

2012 BCSECCOM 301

JV Raleigh Superior Holdings Inc., Maisie Smith (aka Maizie Smith) and Ingram Jeffrey Eshun

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Bradley Doney Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
Hearing Date	February 20, 2012	
Submissions Completed	April 23, 2012	
Date of Findings	July 27, 2012	
Appearing		
Ryan J. Carrier	For the Executive Director	
Ronald J. Pelletier	For Maisie Smith and JV Raleigh Superior Holdings Inc.	

Findings

I Introduction

- ¶ 1 This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act, RSBC 1996, c. 418*.
- ¶ 2 In a notice of hearing dated October 20, 2011, the executive director alleges that, between July 2006 and January 2009, JV Raleigh Superior Holdings Inc. (JVR), Maisie Smith (aka Maizie Smith), and Ingram Jeffrey Eshun contravened sections 34 and 61 of the Act by trading and distributing securities of JVR to 81 investors for proceeds of \$5.7 million. The investors included 49 residents of British Columbia who invested \$3.2 million.
- ¶ 3 JVR and Smith were represented by counsel at the hearing. Eshun did not appear and was not represented at the hearing and filed no submissions.
- ¶ 4 In a statement of admission entered into evidence at the hearing, JVR and Smith made admissions, detailed below. They admitted that by engaging in the conduct described in the admissions, they contravened sections 34 and 61 of the Act.

2012 BCSECCOM 301

II Background

- ¶ 5 JVR is a British Columbia company. Smith and Eshun incorporated it and were its sole directors during the relevant period. Each owned 50% of its shares. Smith is a resident of British Columbia.
- ¶ 6 JVR entered into agreements with the 81 investors. The agreements were titled “Loan Agreement”. Under the loan agreements, the investors advanced funds to JVR in consideration for which JVR promised to use the funds for “purchasing consumer secured notes receivables.” The agreements described the notes as follows: “These notes typically have a high yield. This is a form of factoring.” There is no evidence that JVR used any of the funds for this purpose.
- ¶ 7 The loan agreements provided for monthly payments as a return of capital, a maturity date, and an “interest bonus payment”. Nearly all of the loan agreements were signed on JVR’s behalf by Smith. There is no evidence that any investors received a return of capital or any interest.
- ¶ 8 JVR deposited the investors’ advances under the loan agreements to bank accounts opened by Smith and Eshun. Both had individual authority to withdraw funds from the accounts, and both did so. Eshun signed four cheques made payable to himself totalling \$150,000. In closing a JVR credit union account, Smith received a bank draft in the amount of \$2.7 million.
- ¶ 9 Smith and Eshun signed documents that set up an electronic funds transfer facility for JVR. JVR paid management fees to Eshun of at least \$66,000.
- ¶ 10 None of the respondents was registered under the Act, nor did JVR file a prospectus, during the relevant period.

III Analysis and Findings

- ¶ 11 In the statement of admission:
- JVR and Smith admit to entering into loan agreements with three British Columbia residents;
 - JVR and Smith concede that each of those loan agreements were “evidences of indebtedness” and therefore a “security” as defined in section 1(1) of the Act;
 - JVR and Smith admit that neither were registered under the Act during the relevant period;

2012 BCSECCOM 301

- JVR admits it did not file a prospectus relating to the loan agreements;
 - JVR and Smith say that Smith and Eshun opened bank accounts and a fund transfer facility in the name of JVR and that both Smith and Eshun had signing authority over JVR's accounts and its transfer facility; and
 - JVR and Smith admit that the \$5.7 million JVR collected from the sale of loan agreements was initially deposited into the JVR accounts.
- ¶ 12 Section 1(1) of the Act defines “security” to include, in paragraph (d) “a bond, debenture, note or other evidence of indebtedness” and, in paragraph (l), “an investment contract”.
- ¶ 13 The loan agreements that JVR entered into with investors were evidences of indebtedness and therefore securities under paragraph (d) of the definition of “security”.
- ¶ 14 The loan agreements were also investment contracts under paragraph (l). Well-known common law defines an investment contract as an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glen W. Turner Enterprises, Inc.* 474 F. 2d 476 (1973), and *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.)
- ¶ 15 The loan agreements required an investment of money. The investors' profits were to come from the efforts of persons other than themselves – the evidence is clear that once they advanced their funds, investors were not required to do anything else to earn their returns. The commonality that is required by the cases cited above existed between JVR and the investors.
- ¶ 16 We find that the JVR loan agreements were securities.
- ¶ 17 Section 1(1) of the Act defines “trade” to include “(a) a disposition of a security for valuable consideration” and “(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)”.
- ¶ 18 JVR traded the loan agreements in British Columbia by receiving valuable consideration – the investors' advances – for them. We find that JVR traded its securities.

2012 BCSECCOM 301

- ¶ 19 Eshun, with Smith, opened JVR’s bank accounts and set up its electronic funds transfer facility in order to deal with investors’ funds. This was conducted directly in furtherance of JVR’s trades to investors. We find that Smith and Eshun traded JVR securities.
- ¶ 20 Section 1(1) of the Act defines “distribution” as “a trade in a security of an issuer that has not been previously issued”.
- ¶ 21 The securities JVR sold to investors were not previously issued. We find its trades were distributions.
- ¶ 22 Section 34 of the Act says “a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations”
- ¶ 23 Section 61 of the Act 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 Based on the findings above, as well as, in the case of JVR and Smith, the statement of admissions, we find that JVR, Smith and Eshun traded in securities without being registered to do so, contrary to section 34 of the Act, and distributed those securities without filing a prospectus, contrary to section 61 of the Act, when they distributed JVR securities for proceeds of \$5.7 million.
- ¶ 25 Smith and Eshun were JVR’s only two directors. Based on the conduct described above, we find that they authorized, permitted or acquiesced in JVR’s contraventions of sections 34 and 61 of the Act. We find that they also contravened sections 34 and 61 under section 168.2 of the Act.

IV Submissions on sanction

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

By August 24 The executive director delivers submissions to the respondents and to the secretary to the Commission

By September 14 The respondents deliver response submissions to the executive director and to the secretary to the Commission.

Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission

2012 BCSECCOM 301

By September 21 The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission

¶ 27 July 27, 2012

For the Commission

Brent W. Aitken
Vice Chair

Bradley Doney
Commissioner

Suzanne K. Wiltshire
Commissioner