# 2005 BCSECCOM 575

**Fatir Hussain Siddiqi**

**Sections 161 and 162 of the *Securities Act,* RSBC 1996, c. 418**

**Hearing**

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| **Panel** | Brent W. Aitken | Vice Chair |
| | Marc A. Foreman | Commissioner |
| | Robert J. Milbourne | Commissioner |
| **Submissions Completed** | August 12, 2005 | |
| **Date of Decision** | September 9, 2005 | |
| **Submissions Filed By** | | |
| H. Roderick Anderson | For Fatir Hussain Siddiqi | |
| Peter J. Brady | For the Executive Director | |

**Decision**

**Introduction**

¶ 1 This decision should be read with our Findings in this matter made on June 15, 2005 (see 2005 BCSECCOM 416). In our Findings, we directed the parties to make written submissions on the matter of sanctions and to advise the Secretary to the Commission if they wished to be heard orally. Both parties made submissions; neither sought an oral hearing.

¶ 2 Siddiqi was in the business of assisting public companies in raising capital. In the spring of 1999 Siddiqi was approached by Canop Worldwide Corp. to help it raise capital to fund the exploration of an oil and gas property in Tanzania. Siddiqi was not interested at first but about a year later he began doing research on Canop and the Tanzanian property to see if the deal made sense. By the fall he was negotiating with Canop about ways to fund the deal and ultimately it was agreed that the funding would be done through AIS Resources Ltd. Both Canop and AIS were listed on the Canadian Venture Exchange (CDNX, now the TSX Venture Exchange).

¶ 3 In the September-October 2000 time frame, two related transactions took place. First, Canop and Siddiqi reached an agreement about exploration funding for the

Tanzanian property using AIS as a vehicle. Second, Siddiqi and related parties acquired control of Floral Holdings Ltd. During this period, Siddiqi traded shares of AIS.

¶ 4 On October 13, 2000 the Exchange halted trading in the shares of AIS. The halt remained in place for several weeks and by the end of the year Siddiqi decided it made no sense to proceed with the project. The parties negotiated a settlement and the transactions were unwound.

**Findings**

¶ 5 We found that Siddiqi:

1. contravened section 86(1) of the Act when he purchased and sold 90,000 shares of AIS in 17 trades while being a person in a special relationship with AIS and having knowledge of material information about AIS that had not been generally disclosed, being the negotiations surrounding the farmout agreement and the acquisition of Floral;

2. contravened section 57(a) when he placed buy and sell orders for, and bought and sold, shares of AIS while knowing that those activities resulted in a misleading appearance of trading in, and an artificial price for, the shares of AIS;

3. contravened section 56(1) when he sold short 56,500 shares of AIS without declaring those sales as short sales;

4. contravened section 61(1) when he distributed 28,000 shares of AIS while being a control person of AIS without having filed a prospectus or having the benefit of an exemption from that section; and

5. contravened section 111(1) when he acquired control of more than 10% of the equity securities of AIS without filing the press release and report required by that section.

¶ 6 The Executive Director acknowledges that Siddiqi's undeclared short sales in contravention of section 56(1) "are relatively technical breaches". In making the finding in subparagraph 4 of paragraph 5 above, we noted that as it happened, the Exchange halted trading in the AIS shares 4 days before the expiry of the 7-day notice period required by the rules, and so the contravention is of little practical significance. In making the finding in subparagraph 5, we noted that the market was otherwise well-informed of the change of control in AIS and so the contravention is of little significance.

**Discussion**

¶ 7 The Executive Director says we should prohibit Siddiqi's use of the exemptions under the Act, prohibit him from acting as a director or officer, and prohibit him from engaging in investor relations activities, all for 12 years, and impose an administrative penalty of $150,000. The Executive Director also asks that we order him to pay costs of over $106,000, based on the bill of costs filed as part of the Executive Director's submissions.

¶ 8 Siddiqi appears to accept that it would be in the public interest for us to prohibit Siddiqi's use of the exemptions, his acting as a director or officer, and his engaging in investor relations activities, but for a time period of between 6 and 8 years. He also does not object to an administrative penalty, but says that it should be in the range of $40,000 to $60,000. He also says that the bill of costs submitted by the Executive Director is unreasonable and he should pay an amount not exceeding half of that amount.

¶ 9 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission discussed the factors relevant to sanction as follows (at page 24):

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
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> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British olumbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

¶ 10 We found that Siddiqi traded on inside information, and created a misleading appearance of trading in, and an artificial price for, the shares of AIS. These are both serious contraventions of the Act. Of section 86(1), the Commission said this in *Greenwell*, 1989 BCSC Weekly Summary 125 (at p. 6 Quicklaw edition):

> Section [86(1)] is one of the key provisions of the Act. It is intended to make the market operate more fairly by prohibiting trading in securities by certain persons having possession of certain information that has not been disclosed to the public. We have found there were two breaches . . . . Although [the] trading did not involve large sums of money, the violation of this fundamental prohibition requires that the Commission make appropriate orders to protect the public interest in a fair trading market.

¶ 11 In *Sirianni*, [1991] 40 BCSC Weekly Summary 7, the Commission said this about section 57(a):

> This issue was considered by the United States Securities and Exchange Commission ("SEC") in its decision In the Matter of Thornton and Company, 28 SEC 4 (1948) 208. . . . The SEC observed, at page 218:
>
> > Investors reading reports of stock exchange transactions on ticker tapes and in newspapers ordinarily assume that the reports reflect legitimate transactions. If the transactions instead reflect fictitious activity, such investors are deceived as to the market in the security. They are falsely led to believe that bona fide transactions have occurred at a certain price and they may be induced by the volume or price changes to purchase or sell the securities as the case may be.

¶ 12 Sections 86(1) and 57(a) are both fundamental to investor protection because they prohibit conduct that strikes at the heart of market integrity – a market in which investors trade on disclosed information, and a market untainted by misleading prices or volumes. Siddiqi's conduct damaged the integrity of our markets.

¶ 13 Siddiqi argued that there was no evidence that his conduct actually harmed any investors, or that British Columbia markets were damaged. Certainly if there were such evidence, it would be highly relevant to the issue of sanctions, but the absence of that evidence does not mean that we should ignore those factors. Persons other than Siddiqi who were trading in the shares of AIS at the same time he was could well have suffered some damages, although there is no way to know the quantum.

¶ 14 Siddiqi traded on four days with inside information that had not been generally disclosed. By definition, that means that there was information not available to the persons on the other side of his trades that could reasonably be expected to have a significant effect on the share price. Therefore, their trades with Siddiqi took place at prices that were likely different than they would have been had the inside information been disclosed.

¶ 15 Similarly, Siddiqi's trading activity created a misleading appearance of trading in, and an artificial price for, the shares of AIS. Other persons trading in shares of AIS while its volume and price were being affected by Siddiqi's trading activities were also likely trading at prices different than they would have been had without Siddiqi's activity.

¶ 16 In our findings we noted that Siddiqi's trading in the shares of AIS yielded a gross surplus (before commissions and taxes) of $76,290, which the parties have rounded off to an even $75,000. Siddiqi says that in considering this factor we should offset his costs of covering his short position, which he says amounted to about $42,000. He arrives at this figure by multiplying his short position (56,000 shares) by $0.75, the market price for AIS when he covered the position. If that amount is deducted, then Siddiqi's enrichment falls to about $33,000 before taxes and commissions.

¶ 17 The Executive Director disputes this approach because Siddiqi did not buy shares in the market to cover his short position. Instead, he covered his position out of the 100,000 AIS shares he acquired in the settlement of the civil dispute that arose when the deals fell apart. The Executive Director also says the cost to Siddiqi of the 100,000 shares was nominal.

¶ 18 The evidence is unclear as to the true cost to Siddiqi of the 100,000 shares. But it is true that any shares he used to cover his short position would otherwise have been available to him to sell into the market at $0.75, so in economic terms that is the cost to him of covering his short position. As a result, his actual enrichment is likely some amount less than $33,000, taking into account taxes and commissions.

¶ 19 Siddiqi has no previous disciplinary history with the Commission and cooperated with the investigation. He also made admissions that allowed the hearing to focus on the most serious allegations.

¶ 20 Compared to other cases before the Commission involving contraventions of section 57(a) and 86(1), this case did not involve other overt means of attempting to manipulate the market, such as misrepresentation. Neither did Siddiqi attempt to cover his tracks through a complex network of nominee accounts. His trading was limited to the shares of one company, AIS, and took place in a one-month

period, which limited the harm done to investors and markets compared to other cases the Commission has seen in the past.

¶ 21 The Executive Director says that we should consider the technical and insignificant contraventions as aggravating circumstances. This we have done, to some extent, not on the basis that Siddiqi wilfully contravened these provisions (there was not evidence of that) but because he appears not to have taken the care, and obtained the advice he ought to have, in ensuring that his activities were not in contravention of the Act.

¶ 22 Siddiqi no longer lives in British Columbia and is not acceptable to the TSX Venture Exchange as a director or officer of any company listed on that exchange. He is apparently not active in the market. It is therefore difficult to assess the risk he represents to our markets, but all the same we are of the view that the appropriate sanction ought to include some element of specific deterrence.

¶ 23 Given the fundamental role that the prohibitions against market manipulation and trading on inside information play in our regime of regulation, we think that the sanctions must communicate clearly to market participants the seriousness of a contravention of these sections, and they must also achieve an appropriate level of general deterrence. They must also take into account the mitigation factors and the precedents.

¶ 24 The precedents cited by the Executive Director generally involved conduct more serious than Siddiqi's. In *Sirianni*, debit kiting was a central part of the scheme and the Commission found that the respondents had a strong motivation to manipulate the market because they had a large position in the company, financed by expensive credit. Unlike AIS, the company had no prospects. It was in the process of abandoning the property that supported its public financing and was not making payments on its new property. The Commission found that the "only way for the respondents to profit from their holdings . . . was to induce investor interest." There was no similar evidence in this case. The Commission denied the respondents the use of the exemptions, prohibited them from acting as directors and officers or filling roles similar to what we would now call investor relations activities for 15 years and ordered them to pay costs. (At that time the Commission did not have the power to impose administrative penalties.)

¶ 25 *Atlantic Trust Management Group*, [1995] 14 BCSC Weekly Summary 54 was a massive boiler room operation, and *DiIanni*, 2001 BCSECCOM 918 involved a respondent with a criminal record in the United States who was described by the US Court of Appeals as "a recidivist who – offered any opportunity – will undertake to engage in conduct that is proscribed by federal securities laws". The facts in these cases are far removed from Siddiqi's conduct. In *Atlantic,* the

Commission removed exemptions, imposed director and officer and investor relations activities prohibitions for 25 years, ordered costs and imposed an administrative penalty of $75,000. In *DiIanni*, the Commission removed exemptions and imposed director and officer and investor relations activities prohibitions for life, and ordered costs.

¶ 26 Siddiqi cites *Woo*, 2004 BCSECCOM 610, a settlement in which Woo admitted to market manipulation through 40 trades in numerous companies over a one-month period. He agreed not to trade, not to be an officer or director, and not to engage in investor relations activities, for 10 years. He also agreed to pay the Commission $40,000, of which $3,000 represented the costs of the investigation.

¶ 27 Siddiqi also cites *Hogan*, 2002 BCSECCOM 811. The Commission found that Hogan used the internet to disseminate misrepresentation about five companies and to have conducted "blatant and highly effective" manipulations of their stock. The Commission cease traded him and prohibited him from engaging in investor relations activities for 10 year and imposed an administrative penalty of $25,000. (The Commission also noted that Hogan had agreed to consent to a disgorgement order under section 157(1)(b).)

¶ 28 The parties were unable to direct us to useful precedents for contraventions of section 86(1), although a couple of cases were cited.

**Orders**

¶ 29 Considering it to be in the public interest, we 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 Siddiqi for six years expiring on September 8, 2011, subject to paragraph 5 of these orders;

2. under section 161(1)(d)(ii) of the Act, that Siddiqi is prohibited from becoming or acting as a director or officer of any issuer for six years expiring on September 8, 2011, subject to paragraph 5 of these orders;

3. under section 161(1)(d)(iii) of the Act, that Siddiqi is prohibited from engaging in investor relations activities for six years expiring on September 8, 2011, subject to paragraph 5 of these orders;

4. under section 162 of the Act, that Siddiqi pay an administrative penalty of $60,000; and

5. paragraphs 1, 2, and 3 of these orders remain in force until Siddiqi pays the amount due under paragraph 4 of these orders, and any amount due under any future costs order we make in this matter.

**Costs**

¶ 30 Siddiqi disputes the reasonableness of the bill of costs submitted by the Executive Director. First, he says that his counsel spent only 161 hours in this matter, about one-half of the time billed for litigation staff (317 hours). Second, he disputes that the 537 hours of investigation time that was billed was necessary. Third, he argues that hearing days that did not occupy a full day (the set-date hearing for example was only one hour) should not be billed at the full $2,000 per day rate. Finally, he says he should not have to pay $2,967 in paper copying costs as well as the $3,971 for electronic reproduction of disclosure documents.

¶ 31 Siddiqi asks that the Executive Director be required to provide better particularization of the costs with further written submissions to follow, or that that we reduce the bill of costs by "more than half".

¶ 32 The Executive Director says that the bill of costs accurately reflects the time spent and that "a large portion of the Executive Director's time and expense goes into the investigation stage, whereas the respondent primarily participates in the matter once the investigation is complete."

¶ 33 Combining the litigation and investigation costs, Commission staff spent nearly 854 hours preparing this case. At seven hours per day, this represents about 4 person-months of effort. Although this appears to be a great deal of time to prepare for a five-day hearing, we are reluctant to arbitrarily reduce the bill of costs without more information. Conversely, we are reluctant to make an order for costs without knowing the particulars of the time spent by litigation and investigation staff.

¶ 34 Therefore, we direct the Executive Director to provide better particularization of the time spent by litigation and investigation staff.

¶ 35 We agree that it is not reasonable to charge a full hearing day for the set date hearing. In recognition that some other hearing days we did not sit for a full day, we order that the administrative costs portion of the bill of costs be reduced to $10,000.

¶ 36 We also direct the Executive Director to provide further details about the $2,967 disbursement for "Copywork" and a rationale for its inclusion in the bill of costs.

¶ 37 We direct that the Executive Director provide the additional information we have directed to Siddiqi and to the Secretary to the Commission on or before September 30, along with any further written submissions in support of the order for costs. We direct Siddiqi to deliver to the Executive Director and the Secretary to the Commission his further submissions on costs on or before October 24. If a party wishes an oral hearing, that party should make that request when filing its submissions.

¶ 38 September 9, 2005

¶ 39 **For the Commission**

Brent W. Aitken
Vice Chair

Marc A. Foreman
Commissioner

Robert J. Milbourne
Commissioner