

# 2011 BCSECCOM 563

## Pacific Ocean Resources Corporation and Donald Verne Dyer

### *Securities Act, RSBC 1996, c. 418*

#### Hearing

<b>Panel</b>	Bradley Doney	Commissioner
	Don Rowlatt	Commissioner
	Shelley C. Williams	Commissioner

**Hearing Date** October 4, 2011

**Submissions Completed** November 15, 2011

**Date of Findings** December 19, 2011

#### Appearing

Joyce M. Johner For the Executive Director  
Shamira Esmail, Articled Student

Patricia A.A. Taylor For Pacific Ocean Resources  
Corporation and Donald Verne Dyer

#### Findings

##### **I Introduction**

- ¶ 1 This is the liability part of a hearing under sections 161(1) and 162 of the *Securities Act, RSBC 1996, c. 418*.
- ¶ 2 On June 24, 2009 the Commission issued a cease trade order against Global 8 Environmental Technologies Inc. On January 4, 2011, the executive director issued a notice of hearing alleging Pacific Ocean Resources Corporation and Donald Verne Dyer contravened the Act between November 2005 and July 2009 (the Relevant Period) by trading and distributing securities of Global 8 for which a prospectus had not been filed and without being registered in contravention of sections 34 and 61 of the Act, and by telephoning residences from inside British Columbia for the purpose of trading in securities, in contravention of section 49 of the Act.

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- ¶ 3 The hearing was held on October 4, 2011. The Commission staff investigator and Dyer testified. Following the hearing counsel submitted written submissions on the issue of liability.

### **II Background**

- ¶ 4 This hearing is about a series of transactions by Pacific Ocean and Dyer to raise funds for Global 8.

#### ***Pacific Ocean***

- ¶ 5 Rene Branconnier, a resident of British Columbia, incorporated Pacific Ocean in British Columbia in 1983 and was its sole director.
- ¶ 6 Dyer, a resident of Richmond, BC, acquired Pacific Ocean from Branconnier in August 2003 and is currently the sole director, officer and shareholder. Pacific Ocean has an office in Langley, BC.
- ¶ 7 Dyer and Pacific Ocean are in the business of raising money for public companies. They have never been registered to trade securities under the Act. Pacific Ocean has never filed a prospectus under the Act.
- ¶ 8 Branconnier continues to be involved with Pacific Ocean as a consultant and the sole signatory on its bank accounts. Dyer is not a signatory on the Pacific Ocean bank accounts.

#### ***Global 8***

- ¶ 9 Global 8, formerly known as Organic Recycling Technologies Inc., is a Nevada company. Its shares are quoted on the Pink Sheets in the U.S. It is a reporting issuer under BC Instrument 51-509 *Issuers Quoted in the U.S. Over the Counter Markets*.
- ¶ 10 Branconnier is the control person of Global 8, as defined by US securities legislation.
- ¶ 11 Global 8 has never been registered to trade securities and has never filed a prospectus under the Act.

#### ***Fundraising for Global 8***

- ¶ 12 During the Relevant Period, Pacific Ocean raised US \$836,658 from about 83 Investors across Canada and the US. Pacific Ocean entered into 136 separate loan agreements with the Investors, as some of the Investors participated in more than one transaction. Each of the Investors "loaned" money to Pacific Ocean and was

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given shares of Global 8 as "collateral". The loans were described as "demand" loans, however, recourse by the Investors was restricted to "accepting the...Shares as full and complete satisfaction of the Principle (sic) Sum...including...the accrued interest".

- ¶ 13 Pacific Ocean deposited the Investors' funds into Pacific Ocean's bank accounts. Branconnier was the sole signatory on the accounts. Pacific Ocean acquired shares from Global 8 using the Investors' funds and then transferred the shares to the Investors shortly after.
- ¶ 14 Dyer contacted Investors by telephone at their residences from inside BC. He never met them.

### **III Analysis and Findings**

- ¶ 15 The executive director alleges that the respondents contravened sections 34, 49 and 61 of the Act.

#### ***Unregistered trading and illegal distribution***

- ¶ 16 Section 34 says, "a person must not...trade in a security...unless the person is registered in accordance with the regulations...."
- ¶ 17 The respondents were not registered under the Act.
- ¶ 18 Section 1(1) defines a "security" as including, "a document, instrument or writing commonly known as a security...a bond, debenture, note or other evidence of indebtedness, share, stock, unit...."
- ¶ 19 We find that the shares of Global 8 were securities as defined by the Act.
- ¶ 20 Section 1(1) defines "trade" to include, "a disposition of a security for valuable consideration...."
- ¶ 21 Section 1(1) defines "distribution" as including, "a trade in a security of an issuer that has not been previously issued" or "a transaction or series of transactions involving further purchases and sales in the course of or incidental to a distribution".
- ¶ 22 We find that when Pacific Ocean received the investors' funds and used them to acquire the Global 8 shares from Global 8 and then delivered those shares to the Investors this was "a transaction or series of transactions involving further purchases and sales in the course of or incidental to a distribution" and was

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therefore a distribution and a trade within the meaning of the definitions. While Pacific Ocean structured the transactions as loans, the scheme was transparently intended to facilitate Pacific Ocean's distribution of Global 8 shares. The loans were structured as demand loans and the Investors' recourse was limited to Global 8 shares received as collateral. There was no intent on the part of Pacific Ocean, nor expectation on the part of the Investors, to receive a cash repayment. The loan agreements were clear that recourse by the Investors was restricted to "accepting the...Shares as full and complete satisfaction of the Principle (sic) Sum...including...the accrued interest". Investors expected to receive Global 8 shares in return for their investment.

- ¶ 23 Section 61(1) says, "...a person must not distribute a security unless...a preliminary prospectus and a prospectus respecting the security have been filed with the executive director" and the executive director has issued receipts for them.
- ¶ 24 Neither Pacific Ocean nor Global 8 has filed a prospectus under the Act in relation to the distribution of Global 8 shares.
- ¶ 25 The Act provides exemptions from the registration and prospectus requirements.
- ¶ 26 At Commission staff interviews on May 25, 2010 and June 4, 2010, Dyer claimed that he was aware of registration requirements and that he relied on the close friends, business associates and the accredited investor exemptions. He further claimed he received no advice that the transactions were structured to avoid registration or prospectus requirements. He testified that Branconnier and Rowland Wallenius, an accountant for Global 8, had provided him with the documentation. He also stated that Branconnier was involved in drafting the materials.
- ¶ 27 In *Solara Technologies Inc. (Re)*, 2010 BCSECCOM 426, para. 32 and 33, the Commission said:

"32 It is the responsibility of a person trading securities to ensure that the trade complies with the Act. This is so whether the person chooses to comply by filing a prospectus, or by using an available exemption.

33 When the person chooses to rely on an exemption, two considerations are relevant to the responsibility to ensure compliance with the Act.

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First, the person trading has the onus of proving that the exemption is available (see *Bilinski* 2002 BCSECCOM 102 and *Limelight Entertainment Inc.* 21 OSCB 1727). Second, it is unlikely an issuer will be able to prove that an exemption was available at the time of the trade if it does not have documentation to prove it made a proper determination to that effect."

- ¶ 28 There are no subscription agreements or, in fact, any documentation or other evidence of any kind to support Dyer's contention that the respondents were relying on exemptions.
- ¶ 29 In his interviews Dyer was asked about his relations with most of the investors. It was clear from the evidence that the investors did not meet the "close friends and family" exemption nor the "business associates" exemption. The common features of Dyer's relationship with most Investors were that he: never met them; did not know their middle names; did not know their profession or marital status; did not know their financial status or position; and, did not have knowledge about their families.
- ¶ 30 Dyer claims that 8 of the Investors were accredited investors because they were referred to Pacific Ocean by a paid finder. This is not a basis for claiming the accredited investor exemption and Dyer was not able to provide any substantiation that they were accredited investors.
- ¶ 31 We find that Dyer was unable to provide evidence that he was able to rely on available exemptions to registration and prospectus requirements.
- ¶ 32 In his testimony at this hearing Dyer claimed the transactions were structured on legal and accounting advice to avoid the requirement to register or to rely on exemptions. Dyer did not provide details about the advice received nor was any other evidence produced to support his testimony. If Dyer received such advice this is not relevant in determining whether the respondents contravened the Act. It is relevant only when the Commission considers sanctions.
- ¶ 33 Pacific Ocean was not registered under the Act. Pacific Ocean and Global 8 did not file a prospectus in relation to the distributions of Global 8 shares and there were no exemptions. Therefore we find that Pacific Ocean traded and distributed Global 8 shares in contravention of sections 34 and 61 of the Act.
- ¶ 34 Section 168.2 (1) of the Act says, "If a person, other than an individual, contravenes a provision of this Act or of the regulation, or fails to comply with a

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decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply the decision, as the case may be".

- ¶ 35 Dyer was the sole director, officer and shareholder of Pacific Ocean. Dyer authorized Pacific Ocean's trading and distribution of Global 8 shares. Therefore, under section 168.2(1), Dyer also contravened the same provisions of the Act as Pacific Ocean.

### *Calling telephone residences for the purposes of trading securities*

- ¶ 36 Section 49(2)(b) of the Act says, "A person must not telephone from inside British Columbia to any residence inside or outside British Columbia for the purpose of trading in a security or exchange contract".
- ¶ 37 Section 49(3) says, "Subsection (2) does not apply if
- (a) the person calls at or telephones the residence
    - (i) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading in securities or exchange contracts, or
    - (ii) of a person who
      - (A) has received a copy of a prospectus filed under this Act, and
      - (B) has requested that information respecting a security offered in that prospectus be provided to that person by the person calling or telephoning, and the person calling or telephoning refers only to the request for information respecting that security."

- ¶ 38 Dyer acknowledges contacting Investors by telephone.

- ¶ 39 Dyer stated in his interview that at least 12 of the Investors were retired and one Investor was in a rest home at the time Dyer called them. We accept the inference presented by the Executive Director that these Investors were called at their residences.

- ¶ 40 Since the respondents have not demonstrated that they can rely on the close personal friend, business associate exemption, section 49(3) is not available to them.

- ¶ 41 Section 49(4) of the Act says, "For the purposes of this section, a person is conclusively deemed to have called or telephoned if a salesperson, advising

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employee, partner, director, officer or agent of the person calls or telephones on that person's behalf".

¶ 42 We find that Pacific Ocean is deemed to have telephoned the Investors because Dyer, a director of Pacific Ocean, called on the company's behalf.

¶ 43 We find that the respondents telephoned residences from inside British Columbia for the purpose of trading in Global 8 shares in contravention of section 49 of the Act.

### **IV Summary of Findings**

¶ 44 We find that the respondents, Dyer and Pacific Ocean:

1. traded and distributed Global 8 shares without being registered, without filing a prospectus, and without the benefit of an exemption from those requirements, contrary to sections 34 and 61 of the Act, and
2. telephoned residences from inside British Columbia for the purposes of trading Global 8 shares, contrary to section 49(2)(b) of the Act.

### **V Submissions on sanction**

¶ 45 We direct the parties to make their submissions on sanctions as follows:

By January 17, 2012      The executive director delivers submissions to the respondents and to the secretary to the Commission.

By January 31, 2012      The respondents deliver response submissions to the executive director and the secretary to the Commission. Any party seeking an oral hearing on the issue of sanctions may advise the secretary to the Commission.

By February 7, 2012      The executive director delivers reply submissions, if any, to the respondents and to the secretary to the Commission

¶ 46 December 19, 2011

¶ 47 **For the Commission**

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Bradley Doney  
Commissioner

Don Rowlatt  
Commissioner

Shelley C. Williams  
Commissioner