



British Columbia Securities Commission

Citation: 2013 BCSECCOM 276

**Photo Violation Technologies Corp.,
Frederick Lawrence Marlatt, also known as Frederick Lawrence Mitschele, Michael
Wallace Minor and
Michael Garfield Timothy Minor, also known as Tim Minor**

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Bradley Doney	Vice Chair Commissioner
--------------	----------------------------------	----------------------------

Hearing Date	June 28, 2013
---------------------	---------------

Date of Decision	July 18, 2013
-------------------------	---------------

Appearing

Derek J. Chapman	For the Executive Director
------------------	----------------------------

Patricia A.A. Taylor	For Michael Wallace Minor
----------------------	---------------------------

Frederick Lawrence Mitschele	For himself
---------------------------------	-------------

Decision

I Introduction

¶ 1 This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. Our Findings on liability made on July 16, 2012 (2012 BCSECCOM 284) are part of this decision.

¶ 2 We found that:

- Photo Violation Technologies Corp. (PVT) distributed securities for proceeds of \$3,571,604 to 272 investors contrary to sections 34(1) and 61(1) of the Act;



- Frederick Lawrence Mitschele, in authorizing, permitting and acquiescing in PVT's contraventions, also contravened sections 34(1) and 61(1) of the Act under section 168.2; and
- Michael Wallace Minor admitted to distributing \$3.2 million in PVT securities contrary to sections 34(1) and 61(1).

¶ 3 We also made findings against Minor's father, Michael Garfield Timothy Minor, who died after our Findings and before this hearing. The executive director seeks no orders against him.

II Positions of the parties

¶ 4 The executive director seeks orders prohibiting Mitschele (for 25 years) and Minor (for 20 years) from acting as directors and officers of any issuer, from acting in a management or consultative activity in connection with activities in the securities market, and from engaging in investor relations activities.

¶ 5 The executive director also seeks orders requiring Mitschele and Minor to pay administrative penalties of \$250,000 and \$200,000, respectively, as well as orders requiring Mitschele and PVT to pay disgorgement of over \$3.5 million.

¶ 6 Mitschele seeks to continue serving as a director and officer of the successor company to PVT and to have the ability to raise funds for that company. He seeks to maintain a personal trading account. He argues that no orders are appropriate in light of the losses he has incurred in connection with his activities with PVT.

¶ 7 Minor seeks to continue serving as a director and officer of One World Media and One World Smart Solutions and to maintain a personal trading account. He similarly argues that an administrative penalty is not appropriate given the losses he has incurred in connection with his activities with PVT. In any event, he says, any administrative penalty should not exceed \$7,500. Minor also proposes that the prohibitions sought by the executive director, if made, should not exceed 5 years.

III Factors to consider

¶ 8 The factors significant to sanction are listed in *Re Eron Mortgage Corporation*, [2002] 7 BCSC Weekly Summary 22, at page 24.

Seriousness of the conduct

¶ 9 Contraventions of sections 34(1) and 61(1) of the Act are serious as they are integral to investor protection and the integrity of the capital markets. Section 34(1) requires that those who trade in securities be registered and that purchasers of securities are offered only those securities that are suitable for them. Section 61(1) requires that anyone



distributing securities files a prospectus with the Commission containing the information investors and advisors need to make informed investment decisions.

- ¶ 10 The legislation provides exemptions from sections 34(1) and 61(1) if the issuer follows specified requirements. Those requirements are designed to protect investors and markets, so an issuer who intends to rely on the exemptions must ensure that they are met.
- ¶ 11 The respondents raised about \$3.6 million from 272 investors (Minor admitted to raising \$3.2 million), ostensibly using these exemptions. In our findings we concluded that the exemptions were not available to them.

Harm suffered by investors

- ¶ 12 Although we heard no evidence of investor losses or hardship, PVT's 272 investors, as a group, have suffered significant harm: PVT is bankrupt and there is little likelihood that these investors will recover the \$3.6 million they invested.

Enrichment

- ¶ 13 Mitschele and Minor were not enriched through their activities in PVT. To the contrary, they each lost significant sums as a result of their involvement. Mitschele says he invested about "half a million" dollars and Minor says he made loans of a similar amount which have not been repaid, nor was any interest paid. Minor also funded PVT's defence of litigation intended to deprive it of its patents. This amounted to \$350,000, for which Minor was never reimbursed. Minor earned no salary from PVT and any salary paid to Mitschele was nominal.

Mitigating or aggravating factors; past conduct

- ¶ 14 Mitschele and Minor argue that they acted responsibly with a view to ensuring that PVT conducted its financing in accordance with the Act. They hired counsel with expertise in financing, changed counsel when they came to believe that PVT may not have been in compliance, and sought the assistance of commission staff when they became concerned about non-compliance with the Act. They also relied on legal advisors to address issues related to their non-compliance. Minor estimates that the legal fees by PVT for this work amounted to "at least \$350,000".
- ¶ 15 Mitschele and Minor testified that they hired a law firm to assist PVT in maintaining its corporate records and in raising capital. The firm is a large national and international firm. Mitschele also testified that after he took an officers and directors course at Simon Fraser University, he realized that there may have been problems with the fund raising done by PVT. Mitschele hired the lawyer who taught the course to assist PVT in addressing its regulatory problems. Mitschele and Minor took comfort from the fact that the lawyer was also a former employee of the Commission.



- ¶ 16 This lawyer re-filed documents with the Commission and met with commission staff. Mitschele and Minor attended the first meeting with commission staff. Minor testified that following this meeting they understood that if there were any problems with their filings that commission staff would advise them accordingly. This did not happen. Commission staff's next step, from PVT's point of view, was the issuance of the notice of hearing for this proceeding.
- ¶ 17 Engaging a law firm or advisor to assist in compliance with regulatory compliance does not relieve a respondent from liability for non-compliance. It may be, however, a mitigating factor in determining the appropriate sanction for non-compliance, depending on the circumstances of each case. PVT engaged successive law firms from the outset to assist in its governance and fund raising efforts. Mitschele took a course through Simon Fraser University to better understand his responsibilities as a director and officer. When Mitschele, based on what he learned in that course, had misgivings, he caused PVT to seek alternative counsel – not just any counsel, but the lawyer who taught the Simon Fraser course and was previously employed by the Commission. PVT also engaged the staff of the Commission in an effort to address deficiencies in their filings.
- ¶ 18 The executive director says that despite these efforts, there was evidence that there continued to be instances of non-compliance with their fund raising efforts. The executive director says that Mitschele and Minor should have taken personal, and hands-on, responsibility for ensuring that the problems with their fund raising were decisively addressed, and that they failed to do so.
- ¶ 19 We agree. These factors are mitigating but do not relieve Mitschele and Minor from complying with the requirements of the Act.
- ¶ 20 Minor's admission at the commencement of the hearing that he raised \$3.2 million in PVT securities in contravention of sections 34(1) and 61(1) of the Act is a mitigating factor for him. It reduced the time required for the hearing.
- ¶ 21 Neither Mitschele nor Minor has any prior disciplinary history.

Risk to investors and the capital markets

- ¶ 22 *Re Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 357 was an illegal distribution case in which the respondents raised \$790,000 in purported reliance on exemptions that were not available to them. The Commission said the following about their conduct:

“23 Although we did not find that Solara or Beattie knowingly contravened the Act, they were sloppy about ensuring that the exemptions were available. Their carelessness and demonstrated failure to ensure compliance with requirements when raising capital suggests



the potential for significant risk to our capital markets were they to continue to participate in them unrestricted.”

- ¶ 23 *Solara* provides some guidance in determining the appropriateness and degree of Mitschele's and Minor's continued participation in the capital markets, but there are relevant differences between the facts in *Solara* and those here. The most significant difference is that in *Solara*, there was no evidence that *Solara* or Beattie made any attempt to obtain legal advice. Here, Mitschele and Minor took considerable steps on behalf of PVT to obtain the necessary advice to ensure compliance with the Act, unfortunately, as it happened, in vain. In *Solara* the panel also found that the respondents made a misrepresentation, and filed false and misleading reports with the Commission.

Specific and general deterrence

- ¶ 24 The orders we are making are intended to deter Mitschele and Minor from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.

IV Decision

- ¶ 25 We are making orders against PVT and Mitschele that restrict their ability to trade. PVT went bankrupt in 2010, but Mitschele incorporated a new company with the same name in 2011(PVT 2). Mitschele has always been the primary driving force behind PVT's activities, and is the one most knowledgeable of its affairs. The orders therefore allow him to remain as a director and officer of PVT2. PVT2 may require new financing to carry on its business. The orders therefore allow it and Mitschele to engage in conduct necessary to find financing, but not to sell securities. If they identify a prospective means of financing, they can apply under section 171 of the Act for an appropriate variation of our orders.
- ¶ 26 We are making orders against Minor that restricts his ability to trade and his ability to raise funds in our capital markets. We are similarly mindful that Minor's current source of income and employment is his involvement in two private companies.
- ¶ 27 We have not ordered administrative penalties against either of Mitschele and Minor. Sanctions imposed under the Act are intended to be preventative and protective, not punitive. In our opinion, an administrative penalty is not required for preventative or protective purposes here. Mitschele and Minor made good faith efforts to obtain the legal advice necessary to ensure that PVT conducted its financing activities in compliance with the Act and to sort out PVT's problems with commission staff. They invested, and likely have lost, large sums in PVT.
- ¶ 28 We have made no orders against PVT because it is bankrupt and dormant.

V Order



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

Mitschele

1. under section 161(1)(b), that Mitschele cease trading securities or exchange contracts for a period of 5 years, except that he may trade for his own account through a registrant, if he gives the registrant a copy of this decision;
2. under section 161(1)(d)(i), that Mitschele resign from any position he holds as a director or officer of any issuer, other than PVT2, and any issuer all the securities of which are owned beneficially by him or members of his family;
3. under section 161(1)(d)(ii), that Mitschele is prohibited for 5 years from acting as a director or officer of any issuer, other than PVT2 and any issuer all the securities of which are owned beneficially by him or members of his immediate family;
4. under section 161(1)(d)(iv), that Mitschele is prohibited for 5 years from acting in a management or consultative capacity in connection with activities in the securities market;
5. under section 161(1)(d)(v), that Mitschele is prohibited for 5 years from engaging in investor relations activities;
6. notwithstanding paragraphs 1, 4 and 5, Mitschele may engage in conduct, including advertisement, solicitation, and negotiation, for the purpose of obtaining financing for PVT2's business, provided that he seeks an appropriate variation order from this Commission before selling securities;

Minor

7. under section 161(1)(b), that Minor cease trading, securities and or exchange contracts for a period of 5 years, except that he may trade for his own account through a registrant, if he gives the registrant a copy of this decision;
8. under section 161(1)(d)(i), that Minor resign from any position he holds as a director or officer of any issuer, other than One World Media, One World Smart Solutions and any issuer all the securities of which are owned beneficially by him or members of his immediate family;
9. under section 161(1)(d)(ii), that Minor is prohibited for 5 years from acting as a director or officer of any issuer, other than One World Media, One World Smart Solutions and any issuer all the securities of which are owned beneficially by him or members of his immediate family;



10. under section 161(1)(d)(iv), that Minor is prohibited for 5 years from acting in a management or consultative capacity in connection with activities in the securities market; and

11. under section 161(1)(d)(v), that Minor is prohibited for 5 years from engaging in investor relations activities.

¶ 30 July 18, 2013

¶ 31 **For the Commission**

Brent W. Aiken
Vice Chair

Bradley Doney
Commissioner