

2008 BCSECCOM 71

Michael Savage Sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418

Panel
John K. Graf Commissioner
Robert J. Milbourne Commissioner

Date of decision February 1, 2008

Submissions filed by Douglas Muir for the Executive Director
Michael Savage

Decision

Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. This decision should be read with our findings made on December 14, 2007 (2007 BCSECCOM 737). This hearing on sanctions was conducted in writing, without appearances by the parties.
- ¶ 2 Commissioner Robin E. Ford participated in the findings of December 14, 2007 but resigned from the Commission on December 31, 2007, and did not participate in this decision.

Background

- ¶ 3 In early 2000, Savage sold US\$765,000 of securities of Savage Tele.com Corporation to a group of investors (the Maier group) without being registered to sell securities and without filing a prospectus. Savage misrepresented that Savage Tele.com was incorporated and that Savage Tele.com had purchased two internet service providers to operate as part of its business.
- ¶ 4 After learning of the misrepresentations, the Maier group asked for their money back. Savage refused, and moved what remained of the US \$765,000 into non-company bank accounts, to hide them from the Maier group and frustrate any garnishing orders they might obtain. Negotiations between Savage and the Maier group failed. By August, 2000, the Maier group had filed a lawsuit and obtained a garnishing order. Savage subsequently moved part of the money, some US \$246,000, into the account of Loree Menton, who he described as his fiancée,

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without her having any entitlement to it, and without the company retaining any control over its use.

¶ 5 As a result, on December 17, 2007, we found that:

- Savage contravened sections 34(1) and 61(1) of the Act when he traded and distributed securities of Savage Tele.com Corporation securities to investors, without being registered under the Act and without having filed a prospectus;
- Savage contravened section 50(1)(d) of the Act when he misrepresented that Savage Tele.com Corporation was incorporated and that Savage Tele.com Corporation had acquired two local internet service providers; and
- Savage contravened section 57.1(b) of the Act when he moved US \$245,715 of company funds to the Menton account.

Analysis

Factors to consider

¶ 6 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:

- 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 Columbia 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,

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- 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.

Application of the factors to Savage's conduct

Seriousness of the conduct

- ¶ 7 Savage's misconduct is very serious. He disregarded the securities regulatory regime when he sold securities without complying with the requirements for a prospectus and registration. These requirements go to the very foundation of securities regulation. Moreover, he made misrepresentations to investors when he sold them the securities. Lastly, he committed fraud when he moved company funds to Menton's account.
- ¶ 8 Savage's misrepresentations about the business were not trivial. He misrepresented fundamental facts about the investments - the incorporation of Savage Tele.com, and its ownership of internet service providers, which was at the heart of its business.
- ¶ 9 Savage was the "driving force" behind the Savage Tele.com business. He led the creation of the business plan that included the misrepresentations and took the leading role in soliciting funds. As CEO of the business, he was responsible for the business plan and he failed in his duty to ensure its accuracy.
- ¶ 10 Savage admitted that moving the funds was designed to shield them from any garnishing order that the investors might obtain. We did not, however, find that Savage was aware of the August 1, 2000 garnishing order when he moved the funds to the Menton account.
- ¶ 11 By moving the funds to the Menton account, and putting the funds at risk, Savage permitted the misuse of the company's funds and committed fraud.

Harm suffered by investors

- ¶ 12 We know that substantially all of what remained of the company's funds was deposited in the Menton account. We have no clear evidence of what happened to those funds, other than the US \$63,000 spent by Menton. We know that the Maier group, who invested a total of US \$765,000, initially pursued their rights through the courts and obtained a judgement for the US \$765,000, plus interest. We have

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no evidence of whether the Maier group actually realized anything from the judgement. None of the investors appeared before us.

Damage to British Columbia's capital markets

- ¶ 13 Savage made an illegal distribution of securities based on misrepresentations and he committed fraud in British Columbia. The integrity of the province's capital markets, and its reputation, are seriously damaged as a result. Misrepresentations and fraud are among the most damaging of securities contraventions.

Enrichment

- ¶ 14 Savage moved US \$246,000 into Menton's account and failed to account for it. While we have no evidence of the amount of any enrichment of Savage personally, we do know that Menton spent some US \$63,000 for her own benefit.

Risk that Savage poses to British Columbia investors and markets

- ¶ 15 Savage poses a serious risk to British Columbia investors and markets. He was deceitful and disregarded our regulatory regime.

Fitness to be a director or officer

- ¶ 16 Savage's disregard for the duties and responsibilities of directors and officers and a disdain for securities regulation makes him unfit to be a director and officer of any company with outside directors.

Need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets and to deter those who participate in the capital markets from engaging in inappropriate conduct

- ¶ 17 It is incumbent on us to show that persons who ignore regulatory requirements for registration and prospectuses, who become directors and officers without any recognition of the duties and responsibilities they are undertaking, and who harm investors by fraud and misrepresentation will receive significant sanctions.

Mitigating factors

- ¶ 18 Savage did not set out to separate the Maier group from their funds by these means. Albeit misguidedly, he believed he was not doing anything seriously wrong when he conducted the illegal distributions and made the misrepresentations; he saw them as only minor administrative issues. When he moved the money to his sister's account, and under Oslund's control, he did not believe he was doing anything wrong; he believed he was trying to protect his company. Then, however, Savage took the funds from Oslund's control and put them at risk by giving control of them to Menton. He made some poor choices, in part, it appears, based on some questionable professional advice given by his accountant.

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Sanctions

- ¶ 19 The Executive Director asks that we permanently prohibit Savage from participating in British Columbia capital markets and that we impose an administrative penalty on him of \$250,000 to \$400,000. We do not agree. Savage's conduct was not as egregious as that cited by the Executive Director to support her recommendations on sanctions. On the other hand, it is not appropriate that Savage, or those to whom he gave control of the funds, benefit from any amounts obtained by fraud.
- ¶ 20 Our principal finding about fraud was that Savage perpetrated a fraud when he put investors' funds at risk by moving them to Menton's account. To determine the amount that Savage may have retained or benefitted from, we need to examine how the funds at risk were used. We have evidence about the US \$63,000 that was spent by Menton for personal items. We have no evidence that the balance of the funds put at risk were actually used improperly. As a result, in our view, it is appropriate that Savage give up US \$63,000 of the funds.
- ¶ 21 That is not the end of it, however. For specific and general deterrence, we must demonstrate that the monetary cost to those who commit similar acts will be more than just a return of the funds. Additional monetary sanctions are necessary to achieve the preventative and protective effect we seek.

Decision

- ¶ 22 Considering it to be in the public interest, we order:
1. under section 161(1) of the Act, that:
 - (a) Savage resign as, and is prohibited from becoming, a director or officer of any issuer, other than one in which he and his immediate family own 100% of all the issued shares;
 - (b) the exemptions described in sections 45 to 47, 74, 75, 98 and 99 of the Act do not apply to Savage; and
 - (c) that Savage be prohibited from engaging in investor relations activities and acting in a managerial or consultative capacity in connection with activities in securities markets
- until the latest of
- (i) 10 years;
 - (ii) the date on which he pays the amount set out in 2. below; and

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(iii) the date on which he completes a course of study satisfactory to the Executive Director on the duties and responsibilities of directors and officers; and

2. under section 162 of the Act that Savage pay to the Commission an administrative penalty of \$100,000.

¶ 23 February 1, 2008

¶ 24 **For the Commission**

John K. Graf
Commissioner

Robert J. Milbourne
Commissioner