

2003 BCSECCOM 445

COR#03/102

Ruling

James Nelson McCarney

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

Following is the panel's ruling delivered by Vice Chair Maykut taken from the transcript of the hearing.

Panel	Joyce C. Maykut, Q.C.	Vice Chair
	Joan L. Brockman	Commissioner
	Marc A. Foreman	Commissioner

Dates of Hearing June 24 and 26, 2003

Date of Ruling June 26, 2003

Appearing

Sean K. Boyle For Commission staff

Howard Shapray, Q.C. For James Nelson McCarney
Brad Cramer

... On June 16th the executive director issued a series of temporary orders against James Nelson McCarney because he determined that the length of time to hold a hearing under Section 161 of the act could be prejudicial to the public interest. The temporary orders made were very broad and far reaching. They ordered that McCarney comply with or cease contravening the act, cease trading in and be prohibited from purchasing any securities or exchange contracts, resign any position he may hold as a director or officer of any issuer, and not become or act as a director or officer of any issuer and not engage in any investor-relations activities.

The orders were set to expire on June the 24th, 2003. Accompanying the temporary orders was a notice of hearing set for June the 24th, 2003. The notice alleged that the temporary orders were issued because, one, as of the date of notice of the hearing, McCarney had not satisfied any of the outstanding demands by commission staff to produce documents and information under Section 144 of the act, nor provided a satisfactory response to commission staff's request for a written explanation, and there had been a deliberate failure by McCarney to

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comply with a series of outstanding demands and a deliberate attempt by McCarney to frustrate and delay matters contained in the investigation order issued on January the 6th, 2003, under Section 142 of the act, and McCarney's deliberate failure to comply with the demands for production and continued involvement in two companies referred to in the investigation order was contrary to the public interest. The notice indicated that commission staff intended to apply to have the temporary orders extended until McCarney complies with commission staff's outstanding demands for production of documents and information.

By the time the hearing commenced on June the 24th, commission staff conceded that McCarney had substantially complied with the outstanding demands. At the hearing on the 24th we determined that it was not necessary in the public interest to extend the temporary orders. Accordingly, the orders made against McCarney expired at the end of June the 24th, 2003.

We have since had the opportunity to review the evidence filed in these proceedings. We find that commission staff have failed to establish the allegations, numbers 11 and 12 in the notice hearing [sic], that there has been a deliberate failure by McCarney to comply with a series of outstanding demands and a deliberate attempt by McCarney to frustrate and delay matters contained in the investigation order issued on January the 6th, 2003, and McCarney's deliberate failure to comply with the demands for production and continued involvement in two companies referred to in the investigation order is contrary to the public interest.

In our view, it is not necessary to make any further orders in this matter. However, in this case, the issuance of temporary orders without a hearing to compel production of documents and information during the course of an investigation merits further written reasons. These will be provided in due course.

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