

2012 BCSECCOM 104

Pacific Ocean Resources Corporation and Donald Verne Dyer

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Bradley Doney Don Rowlatt Shelley C. Williams	Commissioner Commissioner Commissioner
Hearing Date	October 4, 2012	
Submissions Completed	March 9, 2012	
Date of Decision	April 3, 2012	
Appearing		
Joyce M. Johner Shamira Esmail	For the Executive Director	
Patricia A.A. Taylor	For Pacific Ocean Resources Corporation and Donald Verne Dyer	

Decision

I Introduction

- ¶ 1 This is the sanctions part of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. Our Findings on liability made on December 19, 2011 (2011 BCSECCOM 563) are part of this decision.
- ¶ 2 Pacific Ocean Resources Corporation and Donald Verne Dyer [also referred to as the respondents] raised US\$836,658 from about 83 investors in transactions structured in an attempt to avoid the application of the registration and prospectus requirements of the Act. In doing so, Dyer contacted investors that he never met, by telephone at their residences.
- ¶ 3 Based on this conduct we found that Pacific Ocean and Dyer traded and distributed shares of Global 8 Environmental Technologies, Inc. in contravention of sections 34, 49 and 61 of the Act.

II Analysis

2012 BCSECCOM 104

A Positions of the parties

- ¶ 4 The executive director seeks orders under sections 161(1) and 162 prohibiting Dyer from participation in the capital markets for 10 years and imposing an administrative penalty against him of CAN\$65,000 and disgorgement of the US\$836,658 raised from investors. The executive director also seeks orders permanently cease trading Pacific Ocean and prohibiting it from conducting investor relations activities or acting as a registrant or promoter.
- ¶ 5 Dyer agrees to the orders sought against Pacific Ocean. He agrees to his prohibition from the capital markets for a period of 10 years, with the exception that he seeks to trade for his own account through a registrant he provides with a copy of our order and that we permit him to act as a director or officer of an issuer, all the securities of which are owned by him. He also asks that we impose no administrative penalty and no disgorgement order.
- ¶ 6 Dyer also asks that Commission staff be ordered to remove the Certificate of Pending litigation from his home.

B Factors to consider

- ¶ 7 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,

2012 BCSECCOM 104

- 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.

C Application of the factors

Seriousness of the conduct and damage to markets

- ¶ 8 The respondents breached the registration and prospectus requirements of the Act. The Commission explained the importance of these provisions and the seriousness of contravening those sections in *Corporate Express Inc. (Re)* [2006 BCSECOM 153] in para. 15:

Section [34] requires that those who trade in securities be registered. It is the means by which the Act intends to ensure that purchasers of securities are offered only securities that are suitable. Section 61(1) requires that those who wish to distribute securities file a prospectus with the Commission. Its intent is that investors and their advisors get the information they need to make an informed investment decision. Any contravention of sections [34] and 61(1) is therefore inherently serious.

- ¶ 9 The respondents aggravated the breaches of sections 34 and 61(1) by also breaching section 49(2)(b).

Harm suffered by investors and the Respondents' enrichment

- ¶ 10 The Respondents' misconduct affected about 83 investors who invested \$836,658 to acquire Global 8 shares. Global 8 shares trade on the U.S. over-the-counter market. They are illiquid and their market value has been significantly below the average price purchased by the investors. The Commission issued a cease trade order against Global 8 on June 24, 2009. This cease trade order is currently in effect.
- ¶ 11 There is no evidence that Dyer was personally enriched by the sale of the Global 8 securities. The money received was deposited into the bank accounts of Pacific Ocean. Dyer is not a signatory to those accounts.

2012 BCSECCOM 104

Damage done to the integrity of the capital markets

- ¶ 12 Pacific Ocean's investors were from Canada and the United States. About \$286,500 of the amount raised was from investors in British Columbia. The respondents' misconduct harms the reputation and integrity of our capital markets and makes it more difficult for market participants that comply with all the requirements of the Act to raise capital.

Aggravating or mitigating factors

- ¶ 13 It is an aggravating factor that the respondents structured the transactions as loans, in a transparent attempt to avoid the application of the registration and prospectus requirements of the Act.
- ¶ 14 In the hearing the respondents claimed that they received legal and accounting advice in structuring the transactions but failed to provide any evidence of this advice. The respondents further submit that the receipt of this advice should be a mitigating factor in determining sanction. The receipt of such advice would be a mitigating factor, however, in the absence of any evidence of this advice, other than Dyer's unsupported assertions, we are unable to accept it as a mitigating factor.
- ¶ 15 There are no mitigating factors.
- ¶ 16 The respondents have no prior disciplinary history.

Fitness to act, and risk posed by continued participation in the capital markets

- ¶ 17 Dyer states that his occupation is to raise capital for public and private issuers. Pacific Ocean was the vehicle used to raise capital from investors for Global 8 through a scheme nominally structured as loans to Pacific Ocean, but which were transparently distributions of shares of Global 8. Investors' funds were deposited into a Pacific Ocean bank account over which Dyer had no signing authority. A principal of Global 8 controlled the account. Dyer's actions fall far below the standard that we expect of market participants. Our orders consider these factors in determining their continued participation in the capital markets.

Consequences and deterrence

- ¶ 18 Our orders are intended to deter Dyer and Pacific Ocean from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.

Previous orders

2012 BCSECCOM 104

- ¶ 19 The executive director cited *Solara Technologies Inc. et al.*, 2010 BCSECCOM 357 and *Manna Trading Corp. Ltd. et al.*, 2009 BCSECCOM 595.
- ¶ 20 *Manna* was variously described by the Commission as a "fraud", "a sham investment scheme" and a "Ponzi scheme". These descriptions distinguish it from the current matter.
- ¶ 21 In *Solara*, the Commission found that the respondents illegally distributed securities, claiming exemptions from the Act that were not available to them. They raised \$790,000 from 46 investors. The Commission found that there were no aggravating factors and concluded that the respondents "were sloppy about ensuring that the exemptions were available" [para. 23]. The respondents were ordered to cease trading securities. The individual respondent was banned from trading for five years except through his own account through a registered dealer. He was prohibited from acting as a director or officer, acting in a management or consulting role in the securities industry or engaging in investor relations activities for five years. He was also ordered to pay an administrative penalty of \$50,000.

III Decision

- ¶ 22 We are making orders prohibiting Dyer and Pacific Ocean from participating in the capital markets. Dyer agrees with the orders proposed by the executive director against Pacific Ocean. Dyer also agrees with the penalty removing him from the markets, but requests an exemption from the cease trade order, no administrative penalty and no disgorgement order. He also asks that we permit him to act as a director or officer of an issuer all the securities of which are owned by him. Our decision addresses these differences.
- ¶ 23 Dyer seeks relief from the imposition of sanctions based on his age, unemployment and financial situation. In a financial statement attached to his affidavit Dyer claims that his expenses exceed his income. He does disclose, however, that he has approximately \$800,000 equity in his home. In these circumstances we see no reason to refrain from ordering an administrative penalty based on his inability to pay.
- ¶ 24 We have imposed an administrative penalty on Dyer of \$65,000. We note the scale of the illegal distribution in this case is similar to *Solara*. In *Solara* however, the Commission found that the breaches of the Act were "sloppy" and not, as in this case, a deliberate attempt to circumvent the Act. The aggravating factors in this case justify a higher administrative penalty.

2012 BCSECCOM 104

- ¶ 25 Dyer seeks the ability to continue trading for his own account through a registrant. We have not been provided with any reasons why this relief should be granted and do not do so.
- ¶ 26 Dyer seeks the ability to act as a director or officer of an issuer the securities of which are solely owned by him. We have not been provided with any reasons why this relief should be granted and do not do so.
- ¶ 27 The executive director also seeks the return of the US\$836,658 to the investors. In illegal distribution cases such an order would normally be made. In this instance, however, none of the proceeds went to either of the respondents. The proceeds went to Global 8. Neither of the respondents has control over Global 8. We are not making an order that this amount be paid to the Commission.

IV Order

- ¶ 28 Therefore, considering it to be in the public interest, we order:

Pacific Ocean

1. under section 161(1)(b) of the Act, that all persons permanently cease trading in any Pacific Ocean securities;
2. under section 161(1)(c) of the Act, that any of the registration or prospectus exemptions set out in the Act and *regulations* do not apply to Pacific Ocean;
3. under section 161(1)(d)(iii) of the Act, that Pacific Ocean is prohibited from becoming or acting as a registrant or promoter;
4. under section 161(1)(d)(v) of the Act, that Pacific Ocean is permanently prohibited from engaging in investor relations activities;

Donald Verne Dyer

5. under section 161(1)(b) of the Act, that Dyer cease trading in or purchasing any securities for 10 years;
6. under section 161(1)(c) of the Act, that any or all of the registration and prospectus exemptions set out in the Act and regulations do not apply to Dyer for 10 years;
7. under section 161(1)(d)(i) of the Act, that Dyer resign any position that he holds as a director or officer of any issuer;

2012 BCSECCOM 104

8. under section 161(1)(d)(ii) of the Act, that Dyer is prohibited from becoming or acting as a director or officer of any issuer for 10 years;
9. under section 161(1)(d)(iii) of the Act, that Dyer is prohibited from becoming or acting as a registrant, or promoter for 10 years;
10. under section 161(1)(d)(iv) of the Act, that Dyer is prohibited from acting in a management or consultative capacity in connection with activities in the securities market for 10 years;
11. under section 161(1)(d)(v) of the Act, that Dyer is prohibited from engaging in investor relations activities for 10 years; and
12. under section 162 of the Act, that Dyer pay to the Commission an administrative penalty of \$65,000.
13. Notwithstanding the above, the administrative orders referred to in this paragraph will remain outstanding until the later of 10 years or such time as the administrative penalty is paid.

¶ 29 April 3, 2012

¶ 30 **For the Commission**

Bradley Doney
Commissioner

Don Rowlett
Commissioner

Shelley C. Williams

2012 BCSECCOM 104

Commissioner