

Citation: 2014 BCSECCOM 213

Bigfoot Recreation & Ski Area Ltd. and Ronald Stephen McHaffie

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Audrey T. Ho Don Rowlatt	Vice Chair Commissioner Commissioner
Hearing date	December 10, 2013	
Submissions completed	January 20, 2014	
Date of Decision	June 3, 2014	
Appearing	Veda Kenda For the Executive Director	

Decision

I Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 On May 30, 2013 the executive director issued a notice of hearing alleging that, from August 2007 to January 2012:
- Bigfoot Recreation & Ski Area Ltd. and Ronald Stephen McHaffie distributed securities without filing a prospectus, and
 - McHaffie perpetrated a fraud.
- ¶ 3 Neither of the respondents appeared or was represented by counsel at the hearing. We granted the executive director's request that we consider both liability and sanction together.

II Background

- ¶ 4 Bigfoot is a British Columbia company formed ostensibly to develop a recreation and ski area near Jones Lake, British Columbia. Bigfoot has never been registered under the Act.

- ¶ 5 McHaffie is a resident of British Columbia and a director of Bigfoot. He has never been registered under the Act.
- ¶ 6 From August 2007 to January 2012 Bigfoot raised \$642,960 by selling shares to 30 investors. The sales were distributions because they were trades in shares not previously issued. No prospectus was filed. The evidence is, and we find, that no prospectus exemptions were available to Bigfoot for the distributions to 27 of the investors, who invested a total of \$621,960.
- ¶ 7 McHaffie was one of several Bigfoot directors, but the evidence is that only he was involved in the distribution of Bigfoot shares.
- ¶ 8 McHaffie provided investors with promotional materials relating to Bigfoot and, as described below, made representations to investors in connection with the distributions. McHaffie also signed share certificates and signed share transfer applications to facilitate trades among Bigfoot shareholders.
- ¶ 9 McHaffie told investors, among other things:
- Their investment money would be used for expenses related to the development of the resort, and that it would be completed before the 2010 Winter Olympics (held in February 2010).
 - Their money would be used to build the resort, and completion was “just around the corner” or “about to happen”. (This was after September 2010, when the government of British Columbia rejected his proposal to build a ski hill.)
 - Their investment money would be used for legal fees to have the Bigfoot shares listed on the Toronto Stock Exchange.
 - The public listing was imminent.
- ¶ 10 These were all lies:
- In fact, McHaffie used investors’ funds for purposes other than developing and building the resort. He deposited the investors’ funds in his personal bank account and spent it on personal expenses such as groceries, gas, and retail purchases.
 - There is no evidence that Bigfoot or McHaffie spent any of the investors money, or took any other steps, to list Bigfoot on the Toronto Stock Exchange. (This is not surprising – Bigfoot did not remotely meet the Exchange’s listing requirements.)
- ¶ 11 None of the investors received any return. There is no evidence the investors will recover any of their funds.

III Findings

A Illegal Distribution

- ¶ 12 Section 61 of the Act says that a person must not distribute a security without filing a prospectus.
- ¶ 13 We find that the executive director proved that the respondents distributed securities to 27 investors, who invested a total of \$621,960, without filing a prospectus and without the availability of any exemptions, contrary to section 61(1).
- ¶ 14 Section 168.2 says that “If a person, other than an individual, contravenes a provision of this Act . . . [a] director of the person who authorizes, permits or acquiesces in the contravention . . . also contravenes the provision.”
- ¶ 15 We find that the executive director proved that McHaffie authorized, permitted and acquiesced in Bigfoot’s contravention of section 61, and therefore also contravened that section under section 168.2.

B Fraud

- ¶ 16 Section 57(b) says that a person “must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or ought reasonably to know, that the conduct . . . perpetrates a fraud on any person.”
- ¶ 17 In considering the substantively identical predecessor to section 57(b), the British Columbia Court of Appeal held in *Anderson v. British Columbia (Securities Commission)* 2004 BCCA 7, that to establish fraud under that section, the elements of fraud must be present, as cited in *R. v. Théroux*, [1993] 2 SCR 5. Those elements are a prohibited act (deceit, falsehood, or some other fraudulent means), deprivation caused by the prohibited act (actual loss or placing the victim’s pecuniary interests at risk), and subjective knowledge by the perpetrator of both the prohibited act and that it could result in deprivation of another.
- ¶ 18 The Supreme Court of Canada in *F. H. v McDougall* 2008 SCC 53 held:
- “49 . . . I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”
- ¶ 19 The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.

¶ 20 We find that the executive director proved that McHaffie perpetrated a fraud on 30 investors for proceeds of \$642,960, contrary to section 57(b).

IV Sanctions

¶ 21 The factors relevant to sanction are set forth in *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 (see page 24).

¶ 22 McHaffie lied to investors in order to induce them to invest in Bigfoot. He fraudulently misused the funds he raised from investors. Fraud strikes at the integrity and reputation of our markets.

¶ 23 That investors were harmed is obvious. There is no evidence to suggest that they will recover any part of the funds they invested. In these circumstances, we consider it appropriate to order disgorgement. The amount ordered against Bigfoot is based on its distributions for which no exemptions were available.

¶ 24 We have ordered an administrative penalty against McHaffie. In doing so we have followed earlier precedents in which a multiplier of three was applied to the amount raised through the fraud. In the circumstances we did not consider it necessary to order an administrative penalty against Bigfoot.

¶ 25 There are no mitigating factors.

¶ 26 The orders we are making are intended to deter the respondents from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.

V Orders

¶ 27 Considering it to be in the public interest, we order:

McHaffie

1. under section 161(1)(b), that McHaffie cease trading permanently, and is permanently prohibited from purchasing, securities or exchange contracts;
2. under sections 161(1)(d)(i) and (ii), that McHaffie resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;
3. under section 161(1)(d)(iii), that McHaffie is permanently prohibited from becoming or acting as a registrant or promoter;
4. under section 161(1)(d)(iv), that McHaffie is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

5. under section 161(1)(d)(v), that McHaffie is permanently prohibited from engaging in investor relations activities;
6. under section 161(1)(g), that McHaffie pay to the Commission the funds he obtained as a result of his contraventions of the Act, which we find to be not less than \$642,960;
7. under section 162, that McHaffie pay an administrative penalty of \$2 million;

Bigfoot

8. under section 161(1)(b), that all persons cease trading permanently, and are prohibited permanently from purchasing, any securities of Bigfoot;
9. under section 161(1)(b), that Bigfoot permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;
10. under section 161(1)(d)(iii), that Bigfoot is prohibited permanently from becoming or acting as a registrant, or promoter;
11. under section 161(1)(d)(iv), that Bigfoot is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
12. under section 161(1)(d)(v), that Bigfoot is prohibited permanently from engaging in investor relations activities;
13. under section 161(1)(g), that Bigfoot pay to the Commission the funds it obtained as a result of its contraventions of the Act, which we find to be not less than \$621,960; and
14. that the amounts paid under paragraphs 6 and 13 shall not exceed, in the aggregate, the amount obtained by the respondents' respective contraventions of the Act.

¶ 28 June 3, 2014

¶ 29 **For the Commission**

Brent W. Aitken
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlett
Commissioner