

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Snider, 2016 BCSECCOM 13

Date: 20160108

Rodney John Snider

Panel	Nigel P. Cave Don Rowlatt Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
Hearing date	June 15, 2015	
Submissions Completed	December 30, 2015	
Decision date	January 8, 2016	
Appearing		
Shaneel Sharma	For the Executive Director	
Rodney John Snider	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. The Findings of this panel on liability made on October 22, 2015 (2015 BCSECCOM 388), are part of this decision.
- [2] The panel found that Rodney John Snider contravened section 61 of the Act with respect to distributions of securities to four investors for a total of \$21,000.
- [3] The sanction portion of this hearing proceeded solely in writing. We received written submissions from both the executive director and the respondent.

II. Position of the Parties

- [4] The executive director seeks the following orders:
- a) under section 161(b) and (d), prohibiting Snider, for a period of five years, from:
 - i) trading in securities;
 - ii) acting as a director or officer of any issuer;
 - iii) acting as a promoter;
 - iv) acting in a management or consultative capacity in connection with activities in the securities market;

- v) engaging in investor relations activities; and
 - b) under section 162, that Snider pay to the Commission an administrative penalty of \$10,000.
- [5] The respondent's submissions do not address the issue of the appropriate sanctions in this case. The respondent's submissions address the following issues:
- a) that the Findings of the panel on liability are incorrect;
 - b) that the Commission's investigation of the respondent's case was improperly conducted because the respondent was never advised of the names of the four investors in the allegations against him;
 - c) that Duncan McLeod (a former director of Flag Resources (1985) Limited and now deceased) was responsible for all activities in connection with the distributions;
 - d) that McLeod and others had committed other misconduct with respect to investors and investor funds in Flag;
 - e) that the Commission failed to properly investigate this other misconduct; and
 - f) that these proceedings have taken an improper amount of time.
- [6] We have considered each of these submissions and have determined that the submissions in (a), (c), (d) and (e) above are not relevant to sanctions. The submission in (b) above is not accurate and the panel has already addressed the submission in (f) above in the Findings.

III. Analysis

A. Factors

- [7] Orders under sections 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.
- [8] In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified 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,
- 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.

B. Application of the Factors

Seriousness of the conduct

- [9] Contraventions of section 61 of the Act are inherently serious. This section is one of the Act's foundational requirements for protecting investors and preserving the integrity of the capital markets. It requires that those who wish to distribute securities file a prospectus with the Commission. This is intended to ensure that investors receive the information necessary to make an informed investment decision.
- [10] The legislation provides exemptions from section 61 if the issuer and those who trade in securities follow certain specified requirements. These requirements are designed to protect investors and markets, so persons who intend to rely on the exemptions must ensure that they are met.
- [11] It is clear that the respondent was not diligent in determining whether the requirements of the exemptions were met with respect to any of the four investors with the result that those investors were denied the protections intended by the Act.
- [12] The respondent's conduct was either careless or reckless or both with respect to compliance with securities laws.

Harm to investors

- [13] The respondent assisted Flag in raising \$21,000 from the four investors. We do not know the state of those investments; however, Flag remains subject to a cease trade order.
- [14] We did not have any further evidence from investors as to the harm that they have suffered.

Past misconduct/Aggravating or mitigating factors

[15] The respondent does not have a history of regulatory misconduct.

[16] There are no aggravating or mitigating circumstances in this case.

Market risk/Fitness to be a registrant or director, officer or adviser to issuers

[17] Recklessness or carelessness with respect to compliance with securities laws in the context of illegal distributions represents a significant risk to our capital markets. In *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 357 (para 23), the panel said:

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.

[18] We agree with these comments as they apply to the respondent.

Enrichment

[19] There is no evidence that Snider was enriched by the illegal distributions.

Specific and general deterrence

[20] The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct.

Previous orders

[21] The executive director submits that the sanctions imposed in *Cinnabar Explorations Inc. et al*, 2014 BCSECCOM 26 should serve as a guide in this case.

[22] In *Cinnabar*, three individual respondents were found to have contravened section 61 with respect to distributions of securities to seven investors for a total of \$21,500. One of the individual respondents also was found to contravene section 50(1)(d) by making a misrepresentation. The panel ordered that two of the individual respondents should receive five year market prohibitions and an administrative penalty of \$10,000. The third individual respondent, who had made the misrepresentation, received five year market prohibitions and an administrative penalty of \$15,000. The panel found that the individual respondents had been careless or reckless with respect to compliance with securities laws.

IV. Appropriate Orders

- [23] We agree that the circumstances in this case are analogous to those in *Cinnabar*. The size of the illegal distribution is almost identical and the finding that the individual respondents in that case were careless or reckless as to compliance with securities laws is the same finding that we make here.
- [24] However, we do find that Snider's role in the illegal distribution was lesser than the individual respondents in *Cinnabar*. Snider found potential investors and then referred them on to McLeod at Flag. In *Cinnabar*, the individual respondents were directly responsible for all aspects of the illegal distributions.
- [25] As a consequence, we would impose slightly lesser sanctions against Snider than against the respondents in *Cinnabar*. These sanctions will be proportionate to the relative seriousness of the misconduct of Snider versus the respondents in *Cinnabar*.
- [26] We make orders that Snider be subject to market prohibitions for four years and to pay an administrative penalty of \$7,500.
- [27] We note that in this case, the executive director did not ask for an order under section 161(1)(g).
- [28] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:
1. under sections 161(1)(b), (c) and (d)(i), (ii) to (v),
 - a) Snider cease trading in, and be prohibited from purchasing, any securities or exchange contracts;
 - b) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply to Snider;
 - c) Snider resign any position he holds as, and is prohibited from becoming or acting as, a director or officer of an issuer or registrant;
 - d) Snider is prohibited from becoming or acting as a registrant or promoter;
 - e) Snider is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 - f) Snider is prohibited from engaging in investor relations activities;
- until the later of January 8, 2020 and the date on which the payment ordered in paragraph 2 has been made; and

2. under section 162 of the Act, that Snider pay to the Commission an administrative penalty of \$7,500.

January 8, 2016

For the Commission

Nigel P. Cave
Vice Chair

Don Rowlett
Commissioner

Suzanne K. Wiltshire
Commissioner