

2006 BCSECCOM 230

Michael Savage

Section 161(1) of the *Securities Act*, RSBC 1996, c. 418

Application

Panel	Brent W. Aitken Neil Alexander Marc A. Foreman	Vice Chair Commissioner Commissioner
Date of Application	March 20, 2006	
Date of Ruling	April 21, 2006	
Written submissions		
Robert W. Taylor J. J. Kinghorn	For Michael Savage	
Douglas Muir	For the Executive Director	

Ruling

- ¶ 1 On March 20, 2006, Michael Savage applied to have the hearing in this matter halted and a new panel appointed to hear the case *de novo*. Savage argues that a reasonable apprehension of bias has been established due to prior contact between Savage and Neil Alexander, a member of the panel.
- ¶ 2 The Executive Director supported the application.
- ¶ 3 Alexander heard the application but did not participate in this ruling.

Background

- ¶ 4 The hearing in this matter is underway. At the time of the application, the case for the Executive Director was almost concluded (but for argument). Savage's cross examination of the Executive Director's only witness was almost complete. However, before that cross-examination was completed, Savage discharged his counsel.
- ¶ 5 Meanwhile, a letter to Alexander from Savage Tele.com, signed by Savage, came to light. The letter was not part of the disclosure the Executive Director provided

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to Savage in connection with the hearing, but among documents Savage had sought under the *Freedom of Information and Privacy Act*.

- ¶ 6 The letter was sent to Alexander in his capacity as an officer of the Bank of America and is dated November 3, 1999. It reads as follows:

Dear Neil,

I just wanted to take a moment to thank you once again for your time and assistance this morning. I truly appreciate the introduction to [an Alexander colleague] and your facilitating the conference call between our two organizations.

I look forward to establishing and enlarging the relationship between our two groups and hope to meet with you again in the future.

In the interim I remain

Respectfully yours

‘Michael Savage’

- ¶ 7 Savage says the letter triggered a recollection that around the time of the letter, Savage spoke to Alexander concerning possible investment and financing opportunities in Savage Tele.com.
- ¶ 8 Savage says he had two telephone conversations with Alexander in which he “described Savage Tele.com and its business plan and outlined the business opportunity in the telecommunications sector”. Savage believes he would have referred Alexander to Savage Tele.com’s website and would have sent him a copy of the executive summary of Savage Tele.com’s business plan.
- ¶ 9 Savage says that as a result of the two calls, Alexander referred Savage to one of Alexander’s colleagues at the Bank.

Analysis and Ruling

- ¶ 10 Savage argues that these circumstances establish a reasonable apprehension of bias, based on the jurisprudence. He also argues that the reasonable apprehension of bias involving Alexander also “taints” the other panel members and therefore a new panel must be appointed to hear the matter.
- ¶ 11 The Executive Director agrees with Savage’s position.

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- ¶ 12 We do not. In light of the ruling we are making, it is not necessary to analyze the issue in detail, but in our opinion, no reasonable informed bystander could, on these facts, reasonably perceive bias on the part of Alexander. The letter was sent six and a half years ago. Alexander has no recollection of the letter or of Savage. Accepting Savage's recollection as accurate, it seems apparent that his approach to Alexander was simply part of Savage's general efforts to raise capital for his business. All Alexander did was refer Savage to the person at Bank of America who dealt with smaller enterprises.
- ¶ 13 However, these are the circumstances. First, Savage has new counsel, who needs time to prepare. Accordingly, an adjournment sufficient to allow that will be necessary.
- ¶ 14 Second, although the Executive Director's case is essentially complete, it took only a little over one hearing day to enter the evidence, so re-starting the hearing will not result in a substantial waste of time or resources.
- ¶ 15 Finally, fraud is alleged.
- ¶ 16 For these reasons, it makes sense to remove all doubt about the bias issue by simply halting the hearing and appointing a new panel to hear the case *de novo*, and we so rule.
- ¶ 17 April 21, 2006

For the Commission

Brent W. Aitken
Vice Chair

Marc A. Foreman
Commissioner