

Starflick.com

Section 28 of the *Securities Act*, RSBC 1996, c. 418

Application

Panel	Brent W. Aitken Don Rowlatt Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
Date of Hearing	January 16, 2014	
Date of Decision	January 16, 2014	
Appearing		
Zoltan Nagy	For Starflick.com	
Shawn R. McColm	For the Executive Director	

Ruling

I Introduction

- ¶ 1 On December 5, 2013 Commission staff issued a cease-trade order under section 164 of the *Securities Act*, RSBC 1996, c. 418. The basis for the order was that Starflick.com, a Nevada corporation, failed to file records as required under the Act as an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.
- ¶ 2 The order states that Starflick is an OTC reporting issuer under MI51-105 because its business has been directed or administered from British Columbia since receiving its ticker symbol for the OTCQB tier of the OTC Markets platform, a US over-the-counter market.
- ¶ 3 By its terms, the order remains in force until Starflick makes the required filings and the executive director revokes the order.
- ¶ 4 On January 6, 2014 Starflick applied under section 28 for a hearing and review of the order and, under section 165(5), for a stay of the order until the disposition of the hearing and review. Zoltan Nagy, who appeared on behalf of Starflick at the application, is the sole director and officer of Starflick.

¶ 5 This is our decision on the stay application.

II Analysis

¶ 6 The test for issuing a stay is articulated in *RJR-MacDonald Inc. v Canada (Attorney General)* [1994] 1 SCR 311. Under that test, an applicant must establish three things:

1. There is a serious issue to be tried;
2. The applicant would suffer irreparable harm if the application were refused; and
3. The applicant would suffer greater harm than would the other party to the application if the application were refused.

¶ 7 We will not dwell on the first element of the test, although we are sceptical about the merits of Starflick’s application for a hearing and review. Given our conclusions on the other two elements of the test, we can leave the assessment of the merits to the panel who hears the review.

¶ 8 As to the second element of the test, Starflick tendered no evidence of irreparable harm. Nagy made some statements about difficulties that some Starflick shareholders were having trading their shares, but entered no evidence. He said all of the Starflick shareholders were in Japan or Hungary, jurisdictions unaffected by the order, whose effect is limited to trades in British Columbia. In addition, the evidence is that Starflick shares are not trading. No Starflick shares have traded on the OTC Markets platform since Starflick obtained its trading symbol in March 2013.

¶ 9 We find that Starflick has failed to establish that refusal of the stay will cause it irreparable harm.

¶ 10 That alone is sufficient to dispose of the application, but it is worth noting the words of the court in *RJR-MacDonald* on the subject of the relative harm between the parties in the context of the public interest when applying the third element of the test:

“71 . . . In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. . . . The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting and protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.”

¶ 11 Applying that to the facts here, we find that the irreparable harm to the public interest that would arise from granting the stay outweighs any harm to Starflick that would arise from refusing it.

III Decision

¶ 12 We dismiss the application.

¶ 13 January 16, 2014

¶ 14 **For the Commission**

Brent W. Aitken
Vice Chair

Don Rowlett
Commissioner

Suzanne K. Wiltshire
Commissioner