NH BUSINESS REVIEW

Top investor backs down from Performance Sports Group proxy fight

But Canadian businessman blasts firm for retail strategy, 'character assassination'

BY BOB SANDERS

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W. Graeme Roustan

W. Graeme Roustan, Performance Sports Group's former board chairman, suspended his proxy challenge Friday morning, but is still blasting the current board chairman, Bernie McDonell.

Roustan, a Canadian venture capitalist, questioned the Exeter-based sporting goods equipment company's strategy of opening its own retail stores. He also charged it with "character assassination" and making decisions that "threaten the long-term value of the company." In suspending his challenge, he said that a proxy fight could cost shareholders as much as $1 million.

Roustan, who chaired PSG (then known as Bauer Performance Sports) from April 2008 to September 2012, is one of the company's largest stockholders. He had told the board on Sept. 11 that he was running for a board seat at the Oct. 14 annual meeting.

Before Roustan threw his hat in the ring, PSG preemptively urged shareholders to reject the bid, criticizing Roustan for not having "sufficient pertinent skills or experience and the relevant knowledge" and faulting him "for his track record of disagreements and litigation with business partners."

The company also said he was "acting against the company's best interest" by "anonymously questioning the wisdom of the company's strategy."

The company also urged no one to talk to media about the proxy fight and changed the rules of the election from requiring a simple majority to plurality, as is required when there is a proxy challenge.

Roustan first asked to be reappointed to the board in January 2015, but was turned down. He then raised the issue of PSG opening its own retail stores.

PSG – which had previously distributed its products primarily through sporting good outlets – opened its first Own The Moment Hockey Experience store in Burlington, Mass. in August. It would be the first of 8 to 10 stores "expected to elevate the Bauer brand, deliver an unmatched consumer educational experience and serve as the ultimate Bauer brand and product showcase," the company said in one of its annual financial filings.

The stores are supposed to serve as training sites for local retailers' staff, and are expected to be profitable in the 12 to 16 months.

But, it also warned, there are risks as well: "incremental financial expenditures, loss of capital investment, divergence of management time and resources, potential disruption or impact on our relationship with existing retail partners and negative customer experiences and related impressions with our brand."

Letter to company

Roustan said that numerous other shareholders and retailers brought concerns to him about "PSG's change in direction to compete directly with retailers" and that it may not be profitable.

In May, Roustan delivered a letter to the company about the concerns and hired a firm to conduct a survey about the strategy. PSG said it was concerned about the survey and that Roustan "personally contacted and communicated with customers of the company to criticize and question the strategy."

It said "that behavior could have sown confusion in the market and, at worst, could have imperiled the company's relationships with some of its most important customers."

After being warned off by PSG attorneys, the survey ended, but after again being rebuffed on his board bid in June, Roustan raised the issue of stock options, according to the companies account.

Those options were awarded as part of his consulting agreement with the company when he served as chairman. Roustan resigned as chairman in September 2012, and left the board in January 2013, extending his options, which he subsequently exercised for stock, but didn't' cash the stock in.

The stock held by a trust in his name, amounts to 1.3 percent of the company, according to The Wall Street Journal.

Roustan allegedly wanted those options reinstated in July, which the PSG board rejected. Then in August 2015, Roustan allegedly said he would not start a proxy contest if he was reimbursed for his expense. PSG declined, saying that the amount was too high and gave a counteroffer that was rejected, the company said.

Roustan did not address the option issue in his statement, though he did note that he had 621,000 shares in the company – almost 100 times more than the entire board. Instead, he responded to "personal attacks" about a 2009 civil case in Texas in which a jury found that he committed "statutory fraud" in connection with a hockey arena deal. Roustan appealed the decision. According to PSG, he lost the appeal and the case was settled.

According to Roustan, he was exonerated in a 2014 final judgment. Furthermore, the board knew all about the case when nominating him for chairman, so, he asked, why bring it up now when he was just running for a seat?

Roustan also countered PSG's contention that he was not qualified to serve on the board, because he is primarily involved in arena development, as opposed to equipment, and lacked public board experience.

The company compared that experience to that of other board members, including Larry Lucchino, former president and CEO of the Boston Red Sox.

Roustan countered that he chaired the board for 4½ years, through the company's first IPO and five acquisitions, and has had experience owning sports equipment retail stores.

He finished his statement by asking the current chairman to resign.

"Long-term shareholders of publicly traded companies need directors who invite and welcome scrutiny and are able to answer tough questions in a professional manner, and not respond to those that wish to serve as a director with unwarranted and unprofessional personal attacks," he said.

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