

2007 BCSECCOM 552

Bryan Orr

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

Hearing

Panel	Brent W. Aitken Neil Alexander Robert J. Milbourne	Vice Chair Commissioner Commissioner
Dates of Hearing	2006: November 6-10, 14-17, and 20-23 2007: September 11	
Date of Decision	September 14, 2007	
Appearing		
Rodney L. Hayley Marko Vesely	For Bryan Orr	
Wietzke Gerber	For the Executive Director	

Decision

- ¶ 1 This is a hearing under section 161(1) of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 The hearing began in November 2006. We then adjourned the hearing while counsel were involved in a related civil trial. A number of consent adjournments followed.
- ¶ 3 In the meantime, the parties reached a settlement. After a hearing into a matter has started, it is the commission's practice that the parties obtain the hearing panel's approval of any settlement. On September 11 we heard the parties' joint application for that approval.

2007 BCSECCOM 552

- ¶ 4 Orr has admitted that he
- contravened section 34(1)(c) of the Act by acting as a portfolio manager without being registered to do so, and made discretionary purchases and sales of mutual funds for clients without first obtaining their instructions; and
 - contravened section 48 of the *Securities Rules*, BC Reg 194/97 by recommending to several clients investments that were unsuitable.
- ¶ 5 The parties compared Orr's conduct with similar conduct by others that led to settlements with the executive director or decisions of the commission. They recommended specific orders that they say are supported by the precedents they cited.
- ¶ 6 The parties' joint submissions did not specifically mention how they considered two factors normally considered by the commission in making sanction decisions: the harm suffered by investors, and the extent to which the respondent was enriched. At the hearing we asked the parties to speak to those factors and their responses were satisfactory. In our opinion the orders recommended by the parties are appropriate in the circumstances.
- ¶ 7 The parties recommended that we make no order for an administrative penalty under section 162 and entered evidence of Orr's inability to pay. Orr asked that this evidence be sealed. Commission hearings are open to the public and the evidence tendered in hearing is available for public scrutiny. Transparency of the hearing process is a fundamental element of fairness, so evidence should remain public unless its disclosure would be unduly prejudicial. In our opinion, the disclosure of this evidence would not be unduly prejudicial to Orr.
- ¶ 8 The parties suggested in their joint submissions that Orr be permitted to rely on the exemption in section 44(2)(c) of the Act. That section exempts an accountant from having to register as an adviser as long as any advice the accountant gives is "solely incidental" to the accountant's principal business. Orr wishes to be free to pursue employment as an accountant.
- ¶ 9 We asked whether the exemption was necessary in order for Orr to act as an accountant, and at the conclusion of the discussion that followed the parties agreed that the exemption was not necessary.
- ¶ 10 Therefore, considering it to be in the public interest:
1. Subject to paragraph 2, we order, under section 161(1)(c) of the Act, that the exemptions described in sections 45 to 47, 74, 75, 98 and 99 of the Act do not apply to Orr for a period of three years from the date of this order.

2007 BCSECCOM 552

2. Orr may trade and purchase securities in one account in his own name for his own financial purpose, solely through a dealer registered to trade securities under the Act, if he gives the dealer a copy of this order before any trade or purchase takes place.

¶ 11 September 14, 2007.

¶ 12 **For the Commission**

Brent W. Aitken
Vice Chair

Neil Alexander
Commissioner

Robert J. Milbourne
Commissioner