2002 BCSECCOM 811

COR#02/105

Decision

Jesse J. Hogan

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

Hearing

Panel	Adrienne Salvail-Lopez	Vice Chair
	Joan L. Brockman	Commissioner
	Roy Wares	Commissioner
Date of Hearing	September 13, 2002	
Date of Decision	September 20, 2002	

Appearing

Joseph A. Bernardo	For Commission staff
Jesse J. Hogan	For himself

¶ 1 We released our findings on June 19, 2002: see *Re Jesse J. Hogan* 2002 BCSECCCOM 537. On September 13, 2002, we reconvened to receive evidence and hear submissions from Hogan and Commission staff respecting the orders we should make against Hogan. Our decision today should be read in conjunction with our findings.

¶ 2 Hogan used the internet to disseminate misrepresentations about five companies and conduct blatant and highly effective manipulations of the markets for their shares. Each of the five companies was an American junior technology firm. Each company had its shares quoted on the National Association of Securities Dealers Over-the-Counter Bulletin Board. Hogan perpetrated the same scheme in respect of each company. He bought shares in the company, posted hundreds of false messages on internet bulletin boards suggesting that the company was about to be taken over, waited for the share price to rise on the basis of this false information, and sold his shares at a profit. His total profit was US$41,752.

¶ 3 Consequently we found that:

1. Hogan, with the intention of effecting trades in the companies' shares, made statements that he knew were misrepresentations, contrary to section 50(1)(d) of the *Securities Act*, RSBC 1996, c. 418;

2. Hogan manipulated the market by engaging in a series of transactions relating to trades in and acquisition of the companies' shares that he knew would result in artificial prices for the shares, contrary to section 57.1(a) of the Act; and

3. Hogan's misrepresentations and market manipulations seriously impaired the integrity of the capital markets and were contrary to the public interest.

¶ 4 During their submissions on orders, Commission staff advised that they will be seeking instructions from the Commission to apply to the Supreme Court under section 157(1)(b) of the Act for an order requiring Hogan to disgorge the profits he made in connection with the scheme. Hogan has a bank account and a brokerage account that are still frozen pursuant to an order issued by the Commission under section 151 of the Act on September 14, 2000. Those accounts contain approximately US$40,000 and some securities that Hogan suggests are worthless. During his submissions, Hogan advised that he would consent to an order requiring him to disgorge the money in the frozen accounts.

¶ 5 Hogan did not dispute any of the evidence tendered against him; in fact, he signed the agreed statement of facts that was put into evidence at the hearing.

¶ 6 Hogan was 24 in 2000, when he perpetrated his scheme, and is now 26. He lives in Burnaby with his family and has not worked for three years. He attributed this in part to having this matter, and the related investigation by the Securities and Exchange Commission, hanging over his head. He has completed several courses in the certified general accountant program at BCIT but is not currently taking any courses. Hogan said that he has no money, other than the money in the frozen accounts, and that he owes $7,741 in student loans and $25,526 to Revenue Canada.

¶ 7 Hogan submitted that he did not know at the time he perpetrated his scheme that he was breaking the securities laws. He claimed that he had never before been involved in the securities markets and that he was caught up in "the whole euphoria of the markets" in 2000. Hogan said that he knows now what he did was wrong and that he wants to get on with his life, to work and invest for the future. He said that he was prepared to take an ethics course and apologized for what he did.

¶ 8 Unfortunately, what he did was seriously prejudicial to the integrity of the public securities markets and public confidence in those markets. We cannot accept that

he did not know at the time that he was breaking the law. He certainly was in no doubt as to the effect of his scheme on the public securities markets.

¶ 9 Hogan knew that the thousands of messages he posted about these five companies on internet bulletin boards were outright lies. He admitted that he had posted the messages to create the appearance of trading activity in the companies' shares. We concluded that he also knew that his activities would result in artificially high prices for the companies' shares. He admitted that he had bought and sold the companies' shares to profit from the artificially high prices caused by his misrepresentations.

¶ 10 Hogan's conduct struck at one of the most fundamental elements of our securities regulatory system – the maintenance of market integrity and public confidence in those markets. The Commission considered the effect of manipulation on those markets in *Re Atlantic Trust Management Group*, [1995] 14 BCSC Weekly Summary 54, observing at page 80 as follows:

> Fair and orderly markets are dependent upon bona fide transactions between persons dealing at arm's length. As stated by the SEC in *Re Edward Mawod & Co. 46 SEC 865, (1977), aff'd., 591 F.2d588 (10th Cir. 1979) at 871 – 872*:
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> > When investors and prospective investors see activity, they are entitled to assume that it is real activity. They are also entitled to assume that prices that they pay and receive are determined by the unimpeded interaction of real supply and real demand so that those prices are the collective marketplace judgements that they purport to be. Manipulations frustrate these expectations. They substitute fiction for fact … the vice is that the market has been distorted and made into 'a stage-managed performance.'
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> It is axiomatic to observe that the manipulation of Riviera and Yellow Point shares is highly prejudicial to the public interest. The Newsoms' conduct could hardly be more serious. It strikes at the heart of the pricing process on which all investors rely and undermines public confidence in the integrity of our capital markets.

¶ 11 Deterrence of such conduct is even more critical in this case than in the Atlantic decision because manipulation has become much easier. The two Atlantic manipulations lasted months and involved offices, employees, glossy promotional materials, aggressive phone and mail campaigns, and a complex trading program involving several brokerage firms. They resulted in trading volume increases that were not quantified and price increases of 212% and 292%. The five Hogan

manipulations lasted days and involved a home computer and a discount brokerage account. They resulted in trading volume increases (from the pre-manipulation daily average to the volume on the day Hogan began to sell his shares) ranging from 1749% to 6735% and price increases (from the pre-manipulation daily average to the highest price during the manipulation) ranging from 61% to 239%.

¶ 12 It is clear that the development of the internet has made manipulation very simple, fast and effective, particularly manipulation of thinly-traded junior companies such as those targeted by Hogan. We must address this development with a firm regulatory response. Part of that response will be the Commission's application to the Supreme Court under section 157(1)(b) of the Act for a disgorgement order, to which Hogan has advised he will consent. Consequently, considering it to be in the public interest, we order:

1. under section 161(1)(b)(ii) of the Act that Hogan cease trading in and be prohibited from purchasing any security until September 20, 2012;

2. under section 161(1)(d)(iii) of the Act that Hogan is prohibited from engaging in investor relations activities until September 20, 2012; and

3. under section 162 of the Act that Hogan pay to the Commission an administrative penalty of $25,000.

September 20, 2002

¶ 13 **For the Commission**

Adrienne Salvail-Lopez
Vice Chair

Joan L. Brockman
Commissioner

Roy Wares
Commissioner

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