

# 2002 BCSECCOM 232

COR#02/030

## Decision

Andrew Rutherford Prowse

Section 161 of the *Securities Act*, RSBC 1996, c. 418

## Hearing

<b>Panel</b>	Adrienne Salvail-Lopez	Commissioner
	Joan L. Brockman	Commissioner
	Roy Wares	Commissioner

**Date of Hearing** January 30, 2002

**Date of Decision** March 19, 2002

## Appearing

Kristine M. Mactaggart For Commission Staff

Andrew Rutherford Prowse In person

## Decision of the Commission

### Introduction

[para 1]

This is a hearing under section 161(1) of the *Securities Act*, RSBC 1996, c. 418. Commission staff issued a notice of hearing on February 27, 2001, and an amended notice of hearing on April 12, 2001. The amended notice alleges that Andrew Rutherford Prowse failed to file insider reports within the time required under the Act. Prowse signed an agreed statement of facts on September 18, 2001.

### Background

[para 2]

In his agreed statement of facts, Prowse admitted that he failed to file insider reports within the time required under section 87 of the Act and under section 70 of the *Securities Act*, SBC 1985, c. 83 (the "former Act") with respect to his purchases and sales of securities of five issuers – Liquid Gold Resources Inc., Sun Devil Gold Corp., Glassmaster Industries Inc., A.C.T. Industrial Corporation and Future Media Technologies Corp.

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### **Liquid Gold**

[para 3]

In January 1996, Prowse became president and a director of Liquid Gold Resources Inc. (now West African Venture Exchange Corp.). Liquid Gold was a reporting issuer and its shares were listed on the then Vancouver Stock Exchange. From January 1996 to February 10, 1997, Prowse filed an initial insider report and eleven insider reports respecting his holdings of shares in Liquid Gold. However, Prowse failed to file insider reports for the period from February 1997 to February 1998, though his holdings changed during that period.

[para 4]

Specifically, Prowse purchased 513,000 shares and sold 529,500 shares of Liquid Gold during that period, in 110 transactions on the Exchange. These transactions represented 31.38% of the trading in Liquid Gold's shares during that period. On a monthly basis, the percentage of trading represented by the Prowse transactions varied from a low of 2.61% in September 1997 to a high of 89.64% in December 1997. In addition, Prowse received 36,453 shares in April 1997 in payment of a debt owed to him by Liquid Gold.

[para 5]

In his testimony, Prowse acknowledged that his trading represented a significant portion of the trading in Liquid Gold's shares and that, before he became involved in the company, "the company never traded".

[para 6]

Commission staff brought to Prowse's attention his failure to file insider reports respecting his holdings of shares in Liquid Gold. On March 30, 1998, Prowse filed 14 insider reports, including the 13 late reports for the period from February 1997 to February 1998. Also, on March 30, 1998, Prowse paid late filing fees of \$650 for these reports.

[para 7]

In his testimony, Prowse acknowledged that he knew he had to file insider reports and that he bore the responsibility for his failure to do so. He has filed his insider reports in a timely manner since March 1998.

[para 8]

Prowse testified that he was "busy trying to make things happen with Liquid Gold" and travelling a lot during the period from February 1997 to February 1998. The business he was trying to develop was in West Africa, particularly Nigeria, and he travelled there three or four times a year.

[para 9]

Prowse testified that he has developed relationships with the Nigerian High Commission in Ottawa and several government departments in Nigeria. He has applied to the Nigerian

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government for tar sands concessions and is following up on those. Liquid Gold also has applied in Nigeria for a marginal oil field. Prowse testified that Liquid Gold's Nigerian connections are personal, namely with Prowse himself, rather than corporate. He continued:

I'm not saying that the company is not going to survive if I'm gone, but I don't think the company is going to be doing business in Nigeria, which would really be a shame because we've been there and spent so much money developing what we are developing on the off chance that the country is going to get, you know, stabilized somewhat.

[para 10]

Further to this, Prowse testified that possible investors in Liquid Gold have told him that "right now the only asset the company has, and it's not even on the books, is – is the inroads that you have made in [Nigeria]." Prowse also produced a letter from a current shareholder and past creditor of Liquid Gold who stated that Prowse had always dealt with him in a honest and forthright manner and that he "would be quite concerned were Andrew Prowse not allowed to proceed at the helm of this company."

[para 11]

Prowse testified that Liquid Gold would suffer further if he was removed as a director because:

Like if I – if I were to – to cease to be an insider or a director of the company, then I would also have difficulty in being the – you know, the funder of the company. Without being the funder of the company, I would have – you know, I – I would hate to think that would – what would happen, how quickly it would happen.

[para 12]

Prowse testified that he has personally funded trips to Nigeria as well as the day to day expenses of the company.

[para 13]

Prowse also testified that the financial benefit to him during the period he did not file insider reports was "negligible or negative".

[para 14]

Liquid Gold has six directors, two of whom are in Nigeria. One of the Nigerian directors is Prowse's "administrative representative". The other is a mining engineer who is, according to Prowse, "fairly active in the tar sands area and every day he gathers information which is – is hopefully going to become valuable to us." The other four directors, including Prowse, are local. One, who is also Liquid Gold's corporate secretary and treasurer, is a chartered accountant who is active in the company. Two are engineers.

### **The Other Issuers**

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[para 15]

As with the Liquid Gold reports, Commission staff brought to Prowse's attention his failure to file insider reports respecting his holdings of securities in the other four issuers.

[para 16]

Sun Devil Gold Corp. (now Cardero Resource Corp.) became a reporting issuer on October 31, 1986. Prowse was corporate secretary of Sun Devil from March 1993 to April 1998. Prowse filed an initial insider report in August 1993. On May 20, 1995, 25,000 options held by him expired. On August 21, 1997, Prowse acquired 5000 shares and 5000 warrants in a private placement. He did not file the two insider reports disclosing these transactions until July 10, 1998.

[para 17]

Glassmaster Industries Inc. (now iQuest Networks Inc.) became a reporting issuer on June 29, 1983. Prowse was a director of Glassmaster from July 1992 to August 1998. On April 14, 1997, Prowse was granted 20,000 options. On June 17, 1997, Prowse exercised the options and acquired 20,000 shares. He did not file the two insider reports disclosing these transactions until July 10, 1998.

[para 18]

A.C.T. Industrial Corporation (now Rhona Online.com Inc.) became a reporting issuer on February 8, 1984. Prowse was a director of A.C.T. from May 1994 to February 1998. On October 22, 1996, Prowse was granted 10,000 options. On December 31, 1996, Prowse exercised the options and acquired 10,000 shares. He did not file the two insider reports disclosing these transactions until July 10, 1998.

[para 19]

Future Media Technologies Corp. (now Future Link Systems Inc.) became a reporting issuer on November 30, 1987. Prowse was a director of Future Media from June 1994 to August 1999. On April 18, 1995, Prowse exercised 25,000 warrants and acquired 25,000 shares. On November 17, 1995, Prowse again exercised 25,000 warrants and acquired 25,000 shares. On March 1, 1996, Prowse was granted 10,000 options. On August 9, 1996, Prowse exercised the options and acquired 10,000 shares. He did not file the four insider reports disclosing these transactions until July 10, 1998.

[para 20]

On August 14, 1998, Prowse paid late filing fees of \$500 in respect of the 10 insider reports filed on July 10, 1998.

[para 21]

The shares of Sun Devil, A.C.T. and Future Media were listed on the Exchange, while the shares of Glassmaster were quoted on the Canadian Dealing Network. All of Prowse's transactions in the securities of these four issuers represented the acquisition of securities from treasury or the exercise or expiry of options or warrants that Prowse had obtained

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from treasury. Consequently, none of the transactions were made through the Exchange or the Canadian Dealing Network.

[para 22]

Prowse testified that, by the time he filed the 10 insider reports in July 1998, he had ceased to be an insider of all four issuers.

### **Decision**

[para 23]

Prowse admitted that he contravened section 87 of the Act and section 70 of the former Act by failing to file 23 insider reports within the time required in those sections respecting his direct or indirect beneficial ownership of, or control or direction over, securities of Liquid Gold, Sun Devil, Glassmaster, A.C.T. and Future Media.

[para 24]

In *Re Frederick George Orr* 2001 BCSECCOM 1106, the Commission reviewed several decisions involving failure to file insider reports and concluded at paragraph 23 that the following factors are particularly relevant in determining sanctions in these cases:

- the volume of shares in the unreported trades compared to total trading in the stock,
- the number of unreported trades,
- the duration of the non-compliance,
- whether the respondent disclosed and rectified the deficiencies voluntarily,
- the respondent's subsequent conduct,
- the respondent's previous disciplinary history,
- the respondent's cooperation with the Commission staff investigation, and
- the presence of any aggravating factors.

[para 25]

Prowse has no disciplinary history with the Commission. He filed insider reports respecting his holdings in Liquid Gold from January 1996 to January 1997. However, Prowse did not file insider reports respecting his holdings in Liquid Gold from February 1997 to February 1998 until Commission staff brought to his attention his failure to do so. Prowse cooperated with Commission staff and, on March 30, 1998, filed the 13 late insider reports. He has filed insider reports respecting his holdings in Liquid Gold in a timely manner since March 1998.

[para 26]

During the 13 months Prowse did not file insider reports respecting his holdings in Liquid Gold, Prowse purchased 513,000 shares and sold 529,500 shares in 110 transactions on the Exchange. These transactions represented almost one third of the trading in Liquid Gold's shares during that period.

[para 27]

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With respect to the other issuers – Sun Devil, Glassmaster, A.C.T. and Future Media – Prowse failed to file 10 insider reports between April 1995 and August 1997. After Commission staff brought this failure to Prowse’s attention, he filed the 10 insider reports on July 10, 1998.

[para 28]

Prowse paid late filing fees totalling \$1150 in respect of his 23 late insider reports. The payment of this fee is required under section 22 of the *Securities Regulation*, BC Reg. 196/97.

[para 29]

Prowse acknowledged that he knew he had to file insider reports. He says that he failed to do so because he was busy with the affairs of Liquid Gold and, in particular, had to travel frequently to Nigeria.

[para 30]

Prowse argued that prohibiting him for a period of time from acting as a director or officer would cause serious problems for Liquid Gold and could prevent the company from doing business in Nigeria.

[para 31]

Liquid Gold’s primary business in Nigeria is its application for tar sands concessions. Liquid Gold has two directors in Nigeria. One deals with administrative matters. The other is a mining engineer who is “fairly active in the tar sands area”. As well, at least one of Liquid Gold’s local directors, a chartered accountant, is active in the company.

[para 32]

It has been almost four years since Prowse filed the 23 late reports. Since that time, Prowse has filed his insider reports on time. Commission staff does not challenge this. Nor do they allege that Prowse attempted to manipulate the market or traded on the basis of inside information.

[para 33]

Having said that, the Commission has recognized that failure to file insider reports in a timely manner is, in and of itself, a threat to the integrity of our capital markets. The Commission observed in *Orr* at paragraphs 19 and 20:

The Commission has repeatedly stressed the importance to the market of timely disclosure of insider trading. For example, in *Re Seven Mile High Group Inc.* [1991] 47 BCSC Weekly Summary 7 the Commission said (at p. 36):

“The information provided by insider trading reports is important market information, as it discloses to market participants the trading activities of the persons most closely connected to, and therefore in a position to be most knowledgeable about, a reporting

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issuer. Timely reporting is particularly important where, as in this case, the insider is an active trader.”

A failure to file reports when required can be presumed to have some deleterious effects on other investors and the market, even in the absence of evidence of actual harm.

[para 34]

We consider Prowse’s conduct to have fallen considerably below the standard expected of an insider and director of a reporting issuer. Therefore, we consider it to be in the public interest to order:

1. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Prowse for a period of 18 months, except that Prowse may rely on section 45(2)(7) of the Act to trade in securities for his own account;
2. under section 161(1)(d)(i) of the Act that Prowse resign any position that he holds as a director or officer of Liquid Gold on the date that is one year from the date of this order unless, before that date, Prowse successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers and files with the Executive Director evidence that he has successfully completed the course;
3. under section 161(1)(d)(ii) of the Act that, if Prowse resigns any position that he holds as a director or officer of Liquid Gold, Prowse is prohibited from becoming or acting as a director or officer of Liquid Gold until the date Prowse has both successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers and filed with the Executive Director evidence that he has successfully completed the course;
4. under section 161(1)(d)(i) of the Act that Prowse resign any position that he holds as a director or officer of any reporting issuer other than Liquid Gold;
5. under section 161(1)(d)(ii) of the Act that Prowse is prohibited from becoming or acting as a director or officer of any reporting issuer other than Liquid Gold until the later of
  - (a) 18 months from the date of this order, and
  - (b) the date he has both successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers and filed with the Executive Director evidence that he has successfully completed the course;

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6. under section 162 of the Act that Prowse pay an administrative penalty of \$5000;  
and
7. under section 174 of the Act that Prowse pay prescribed fees or charges for the costs of, or related to, the hearing.

[para 35]

The Commission will consider written submissions before making an order for costs. We direct Commission staff to file their submissions and send a copy to Prowse by March 28, 2002. We direct Prowse to file his submissions and send a copy to Commission staff by April 12, 2002.

March 19, 2002

[para 36]

**For the Commission**

Adrienne Salvail-Lopez  
Commissioner

Joan L. Brockman  
Commissioner

Roy Wares  
Commissioner