

2006 BCSECCOM 569

Thomas Kim Seto

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

Hearing

| | | |
|--------------|----------------|--------------|
| Panel | Robin E. Ford | Commissioner |
| | Neil Alexander | Commissioner |
| | John K. Graf | Commissioner |

Date of decision October 4, 2006

Written submissions by

Dana Goodfellow For the Executive Director

Decision

- ¶ 1 The executive director issued of a notice of hearing against Thomas Kim Seto on March 6, 2006. On May 8, 2006, the Commission ruled that we would hear issues of liability and sanction together and that the hearing would be in writing. Thomas Kim Seto did not appear. The executive director tendered evidence by way of affidavit, and made written submissions, applying for orders against Seto under section 161 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 We admit into evidence and mark as exhibits 1 and 2 the affidavit of Paula Couper, sworn June 8, 2006, and the affidavit of Elaine Barberree, sworn March 30, 2006.
- ¶ 3 The executive director relies on:
- the Alberta Securities Commission decision of February 15, 2000 in the matter of World Stock Exchange, Thomas Kim Seto, and Orest Rusnak ((2000) 9 ASCS 658) under the Alberta *Securities Act* (SA 1981, c. S-6-1);
 - the ASC's order of March 31, 2000 in that matter ((2000) 9 ASCS 1240); and
 - Mr. Justice Wenden's oral judgment of May 27, 2005 in R. v. Seto, [2005] AJ No. 994 (Alberta Provincial Court).

Facts

- ¶ 4 We draw the following solely from the decision and order of the ASC and the judgment of the Alberta Provincial Court.

2006 BCSECCOM 569

- ¶ 5 Seto resided in Edmonton, Alberta. In September or October of 1997, Seto came up with the idea of setting up an internet stock exchange.
- ¶ 6 In late October of 1997, Seto registered a domain name (worldstock.com) and opened a website under the name “World Stock Exchange on the Internet”. The WSE website was stored on and accessible through an internet service provider whose computer was located in Edmonton, Alberta. At that time, the website was still under construction and, although no companies were then listed, the website included information on how a company could become listed on the WSE.
- ¶ 7 Seto described himself as a salesman and business consultant and the founder of the WSE.
- ¶ 8 An ASC investigator met with Seto and advised him to “take the website down” pending further investigation. Seto removed everything except the title page, and advised ASC staff that he was going to the Cayman Islands to set up the website there.
- ¶ 9 On November 11, 1997, Seto went to the Cayman Islands. On that trip, WSE was incorporated in the Cayman Islands, as were Valle Los Reyes Island Resort Ltd and Canroc International Ltd, two of the companies to be listed on the WSE. Seto was named as a director of the WSE and remained a director until he resigned in March 1999.
- ¶ 10 The WSE website was for some time stored on, and accessible on the internet through, a computer located in the Cayman Islands. The Cayman Islands authorities had some problems with the WSE website and it was shut down. The WSE website was then moved to a computer located in Antigua.
- ¶ 11 Seto solicited a number of Albertans and Alberta companies to raise money on the WSE.
- ¶ 12 The website stated that the World Stock Exchange was incorporated and established in a manner that ensured that it did not fall under the securities laws of any country and all financial transactions were finalized through offshore banks.
- ¶ 13 The Antigua website contained detailed information about how to apply for listing on the WSE. The “Procedures for Listing” included the requirement for “Confirmed arrangements for the payment of the Filing Fees, as required, together with the further investments for the purchase of shares in the World Stock Exchange.”

2006 BCSECCOM 569

- ¶ 14 The Antigua website showed three listed companies on the WSE - Valle Los Reyes and Canroc (mentioned above) and Lombard World Housing Corporation, also incorporated in the Cayman Islands. The operations of each were apparently conducted through what was described as subsidiary or affiliate companies.
- ¶ 15 Canroc had a subsidiary company incorporated in Alberta. Lombard had an affiliate company in Alberta. Valle Los Reyes had a subsidiary company in Costa Rica.
- ¶ 16 Each listed company had its own web page on the Antigua website containing information relating to the company including each company's application for listing on the WSE. Lombard's web page included the address of the company's president in Edmonton, Alberta.
- ¶ 17 The ASC did not recognize the WSE as an exchange. Neither the WSE, nor any of its listed companies, filed a prospectus with the ASC. None of the respondents was registered under the Alberta *Securities Act*. It was not suggested that any statutory exemptions applied.
- ¶ 18 The ASC panel found that the WSE did "carry on business as an exchange in Alberta", contrary to section 52(1) of the Alberta Act. The panel noted that the WSE was active in and had connections to many jurisdictions, including Alberta, but there were real and substantial links to Alberta. In the panel's view, the activities of the WSE required them to act to protect the public interest. They took into account the flag-of-convenience approach to incorporation of the WSE and the lack of any substantial connection between the WSE and either of its purported home jurisdictions.
- ¶ 19 The panel concluded that the WSE was run from Alberta. The panel said:
- the WSE's potential victims include anyone with internet access so, in this situation, comity encourages us to apply Alberta law because the WSE's links to Alberta allow us to act and because we would want other jurisdictions to take a similar approach. (QL, page 28)
- ¶ 20 The panel also found that the respondents traded in securities of the WSE in Alberta by requiring companies to purchase shares in the WSE as a condition of listing (and other acts in furtherance of a trade).
- ¶ 21 On March 31, 2000, the panel ordered under section 165 of the Alberta Act that:
- Seto cease trading in securities;

2006 BCSECCOM 569

- the exemptions contained in sections 65, 66, 66.1, 107, 115, 116, 132 and 133 of the Act or in the regulations made pursuant to the Act do not apply to Seto;
- Seto resign any positions he holds as a director or officer of any issuer; and
- Seto is prohibited from becoming or acting as a director or officer or as both a director and an officer of any issuer,

for a period of 5 years from March 28, 2000.

¶ 22 On May 27, 2005, Seto entered guilty pleas to and was convicted on the following five counts of breaches of the Alberta Act:

- count one: between August 1 and October 5, 2002 trading in the securities of Genoray contrary to the ASC order of March 31, 2000;
- count two: between August 1 and October 5, 2002 trading in securities of Genoray without being registered as a salesperson;
- count three: between August 1 and October 5, 2002 making representations to a person that shares of Genoray would be listed on NASDAQ;
- count four: between June 1 and August 31, 2004 advising a person to purchase shares of a Costa Rican company, Knights of Paradise Resorts Ltd., without being registered as an advisor; and
- count five: between September 3, 2002 and May 27, 2005 failing to comply with the ASC order by acting as a director of Paraiso Club Resorts.

¶ 23 Under section 194 of the Alberta Act, the Alberta Provincial Court sentenced Seto to a total of five months in prison and extended the administrative sanctions imposed on him by the ASC for an additional twelve years.

¶ 24 The Court took into account the following aggravating factors:

- the offences appear minor but were made more serious by the fact they were committed shortly after the ASC issued its order;
- the ASC decision and order were clear and unambiguous;
- Seto was not a neophyte in and to the world of securities;
- the onus was on Seto to find out what the ASC order meant;
- Seto deliberately attempted to mislead the Court;
- Seto sought refuge in the “grey areas” of the law or tried to put the blame on others;
- Seto was wilfully blind to the requirements of the Act and order (continuing to be of the view he stated in argument to the ASC that the

2006 BCSECCOM 569

ASC “could not be held in greater esteem than myself in making regulations as a securities regulator”); and

- a sentence in the community would pose a great risk to the community (and so a prison sentence was appropriate).

¶ 25 The Court took into account the mitigating factors that:

- the offences were less serious than the formal language of the counts made them appear, involving a sale to a friend, and passing on rather than creating a misrepresentation;
- Seto had no criminal record;
- he pled guilty (although very late, at the start of proceedings with all the witnesses present and ready to testify); and
- letters attested to his good character.

Analysis

¶ 26 The executive director says that Seto’s misconduct in Alberta is evidence that Seto presents a threat to the integrity of the capital markets and to investors in British Columbia.

¶ 27 The executive director seeks an order under section 161 of the Act that Seto:

- cease trading in securities in British Columbia; and
- resign any position he holds in, and be prohibited from becoming or acting as a director or officer of, any issuer in British Columbia,

for 12 years from May 27, 2005.

¶ 28 As in the case of *Woods*, [1997] 8 BCSC Weekly Summary 22, where the Commission made orders in the public interest based on events and related legal proceedings in Ontario, we consider it reasonable to rely on the findings of fact of the ASC and the Alberta Court.

¶ 29 In *Woods*, the Commission said:

Provincial securities legislation in Canada is substantially uniform in most material respects. The Commission is therefore interested in the activities of persons found to have contravened securities legislation in other jurisdictions. This is particularly so since it is not unusual for persons involved in capital markets to conduct business in more than one jurisdiction. For example, persons from all provinces, including British Columbia, trade in securities through the facilities of all of the principal

2006 BCSECCOM 569

stock exchanges in Canada. Furthermore, a person may live in one province and be a director or officer of an issuer based in another province. For these reasons, applications are made to the Commission from time to time to issue orders on a more or less reciprocal basis to those issued in other jurisdictions. Similarly, applications are made to securities regulators in other jurisdictions to issue these types of orders based on orders made by this Commission in the first instance.

The orderly and credible regulation of the securities market throughout Canada, not to mention common sense, argues strongly that such applications be favourably received. However, the Commission's responsibility in hearing such applications is no different than in any other case. In each case, the Commission must consider what is in the public interest, and act accordingly. (page 4)

- ¶ 30 There need not necessarily be an existing connection with BC. The Court in *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 SCR 494 recognized the cross-jurisdictional nature of securities transactions, the increased risks posed by electronic trading, and the need for regulators to be able to respond, and surmount borders where legally possible. (para. 28)
- ¶ 31 Seto has not hesitated to cross borders to avoid regulation. Seto is clearly unfit to hold a position of trust as a director or officer.
- ¶ 32 We must deter Seto from engaging in conduct similar to that described above in BC or (acting elsewhere) putting at risk the interests of BC investors.
- ¶ 33 Since the ASC order appears to have made no impression on Seto, we agree with the executive director that an order for a significantly longer period is appropriate. It is convenient that the period expire at the same time as the order of the Alberta Court.
- ¶ 34 Under section 161 of the Act, considering it to be in the public interest, we therefore order that Seto:
- (a) cease trading in securities; and
 - (b) resign any position he holds, and is prohibited from becoming or acting, as a director or officer of any issuer,
- for 12 years from May 27, 2005.
- ¶ 35 October 4, 2006

2006 BCSECCOM 569

¶ 36 **For the Commission**

Robin E. Ford
Commissioner

Neil Alexander
Commissioner

John K. Graf
Commissioner