

IN THE MATTER OF

Mining Claims KRL-911698 to 911706, both inclusive, 911711 to 911714, both inclusive, 911717 to 911720, both inclusive, 911723 to 911726, both inclusive, 911729 to 911732, both inclusive, 911735 to 911752, both inclusive, and 911755 to 911757, both inclusive, situate in the Aljo Lake Area, 911715, 911716, 911721, 911722, 911727, 911728, 911733 and 911734, situate in the Levitt Lake Area, in the Red Lake Mining Division, hereinafter referred to as the "Mining Claims";

AND IN THE MATTER OF

An application under section 105 of the **Mining Act** for the transfer of ownership of the Mining Claims from the Respondent to the Applicant.

B E T W E E N:

C. WARREN HUNT

Applicant

- and -

KRIGOLD RESOURCES LTD.

Respondent

REASONS

The tribunal issued its' Order in this matter on September 23, 1997, vesting the Mining Claims in the applicant, C. Warren Hunt. Although not requested by a party to these proceedings, inquiries have been made by a third party, Mr. Rick Smith of RSL. Therefore, pursuant to subsection 17(1) of the **Statutory Powers Procedures Act** R.S.O. 1990, c. S. 22, as amended, the tribunal is providing these Reasons.

On August 25, 1997, Mr. Owen V. (Tony) Dwyer, Chairman of Norstar Global Finance Inc. applied to the tribunal on behalf of the applicant, Mr. C. Warren Hunt, pursuant to section 105 of the **Mining Act**, R.S.O. 1990, c. M.14, as amended, for an order vesting 54 mining claims, being mining claims KRL-911698 to 911706, both inclusive, 911711 to 911714, both inclusive, 911717 to 911720, both inclusive, 911723 to 911726, both inclusive, 911729 to 911732, both inclusive, 911735 to 911752, both inclusive, and 911755 to 911757, both inclusive, situate in the Aljo Lake Area, 911715, 911716, 911721, 911722, 911727, 911728, 911733 and 911734, situate in the Levitt Lake Area, in the Red Lake Mining Division, hereinafter referred to as the "Mining Claims", in the applicant. In a letter from Mr. Hunt to the tribunal dated August 23, 1997, Tony Dwyer is appointed as agent on behalf of Mr. Hunt.

In support of the application, a photocopy of an Extension of Assignment, made effective on January 24, 1992 (Exhibit L) was filed (the "Extension Agreement"). The Extension Agreement is between Krigold Resources Ltd., C. Warren Hunt and 357003 B.C. Ltd., and sets out the following information:

- In an agreement dated September 1, 1986, which was subsequently amended on February 26, 1987 and January 15, 1988, Parsanta K. Sarkar and R. Lynn Moxham, being President and Secretary respectively of Krigold, acquired an option to earn up to a 100 percent interest in 16 mining claims in the Aljo Lake area, subject to a net smelter return royalty to Mr. Hunt.
- On May 12, 1987, the option acquired by Sarkar and Moxham was transferred to Krigold.
- By agreement dated January 6, 1989, Krigold and Hunt agreed to postpone cash and royalty payments in exchange for cash and shared in Krigold.
- The January 24, 1992 Agreement provides for a further postponement of cash and royalty payments in consideration of additional Krigold shares. The terms of this agreement provides that there will be postponement of the further cash payments of \$20,000 and \$250,000, which are to become due on February 1, 1994 and February 1, 1995 respectively. In addition, payment of the \$20,000 advance royalty, which is to become due when the option is exercised is to be postponed to February 1, 1996.

Also filed is a copy of the Memorandum of Agreement dated September 1, 1986 between C. Warren Hunt as owner and Prasanta K. Sarkar and R. Lynn Moxham as purchasers (Exhibit B, the "Option Agreement"), the pertinent points of which are the following:

- Paragraph 1 sets out cash payments required, being comprised of an initial payment of \$500 and five additional payments totalling \$290,000, the last two of which are \$20,000 and \$250,000 respectively.

- Paragraph 2, entitled "Work Requirements" provides that the purchaser shall stake 16 additional claims comprised of not less than 640 acres by December 1, 1986, apply for lease for the original mining claims, and have the option to expend \$500,000 in exploration by August 1, 1991.
- Paragraph 4 sets out the formulas for percentage of earned interest.
- Paragraph 5 sets out conditions under which there will be a reduction in participation and interest.
- Paragraph 6 sets out the production royalty.
- Paragraph 8 provides that property acquired by either party within two kilometres of the original claims shall become part of the agreement, to be called additional claims.
- Paragraph 9 provides that all original and additional claims shall be kept in good standing by the purchaser. If there in any intention on the part of the purchaser to abandon the original or additional claims, 30 days notice to the owner shall be provided, whereupon the owner has 15 days to advise of whether he wishes a transfer of the claims.
- Paragraph 11 provides that all claims may be transferred to the purchaser.
- Paragraph 12 provides that if the agreement is terminated, the purchaser will transfer the claims to the owner or any such other party as directed.

An examination of the 54 abstracts filed in support of the application show that they were all staked by Kenneth J. Bernier in late September or early October, 1986 and transferred to Krigold on November 25, 1986. Information contained on the abstracts shows that \$212,000 worth of assessment work was applied to the Mining Claims, \$21,200 was in the claim bank for future use and \$34,826 was in reserve.

The issue of the dates of staking of the additional claims was addressed in a Prospectus for a Public Offering of 650,000 units of Krigold Resources Inc. dated February 14, 1990 (Exhibit E, the "Prospectus"). At page 8 of the Prospectus, the property is described in detail, giving specific details of the Option Agreement and Extension of Assignment. Of particular relevance to the subject matter of this application, at the bottom of page 9, the Prospectus states:

As a further condition of the Hunt Option, the Issuer was obliged to stake an additional 16 mineral claims. The Issuer also staked another 44 mineral claims which were included in the Hunt Option by amendment dated February 26, 1987. An additional 60 unpatented mining claims in the Aljo and Levitt Lake areas of the Red Lake Mining Division, Ontario were staked by the Issuer at a cost of \$6,000.

The tribunal has examined the map provided and notes that the Mining Claim surround an area comprised of sixteen mining claims which are now patented and include the site of an abandoned mine. The numbers of these sixteen mining claims correspond to the mining claim numbers set out in the recitals of the Memorandum of Agreement, which were subsequently taken to lease, being one of the terms of the said agreement.

A copy of a Companies Office search in British Columbia by Wong & Marrs, Barristers and Solicitors, was filed with the application along with a covering letter from the firm as Exhibit N. The search, which lists the names and addresses of the Directors indicates that Krigold was dissolved for failure to file annual reports. The effective date of dissolution was September 23, 1993.

Examination of the relevant British Columbia statute, being the **Company Act**, R.S.B.C. 1985, c. 51, s. 8; 1987, c. 56, s. 53; 1989, c. 47, s. 340, section 281, indicates that the dissolution of a company for failure to file is done under certain conditions by the Registrar of Companies. Pursuant to section 284, the liabilities of every director, officer, liquidator and member continues and may be enforced. What is not clear from the statute is the mechanism for instituting an action against such an entity or provisions for notice. Parallel provisions found in the **Business Corporations Act**, R.S.O. 1990, c. B.16, section 242, provides that an administrative action or proceeding may be brought against a corporation within five years of its dissolution, that property remains available for such action through service at the corporation's last known address and service must also be effected on the Public Trustee. No such provision for service of the Public Trustee in British Columbia appears in that province's statute.

Mr. Dwyer was able, through his own efforts to contact Dr. Robert Lynn Moxham, one of the Directors of the dissolved Krigold entity. In a letter to the tribunal dated September 16, 1997, Dr. Moxham advised the tribunal that the Mining Claims were subject to an option agreement which was not fulfilled by Krigold, and as such, Mr. Hunt was at all times the beneficial owner of the Mining Claims and entitled to have them vested in him.

The tribunal has carefully considered the material filed. While the facts of this case are highly unusual, in that normally, when a corporation ceases to carry on business and assets held in its name are not distributed to shareholders, upon dissolution they forfeit to the Crown. The fact that no steps were taken to ensure that the lease was surrendered supports the confirmation provided by Dr. Moxham that all patented and unpatented Mining Claims encompassed by the Agreement were to have been returned to Mr. Hunt. In saying this, the tribunal notes that its' jurisdiction does not extend to the mining claims which now form the lease.

The issue of whether the Mining Claims have been forfeit to the Crown upon the dissolution of Krigold is central to whether or not the application would be granted. There

is no evidence that the Crown in Ontario was aware of the dissolution of Krigold prior to the making of the application. No steps have been taken to cancel the Mining Claims, which effective September 10, 1997, were still in good standing. Similarly, the lease rental was in arrears, but the Minister had not caused a notice stating that forfeiture has been effected. Although the reference in section 184 of the **Mining Act** is applicable to Ontario companies, the reference incorporates the provisions of subsection 244(1) of the **Business Corporations Act**, which states:

244. (1) Any property of a corporation that has not been disposed of at the date of its dissolution is immediately upon such dissolution forfeit to the Crown.

In considering this application, the tribunal relies on its' jurisdiction found in sections 105 and 121 of the **Mining Act**, which state:

105. Except as provided by section 171, no action lies and no other proceeding shall be taken in any court as to any matter or thing concerning any right privilege or interest conferred by or under the authority of this Act, but, except as in this Act otherwise provided, every claim question and dispute in respect of the matter or thing shall be determined by the Commissioner, and in the exercise of the power conferred by this section the Commissioner may make such order or give such directions as he or she considers necessary to make effectual and enforce compliance with his or her decision.

121. The Commissioner shall give a decision upon the real merits and substantial justice of the case.

Applications for the vesting of mining claims pursuant to option agreements which have not been exercised are common with the tribunal. For whatever reason, business, ability to raise funds, demonstrable securability of assets, oftentimes optionees will acquire the mining claims through a transfer prior to having met with all of the conditions of the option agreement entitling them to outright equitable and beneficial ownership. The specific conditions involved invariably involve payment of money, often through a series of payments over time and sometimes shares as well. It is not uncommon when an attempt to make a public offering is unsuccessful that the optionor is left pursuing the return of the mining claims, not because the optionee does not wish to return the claims, but because the wind has gone out of their sails and the individual or entity involved simply does not want to bother with tying up loose ends.

The tribunal is satisfied after hearing from Dr. Moxham that it had been the intention of Krigold to return the Mining Claims once it was clear that the money outstanding

on the Agreement would not or could not be paid. The fact that Dr. Moxham had to be located in Viet Nam and current Toronto addresses for the other Directors who were listed as residing in Toronto could not be found supports the supposition that the principles of Krigold moved on after its' dissolution. Notwithstanding that Krigold no longer exists, the tribunal is satisfied on the real merits and substantial justice of the case that actual notice of these proceedings was received by an individual who was in a position to know the pertinent facts in this matter and speak to them. The tribunal found that it would rely on the knowledge of Dr. Moxham in this matter and his consent to the transfer, dated September 18, 1997 and sent via facsimile from Danang, Vietnam.

Nonetheless, the fact is that, according to the terms of the Option Agreement that upon termination, the Mining Claims would be returned through a transfer to Mr. Hunt. For whatever reasons, this was not done and the tribunal finds that Mr. Hunt is entitled to their return. In this regard, the tribunal finds that, at all relevant times, Mr. Hunt was the beneficial owner of the Mining Claims. The tribunal further finds that the Mining Claims did not forfeit to the Crown, as Krigold was not at the date of dissolution their beneficial owner. Whatever equitable interest had been earned by Krigold through payment of some of the Cash Payments or performance of the Work Requirements listed in Paragraphs 1 and 2 respectively of the Option Agreement was lost when the Option Agreement was repudiated.

Based upon the forgoing, the tribunal has found that Mr. Warren C. Hunt, the beneficial owner of the Mining Claims, is entitled to their return and therefore has ordered that the Mining Claims be transferred to Mr. Warren C. Hunt.