

2003 BCSECCOM 330

COR#03/079

Decision

American Gold Mining Corporation

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

Hearing

Panel	Joyce C. Maykut, Q.C. Neil Alexander Marc A. Foreman	Vice Chair Commissioner Commissioner
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Date of Hearing May 12, 2003

Date of Decision May 16, 2003

Appearing

Joyce M. Johner For Commission staff

Introduction

- ¶ 1 This is a hearing under section 161(1) of the *Securities Act*, RSBC 1996, c. 418 against American Gold Mining Corporation.
- ¶ 2 On December 24, 2002 the Executive Director issued a notice of hearing and temporary cease trade order against American Gold. The Commission extended the temporary cease trade order until the hearing is held and a decision rendered.
- ¶ 3 Staff allege that American Gold traded and distributed securities to residents in British Columbia without obtaining registration and without filing a prospectus contrary to sections 34 and 61 of the Act.
- ¶ 4 No one appeared for American Gold at the hearing. We find that American Gold received notice of the hearing in accordance with section 180 of the Act.

Background

- ¶ 5 American Gold is a private mineral exploration company incorporated in the state of Nevada on October 25, 1999.

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- ¶ 6 Ronald V. Markham of Reno, Nevada is American Gold's founder and president. The company's secretary and treasurer recently resigned, leaving Markham as American Gold's only director and officer. American Gold's public website shows that it also has two public relations officers, one of whom is Greg Truman. American Gold's website domain is registered to Truman whose address is listed in Kelowna, British Columbia.
- ¶ 7 American Gold shareholder's list and shareholder's history report obtained from the company's transfer agent, shows approximately 193 shareholders, 35 of whom are residents of British Columbia. The report indicates that British Columbia residents became American Gold shareholders by acquiring previously unissued treasury shares. One British Columbia shareholder confirmed to Commission staff that he had recently bought American Gold shares. The company has not filed a preliminary prospectus or a prospectus under section 61 of the Act nor has it obtained any registration under section 34 of the Act.
- ¶ 8 Markham has been in custody in Nevada since March 2003 pending the resolution of criminal charges. Markham received the temporary order and notice of hearing on December 24, 2002. He confirmed to Commission staff on behalf of American Gold that he did not oppose a permanent order being against American Gold until it filed a prospectus complying with the Act and related rules and regulation.
- ¶ 9 In 1997, following a hearing under section 161 of the Act, the Commission issued several enforcement orders against Markham for his role in Mindoro Corporation. In its decision, *Re Mindoro Corp.*, [1997], 7 BCSC Weekly Summary 13, the Commission stated at page 22 that:

Markham perpetrated an outrageous fraud on Mindoro and the residents of British Columbia who invested in Mindoro. In our view he was the ultimate con man who knew that high income or instant profits are always too good to resist and the fear of missing out can always be relied upon to override any fear of losing all. We found that he deliberately violated the most fundamental provisions of the Act, all with a view to defraud Mindoro and its shareholders. The exact extent of the loss is unknown although it appears to be in the several millions. Markham was, and still is, contemptuous of the regulatory regime and the public it serves to protect. The only interest he considers protecting is his own. His conduct is highly prejudicial to the public interest and warrants the severest sanction.

- ¶ 10 The Commission determined that it was in the public interest to keep Markham and any company he controlled out of British Columbia's capital markets

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permanently. In addition to ordering Markham and Mindoro to each pay an administrative penalty of \$100,000, the Commission banned Markham, and any other company he controlled, from participating in the capital markets in British Columbia for the rest of his natural life. This included a prohibition against trading any securities, relying on any statutory trading exemptions, acting as a director or officer of any issuer and engaging in investor relations activities.

- ¶ 11 American Gold, in its corporate profile section of its public website, provides an extensive description of Markham's history in the last 34 years in the mining industry in Canada and the United States. There is no mention of the Commission enforcement proceedings or the regulatory orders made against Markham.

Decision

- ¶ 12 The relevant portions of the definitions of "trade" and "distribution" in section 1(1) of the Act follow.

'trade' includes

(a) a disposition of a security for valuable consideration whether the terms of payment be on margin, installment or otherwise ...

'distribution' means, if used in relation to trading in securities, ...
a trade in a security of an issuer that has not been previously issued
...

Section 34 of the Act says:

34 (1) A person must not

(a) trade in a security or exchange contract unless the person is registered ...

Section 61 of the Act says:

61 (1) Unless exempted under this Act or the regulations, a person must not distribute a security unless a preliminary prospectus and a prospectus respecting that security

(a) have been filed with the executive director, and

(b) receipts obtained for them from the executive director.

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- ¶ 13 We find that American Gold sold its securities to residents of British Columbia for valuable consideration. American Gold was not registered under the Act and had not filed a preliminary prospectus or a prospectus under the Act. Furthermore, the securities traded by American Gold had not been issued before their sale to these investors.
- ¶ 14 We therefore find that American Gold:
1. traded in securities to residents of British Columbia without registration contrary to section 34(1) of the Act, and
 2. distributed securities to residents of British Columbia without filing a preliminary prospectus or prospectus contrary to section 61(1) of the Act.
- ¶ 15 Furthermore, we find that Markham, as the founder, sole director and person clearly directing the affairs of American Gold, controls American Gold. The Commission's earlier orders against Markham, prohibits him and any company that he controls from trading in British Columbia's capital markets.
- ¶ 16 Accordingly, we consider it to be in the public interest to order under section 161(1)(b) of the Act that all persons cease trading and be prohibited from purchasing the securities of American Gold.
- ¶ 17 May 16, 2003
- ¶ 18 **For the Commission**

Joyce C. Maykut, Q.C.
Vice Chair

Neil Alexander
Commissioner

Marc A. Foreman

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Commissioner