

File No. MA 017-06

M. Orr )  
Deputy Mining and Lands Commissioner )

Friday, the 6th day  
of October, 2006.

**THE MINING ACT**

**IN THE MATTER OF**

Mining Claims L-4203257, 4200261 to 4200263, both inclusive, situate in the Township of Grenfell, in the Larder Lake Mining Division, staked by and recorded in the name of Timmy Steven Corbeil, (hereinafter referred to as the "Mining Claims");

**AND IN THE MATTER OF**

Mining Claims L-4200276 to 4200279, both inclusive, situate in the Township of Grenfell, in the Larder Lake Mining Division, staked by and recorded in the name of Timmy Steven Corbeil, (hereinafter referred to as the "Corbeil Mining Claims");

**AND IN THE MATTER OF**

An application pursuant to section 105 of the **Mining Act** for the transfer of ownership of the Mining Claims, and the Corbeil Mining Claims from the Respondent to the Applicant and such other relief as the tribunal deems just.

**B E T W E E N:**

RESOURCE PROPERTY MARKETING INC.

Applicant

- and -

TIMMY STEVEN CORBEIL

Respondent

**ORDER**

**WHEREAS THIS APPLICATION** was received by this tribunal on the 11th day of May, 2006 and heard on the 26th day of September, 2006, in the Courtroom of this tribunal in Toronto, Ontario:

**UPON** hearing from the parties and reading the documentation filed;

1. **IT IS DECLARED** that Resource Property Marketing Inc. owes Mr. Timmy Steven Corbeil \$2,880.00 (Cdn.) for the staking of the Mining Claims and that Resource Property Marketing Inc. **BE AND IS HEREBY ORDERED** to pay Mr. Timmy Steven Corbeil \$2,880.00 within 31 days from the date of this Order, being the 6<sup>th</sup> day of November, 2006, with adequate proof of payment being filed with the tribunal Registrar.

2. **IT IS ORDERED** that this application be and is hereby granted and that the ownership of the Mining Claims and the Corbeil Mining Claims be and is hereby transferred from the respondent to the applicant.

3. **IT IS FURTHER ORDERED** that the notation "Pending Proceedings", which is recorded on the abstracts of the Mining Claims and the Corbeil Mining Claims, to be effective from the 11th day of May, 2006, be removed from the abstracts of the Mining Claims.

4. **IT IS FURTHER ORDERED** that the time during which the Mining Claims and the Corbeil Mining Claims were under pending proceedings, being the 11th day of May, 2006 to the 6th day of October, 2006, a total of 146 days, be excluded in computing time within which work upon the Mining Claims is to be performed and filed.

5. **IT IS FURTHER ORDERED** that the 14th day of February, 2008, be fixed as the date by which the next unit(s) of prescribed assessment work, as set out in Schedule "A" attached to this order, must be performed and filed on Mining Claims L-4203257 and 4200261 to 4200263, both inclusive, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be February 14 pursuant to subsection 67(4) of the **Mining Act**.

6. **IT IS FURTHER ORDERED** that the 22nd day of May, 2008, be fixed as the date by which the next unit(s) of prescribed assessment work, as set out in Schedule "A" attached to this order, must be performed and filed on Mining Claims L-4200277 and 4200278, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be May 22 pursuant to subsection 67(4) of the **Mining Act**.

7. **IT IS FURTHER ORDERED** that the 21st day of June, 2008, be fixed as the date by which the next unit(s) of prescribed assessment work, as set out in Schedule "A" attached to this order, must be performed and filed on Mining Claims L-4200276 and 4200279, pursuant to subsection 67(3) of the **Mining Act** and all subsequent anniversary dates are deemed to be June 21 pursuant to subsection 67(4) of the **Mining Act**.

8. **IT IS FURTHER ORDERED** that no costs shall be payable by either party to this application.

**THIS TRIBUNAL FURTHER ADVISES** that pursuant to subsection 129(4) of the **Mining Act**, R.S.O. 1990, c. M. 14, as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

**DATED** this 6th day of October, 2006.

Original signed by

M. Orr  
DEPUTY MINING AND LANDS COMMISSIONER

## SCHEDULE "A"

<b>Mining Claim#</b>	<b>New Due Date</b>
L-4203257	February 14, 2008
L-4200261	February 14, 2008
L-4200262	February 14, 2008
L-4200263	February 14, 2008
L-4200277	May 22, 2008
L-4200278	May 22, 2008
L-4200276	June 21, 2008
L-4200279	June 21, 2008

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**B E T W E E N:**

RESOURCE PROPERTY MARKETING INC.

Applicant

- and -

TIMMY STEVEN CORBEIL

Respondent

**REASONS**

**Appearances:**

Mr. Joe Haberer

Mr. Doug Edmondson

Mr. Timmy Steven Corbeil

## **Background**

The applicants were Mr. Doug Edmonson and Mr. Joe Haberer (the principals of Resource Property Marketing Inc.) who were attempting to put together a grouping of claims that would appeal to potential buyers. In 2003, they crossed paths with the respondent in Sudbury and he told them of his work as a staker and what he charged for the work he did. In 2005, Mr. Haberer was having difficulty contending with terrain and bears on land he was intending to stake. After he contacted Mr. Edmonson, it was decided that they would call upon the services of Mr. Corbeil, a much younger man. When the applicants refused to pay what Mr. Corbeil demanded for his services, he refused to transfer the claims. The applicants applied to the Mining and Lands Commissioner asking that the Commissioner order the Mining Claims and the Corbeil Mining Claims to be transferred in accordance with the agreement they say they had with the respondent.

## **Issues**

1. Should the subject Mining Claims and the Corbeil Mining Claims be transferred to the applicant?
2. If the answer is yes, what amount of money does the applicant owe the respondent?

## **Evidence of the Applicants**

Messrs. Edmonson and Haberer are partners in the work that they do, which seems to consist of staking claims and marketing what they stake to interested buyers. Their company was formed in 1998 and it is called Resource Property Marketing Inc. ("RPM"). In 2005, they were going about their business when in August, Mr. Haberer called Mr. Edmonson to voice concerns about the difficulties he was encountering with pits on land he was staking and the presence of bears. Mr. Haberer is not a young man and he indicated he had fallen into a pit at least once while on the lands in question. Mr. Edmonson recalled a meeting that he and Mr. Haberer had had with the respondent in 2003 in Sudbury. He also recalled that the respondent had said then that he charged \$60 per unit to stake. Calling up the respondent, Mr. Edmonson told him that he and his partner were interested in having the respondent do some work for them, where the land was located, and suggested that Mr. Corbeil meet with Mr. Haberer at the site in order to get the information first hand. Mr. Corbeil agreed and went to meet with Mr. Haberer. Mr. Edmonson said that Mr. Corbeil talked about charging \$60 per claim. This would have been before Mr. Corbeil saw the site.

Mr. Edmonson said that at the time of the meeting at the site, Mr. Haberer called him in order to get his approval regarding a new price that Mr. Corbeil wanted to charge, namely \$70 per unit. Mr. Haberer said that after Mr. Corbeil had gone into the bush, he had come out with this new price. According to Mr. Edmonson, he was happy to leave the decision-making to Mr. Haberer, but from the evidence, Mr. Haberer felt that he needed to get the approval of his partner before going ahead and hiring Mr. Corbeil. Mr. Edmonson meanwhile advanced Mr. Haberer \$700 as he was expecting Mr. Haberer to stake as well. This would presumably offset some of the cost arising out of the fact that they would be hiring Mr. Corbeil. There was no indication that Mr. Corbeil was given an advance.

After some discussion, Mr. Haberer hired Mr. Corbeil to carry out the staking of 32 claims. According to Mr. Haberer, he agreed to pay \$70 per unit. There was no agreement to pay by the line as this could run into more money than he and his partner Mr. Edmonson, were prepared to pay.

Mr. Haberer said that Mr. Corbeil carried out the staking work using his own tags. Mr. Haberer supplied the maps used by Mr. Corbeil. Mr. Haberer carried out other work consisting of cutting some lines and putting in some line posts. His work was limited by the fact that Mr. Corbeil had taken the maps and was using his own tags.

Mr. Haberer said that Mr. Corbeil's girlfriend, Ms. Shannon Sager, delivered the invoice for the work. She also delivered the Application to Record – which was in Mr. Corbeil's name as he had carried out the staking. The invoice details indicated that Mr. Corbeil was charging \$90 per unit for 32 units, for a total of \$2,880.00. Mr. Haberer contacted Mr. Edmonson who reacted by having Mr. Haberer deliver a cheque to Mr. Corbeil for a reduced amount. Mr. Edmonson reduced the per unit rate to \$70, deducted an amount that he felt reflected work carried out by Mr. Haberer and held back \$400 to reflect the cost of GPS information that had not been released by Mr. Corbeil, along with maps provided by the applicants. Mr. Corbeil rejected this cheque, which was in the amount of \$1,168.00.

It was at this point as well that the applicants attempted to have the claims transferred to their company by crossing out the box on the Application to Record which indicated that the name of the recorded holder was the same as the name recorded at the top of the form (Mr. Corbeil) and inserting the name of their company in the appropriate box. Mr. Corbeil had another invoice sent to Mr. Haberer, this one reflecting a deduction for Mr. Haberer's work from the cost charged by Mr. Corbeil. However, Mr. Corbeil's charge was now by the line and was for a higher amount, although when the deduction for Mr. Haberer's efforts was made, the amount owing was still \$2,880.00. After the applicants refused to pay this invoice, Mr. Corbeil took it upon himself to stake all around the four subject mining claims. His position after this additional staking was that if the applicants wanted the original subject claims, they would have to purchase these additional claims and the price was \$40,000.00.

When Mr. Haberer and Mr. Edmonson were questioned by Mr. Corbeil, they were adamant that they had agreed to a price of \$70 per unit. Mr. Haberer's version of events was less clear than Mr. Edmonson's; however, Mr. Haberer was clear on what he said he agreed to in terms of the price per unit.

### **Evidence of the Respondent**

Mr. Corbeil added little in the way of new information regarding the first meeting he had with the applicants in Sudbury. In his written documentation he described the conversation he had with the applicants in this way, "... we discussed staking and line cutting and at that time I informed him the base price per line or unit was \$65-70." According to Mr. Corbeil, he explained the two types of pricing once again to Mr. Haberer when they met at the site and later at a local restaurant. Line pricing and pricing by the unit were very much different in terms of end price. For example, one unit charged out at \$90 would not pay for a staker to actually stake. In a case like that,

the staker (and the decision was solely at the discretion of the staker in his experience) would charge by the line. Four lines therefore gave the staker \$400 if he was charging \$100 per line. A price of \$90 for one unit simply didn't cover the costs of staking. With respect to what Mr. Corbeil found at the site, (according to his written materials), he indicated to Mr. Haberer that there were 32 units and 47 lines. Based on Mr. Corbeil's written materials and his testimony, it didn't seem to matter if the agreement was based on lines or units, he aimed to make sure that the price would even out to his advantage. Mr. Corbeil made this clear when he talked about the fact that Mr. Haberer wanted the invoice to reflect unit pricing. As Mr. Corbeil put it, "I informed him that it was possible to write up the invoice as such, but if that was the case the price would have to go up to \$90 to reflect the extra 15 lines, [47 lines minus 32 units] and that the \$75 per would certainly not apply." There was no explanation as to how lines and units could be blended together to adjust pricing. Both parties had submitted written recollections of their meeting for the hearing and in his documentation Mr. Corbeil indicated that Mr. Haberer had offered \$75 per unit. Mr. Corbeil said that Mr. Haberer understood the difference between line and unit pricing and that he (Mr. Corbeil) went off to do the staking. He said that Mr. Haberer contributed nothing to the job and that he had to do everything related to the staking. In his testimony he said that Mr. Haberer spent a lot of time talking about medicinal herbs with Ms. Sager, and Mr. Corbeil did not depend on any of Mr. Haberer's efforts to get the job done.

Mr. Corbeil also described his attempts to get paid. His partner Ms. Sager delivered first one invoice which set out a unit pricing of \$90 per unit and when that wasn't paid, a second invoice which set out a line pricing that included a credit for Mr. Haberer's work. Mr. Corbeil explained the credit to Mr. Haberer as a means to an end – Mr. Corbeil was trying to get paid for his work and this might speed up the process. Mr. Corbeil maintained that Mr. Haberer did not contribute to the work in any meaningful way. The balance owing on both invoices submitted by Mr. Corbeil was the same amount - \$2,880.00. Both attempts were unsuccessful and after the second invoice was presented, Mr. Haberer let Ms. Sager know that he thought the price was high. He claimed that his partner was not happy with the price. This was after claiming that he had to wait for the creation of a company to process the cheque. He also met later with Mr. Corbeil and Ms. Sager and said that his partner, Mr. Edmonson was not prepared to pay the invoiced amount. Instead, Mr. Haberer presented Mr. Corbeil with Mr. Edmonson's letter and a cheque for a reduced amount. The applicants were prepared to pay \$1,168.00 and not the \$2,880.00 being demanded by Mr. Corbeil. Mr. Corbeil rejected this cheque. When Mr. Corbeil and his partner visited the recording office a few weeks later, they were made aware of the notations on the Application to Record and their staking additional land around the subject claims followed this. According to Mr. Corbeil, they staked another 50-60 units in the surrounding area. Mr. Corbeil said that if the applicants wanted the claims he had staked for them originally, then they would have to purchase the larger claim package for \$40,000.00.

Mr. Corbeil's only witness was his partner Ms. Sager. She was described as his accountant and in fact she made out and delivered both invoices. She described the first meeting they had with Mr. Haberer saying that she heard Mr. Haberer offer \$75 out of nowhere, and at the same time said that he agreed to pay by the line. She was not at the table for the entire discussion as she had excused herself at least once during the conversation. When questioned by the tribunal as to the basis for the amount credited to Mr. Haberer's efforts in the second invoice, she could not explain it other than by saying it was a figure designed to help her and Mr. Corbeil get paid. Mr. Corbeil had already explained it this way in his evidence.

## Findings

The parties have no written contract to rely on here. Indeed, when asked by the tribunal why nothing was put into writing, Mr. Haberer said that a man's word is enough. Mr. Corbeil also referred to the honour of a man's word. However, after hearing these parties, the tribunal thinks that honour played a backseat role in their dealings. Honour would make a man think twice before walking away from an elderly gentleman who might not have clearly grasped a clear understanding of what lines and units had to do with pricing. Honour might have made a man understand that another man's work deserves proper compensation. Putting things down on paper has a way of clarifying the mind as well as the points of a discussion. If honour was so important to both sides, then one has to wonder why an invoice had to be in writing. The tribunal finds though that there was a contract between the parties. Neither party has denied the existence of a contract; the problem they face is that both sides describe the rate of payment differently. In other words, the tribunal is satisfied that this is not a case where subsection 58(1) of the **Mining Act** applies. Indeed, as Commissioner Ferguson said in the case of **Myslicki v. Mosley et al. No. 3 [7 M.C.C.]** at page 595,

“Primarily the subsections create defences to oral contracts and to some extent modify the *Statute of Frauds*. They cannot be used as a method of establishing the formation of a contract.”

The tribunal finds that the parties did agree that Mr. Corbeil was to stake 32 claims or units for Mr. Haberer and Mr. Edmonson. While both Mr. Haberer and Mr. Edmonson thought that Mr. Haberer's efforts would reduce the total bill they would have to pay, the tribunal could not find any evidence that it could rely on to support Mr. Edmonson's contention that Mr. Haberer carried out 30% of the work. Nor was Mr. Haberer's evidence reliable on this point.

Finally, the tribunal must make a finding as to what value should be assigned to Mr. Corbeil's work. It is here that the tribunal had some difficulty due to the fact that the answer depended on the credibility of the witnesses. On the one side were the applicants who said that the price had been agreed at \$70 per unit. Mr. Corbeil on the other hand was adamant that he never agreed to that price and had priced out his work at \$90 per unit. It was Mr. Haberer alone who had to deal with Mr. Corbeil though and there is no doubt in the tribunal's mind that Mr. Corbeil ran verbal circles around Mr. Haberer when they met and discussed the terms of the agreement. Mr. Haberer had difficulty in recollecting past events and in trying to explain where he actually was in the bush in order to verify what it was he contributed to the whole staking process. Mr. Haberer realized he had a problem on his hands when he received the first invoice. He then had to use his partner as a foil when he realized that he had made a deal with someone who talked fast and had little time for people who were slow to understand the complexities of his pricing standards. Mr. Haberer must have realized that he had agreed to pay more than he wanted to pay and he was going to have his partner play the “heavy” in an effort to bargain about the final bill. Mr. Corbeil was quick to realize that the applicants were having second thoughts now that the job was done and he was not going to give up the claims until he had been paid.

This is where the tribunal must leave the matter – Mr. Corbeil's evidence while too descriptive and reliant on irrelevant matters, was in fact, to be accepted since he was really dealing with Mr. Haberer at the time. The tribunal therefore finds that the applicants (through Mr. Haberer) had agreed to pay by the unit and at the rate of \$90 per unit. Therefore, the sum owing is \$2,880.00. The tribunal has no intention of looking to other costs that might have been incurred by the respondent – there simply is no reliable evidence to support the payment of additional monies.

The tribunal heard a great deal about honour. Honour extends into behaviour in the courtroom. There was very little in the way of honour being displayed at the hearing. Honour may still exist in some aspect of the staking world; however, the tribunal hopes that the Mr. Haberers and Mr. Edmonsons of the world realize that a written document which sets down real numbers and words is far more reliable than someone's “word” these days.

## **Exclusion of Time**

Pursuant to subsection 67(2) of the **Mining Act**, the time during which Mining Claims L-4203257, 4200261 to 4200263, both inclusive, 4200276 to 4200279, both inclusive, were pending before the tribunal, being the 11th day of May, 2006 to the 6th day of October, 2006, a total of 146 days, will be excluded in computing time within which work upon the Mining Claims is to be performed and filed.

Pursuant to subsection 67(3) of the **Mining Act**, R.S.O. 1990, c. M.14, as amended, February 14, 2008, is deemed to be the date for the performance and filing of the next unit(s) of assessment work on Mining Claims L-4203257 and 4200261 to 4200263, both inclusive.

Pursuant to subsection 67(3) of the **Mining Act**, R.S.O. 1990, c. M.14, as amended, May 22, 2008, is deemed to be the date for the performance and filing of the next unit(s) of assessment work on Mining Claims L-4200277 and 4200278.

Pursuant to subsection 67(3) of the **Mining Act**, R.S.O. 1990, c. M.14, as amended, June 21, 2008, is deemed to be the date for the performance and filing of the next unit(s) of assessment work on Mining Claims L-4200276 and 4200279.

## **Conclusions**

The application of Resource Property Marketing Inc. will be allowed. The ownership of the Mining Claims and the Corbeil Mining Claims will be ordered to be transferred from the Respondent to the Applicant. Resource Property Marketing Inc. will be ordered to pay \$2,880.00 to the respondent, Mr. Timmy Steven Corbeil. The applicant will have 31 days from the date of the order to pay the respondent with proof of payment to be filed with the tribunal Registrar. Failure by Resource Property Marketing Inc. to make the payment indicated in the allotted time frame and failure to file proof of payment with the tribunal Registrar will result in the issuance of an Amended Order by the tribunal which will transfer all interest in the Mining Claims and in the Corbeil Mining back from the Applicant to the Respondent.