

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

Citation: Re Jardine, 2016 BCSECCOM 82

Date: 20160324

Brent Glen Jardine and Indo Global Exchange(s) Pte., Ltd.
(formerly Claridge Ventures, Inc.)

Panel	Nigel Cave Audrey T. Ho Don Rowlatt	Vice Chair Commissioner Commissioner
--------------	---	--

Hearing Dates January 26, 2016

Submissions Completed March 3, 2016

Date of Decision March 24, 2016

Appearances

Veda Kenda For the Executive Director

H. Roderick Anderson For Brent Glen Jardine

Decision

I. Introduction

- [1] This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- [2] On June 11, 2015, the executive director issued a notice of hearing against the respondents (2015 BCSECCOM 231).
- [3] On July 9, 2015, the executive director issued an amended notice of hearing against the respondents (2015 BCSECCOM 284).
- [4] In the amended notice of hearing the executive director alleges that:
- a) prior to October 4, 2009, Brent Glen Jardine acted as a *de facto* director or officer of Claridge Ventures, Inc., in contravention of a previous order of this Commission made on October 4, 2007 (Order);
 - b) Claridge failed to provide disclosure in compliance with the Act and regulations pursuant thereto, in contravention of section 85 of the Act;

- c) Jardine, as a *de facto* director or officer of Claridge, authorized, permitted or acquiesced in Claridge's contraventions of section 85 of the Act, and therefore, pursuant to section 168.2 of the Act, Jardine contravened section 85 of the Act; and
 - d) the conduct of the respondents is contrary to the public interest.
- [5] At the commencement of the hearing, the executive director advised that he intended to discontinue proceedings against Claridge. Further, counsel for Jardine, on his client's behalf, admitted certain factual matters set out in the amended notice of hearing (described below), thereby admitting liability with respect to a breach of the Order.
- [6] As a consequence of the discontinuance against Claridge, the executive director withdrew his allegations against Jardine under section 168.2.
- [7] Jardine and the executive director provided us joint recommendations with respect to the appropriate sanctions in the circumstances of this case.
- [8] As the manner proceeded as outlined above, there were no witnesses called by any party nor were there any documents entered into evidence, other than the agreed statement of facts. We received oral and written submissions on sanction, in support of their joint recommendation, from both the executive director and Jardine.
- [9] Following the hearing, we asked the parties to provide us with an agreed statement of facts. The parties did so and those agreed facts form the only facts before the panel in this matter. Set out below is the agreed statement of facts filed by the parties.

II. The agreed statement of facts

- [10] Jardine is a British Columbia resident. He has never been registered under the Act.
- [11] In a Settlement Agreement that he made with the Commission on October 4, 2007, Jardine acknowledged that:
- he had been a director and officer of a mining company quoted on an over-the-counter (OTC) market in the United States;
 - in those positions, he was responsible for highly promotional and misleading statements misrepresenting the value of the company's assets, contrary to section 50(1)(d) of the Act; and
 - he was also responsible for the company's failure to obtain and file the required NI 43-101 technical report.
- [12] As part of the settlement, Jardine further agreed to the Order prohibiting him, for the next two years (the Prohibition), from being a director or officer of any issuer.
- [13] In the spring of 2008, within seven months of being banned from being a director by the Order, Jardine offered an unemployed friend in Alberta an opportunity to make money by

acting as a director and bringing in 'seed' shareholders for a company that Jardine would form.

[14] Jardine's friend agreed and became a director (the Alberta Director). The Alberta Director's brother, who worked for an automotive dealership in Manitoba, also accepted a similar arrangement with Jardine (the Manitoba Director).

[15] Neither the Alberta Director nor the Manitoba Director had:

- ever acted as a director or officer of a public company;
- any accounting credentials; or
- any previous experience in mineral exploration or operating a mining or exploration company.

[16] On May 7, 2008 Jardine had Claridge incorporated in Nevada, identifying the Alberta Director and the Manitoba Director as the only directors and officers. Both became nominee directors (the Nominee Directors).

[17] Despite the Order, Jardine was a *de facto* director or officer of Claridge from its incorporation and throughout the Prohibition. During that time, Jardine occupied a similar position and performed similar functions to a director or officer, including:

- organizing the Nominee Directors' solicitation of 'seed' shareholders (June 2008);
- locating and arranging Claridge's acquisition of a mining property (July 2008);
- identifying and retaining the geologist who sold Claridge its mining asset and who prepared a report on that property (June and July 2008);
- approving payments by Claridge, monitoring its finances, and overseeing its audit and its quotation on an OTC market (from at least July 2008 to September 2009),
- directing the Nominee Directors to sign and deliver documents, make payments, and forward information to Jardine and others (from at least July 2008 to February 2009);
- running Claridge's business from his North Vancouver home; and
- contacting, coordinating with, and instructing the agent in British Columbia (the BC Agent) who:
 - prepared the incorporation documents for Claridge (April and May 2008);
 - located and dealt with Claridge's accounting firm, lawyer, EDGAR filer, transfer agent, and OTC market maker (July 2008 to July 2009); and
 - drafted and supervised its filings with the United States Securities and Exchange Commission (the SEC) (September 2008 to July 2009), in which Jardine's role in its business was kept hidden.

[18] Jardine continued to be a *de facto* director or officer of Claridge from when the Prohibition ended until at least September 1, 2013. During that time, Jardine still occupied a similar position and performed similar functions to a director or officer, including:

- managing Claridge’s reorganization (November 2009 and April 2012);
- appointing new directors and officers in addition to the Nominee Directors (October 2012 and July 2013);
- investigating business opportunities and negotiating key deals for Claridge, including attempts to refocus its business on medical devices, vitamin water, and an online brokerage in Indonesia (including in September 2012 and July 2013);
- continuing to:
 - approve payments by Claridge, monitor its finances, and oversee its audit and OTC market listing (September 2009 to September 2013);
 - direct Claridge’s directors to sign and deliver documents, make payments, and forward information to Jardine and others (November 2009, February / March 2012, and July / August 2013);
 - run Claridge’s business from his North Vancouver home (throughout the period between the Prohibition and September 1, 2013); and
 - coordinate with and instruct the BC Agent, who:
 - continued to draft and supervise Claridge’s filings with the SEC, including misleading SEC disclosure (October 2009 to September 1, 2013); and
 - was directed to copy Jardine on all emails to the Alberta Director so that Jardine would “know what’s going on” and could “explain to [the Alberta Director] what he needs to do” for Claridge, which Jardine called “my shell” (February 2012).

[19] On October 29, 2007, before Jardine asked his friend to become a nominee director, the Commission published a proposed rule as part of its response to abusive practices involving OTC markets.

[20] Under part of the proposed rule, companies listed on OTC markets would become reporting issuers under British Columbia law, if directed or administered from British Columbia (the OTC Rule).

[21] The OTC Rule took effect on September 15, 2008 and remains in place.

[22] On May 1, 2009, Claridge obtained a ticker symbol on an OTC market.

[23] Because Jardine and the BC Agent were directing or administering the company from British Columbia at that time, Claridge became a reporting issuer under the

OTC Rule and was therefore required to file disclosure. Claridge, however, has never filed any disclosure with the Commission.

[24] As a *de facto* director or officer of Claridge, Jardine was responsible for the failure to file.

[25] Jardine's conduct described above, including:

- Jardine's acting as a *de facto* director or officer of Claridge, while using nominee directors to conceal his earlier misconduct from the public and regulators, after the Prohibition expired;
- Jardine's actions in filing the misleading SEC disclosure, which would have violated section 168.1 of the Act, if it had been filed with the Commission, as the law required; and
- Jardine's actions as a *de facto* director in failing to file disclosure with the Commission

harmed the reputation, integrity, and credibility of the province's securities market and regulatory environment, and is contrary to the public interest.

[26] By engaging in the conduct described in paragraph 17 above, Jardine acted as Claridge's director and officer during the Prohibition and therefore contravened the Order.

[27] Based on these admissions, we find that Brent Glen Jardine contravened the Order.

III. Joint Recommendations of the parties on sanction

[28] The parties provided the following joint recommendation on sanctions:

- a) under section 161(1)(d)(i) of the Act, that Jardine resign any position that he holds as a director or officer of any issuer;
- b) under section 161(1)(d)(ii) of the Act, that Jardine is prohibited from becoming or acting as a director or officer of any issuer except for one company in which he is the sole shareholder;
- c) under section 161(1)(d)(iii) of the Act, that Jardine is prohibited from becoming or acting as a registrant or promoter;
- d) under section 161(1)(d)(iv) of the Act, that Jardine is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- e) under section 161(1)(d)(v) of the Act, that Jardine is prohibited from engaging in investor relations activities;

- f) that the orders in paragraphs (a) through (e) remain in place until 7 years from the date of the order; and
- g) under section 162 of the Act, that Jardine pay to the Commission an administrative penalty of \$40,000.

[29] The parties both submit, without suggesting that our discretion to decide this matter be fettered, that we should defer to their joint recommendations. They submit that it is in the public interest to encourage timely, efficient and fair settlement of outstanding enforcement proceedings.

[30] The parties directed us to the decision of the Alberta Securities Commission in *Re Allen*, 2015 ABASC 919 in which a panel of that commission was asked to consider joint recommendations on sanction. In making an order consistent with the joint recommendations, the panel stated (at para 21) as follows:

A hearing panel is not obliged to order jointly recommended sanctions but will do so if satisfied they fall within a range of sanctions that are reasonable in all the circumstances and in keeping with the ASC's public interest mandate.

[31] We agree with those comments and the submissions of the parties on this approach to the matter before us.

IV. Analysis

Law

[32] 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.

[33] 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.

[34] We have considered all of these factors. In the circumstances, we find that the following are the most significant to be considered:

- Jardine has a previous history of regulatory misconduct;
- Jardine's conduct, by acting as a *de facto* director and officer of the issuer, was designed to circumvent the Order and was therefore intentional;
- intentionally breaching a previous order of a regulatory body suggests that Jardine is a significant risk to our capital markets;
- Jardine's conduct since the Prohibition suggests he continues to be a risk to our capital markets;
- there is no evidence that Jardine profited from his misconduct; and
- there is no evidence that any investors suffered any loss as a result of Jardine's misconduct.

[35] The parties directed us to a number of previous decisions of this commission including *McLoughlin (Re)*, 2011 BCSECCOM 202, *James Terrance Alexander*, 2007 BCSECCOM 773 and *Independence Energy Corp (Re)*, 2014 BCSECCOM 209 and a settlement agreement *Re Ross*, 2007 BCSECCOM 114 in support of their submissions that the joint settlement recommendations were reasonable in all of the circumstances.

[36] We would not normally consider settlement agreements in the context of determining the appropriate sanctions following a hearing as their terms are reached in a different context than a hearing. However, as this case does have some similarity to a settlement agreement, we believe the consideration of settlement agreements to be appropriate in the circumstances.

[37] Having considered these decisions and the settlement agreement and the *Eron* factors (with emphasis on those matters set out in paragraph 25), we find the joint settlement recommendations to be within a range of sanctions that we consider reasonable and proportionate in all of the circumstances. We find imposing the joint settlement recommendations to be in the public interest.

V. Orders

[38] 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)(d)(i) to (v),
 - a) Jardine resign any position that he holds as a director or officer of any issuer;
 - b) Jardine is prohibited from becoming or acting as a director or officer of any issuer except for one company in which he is the sole shareholder;
 - c) Jardine is prohibited from becoming or acting as a registrant or promoter;
 - d) Jardine is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 - e) Jardine is prohibited from engaging in investor relations activities;
 - f) that the orders in paragraphs (b) through (e) remain in place until 7 years from the date of the order; and
 - g) under section 162 of the Act, that Jardine pay to the Commission an administrative penalty of \$40,000.

March 24, 2016

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlett
Commissioner