

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

Citation: Re Hable, 2017 BCSECCOM 209

Date: 20170626

Volkmar Guido Hable

Panel	Nigel P. Cave Don Rowlatt Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
Hearing Date	March 13, 2017	
Submissions Completed	May 10, 2017	
Date of Findings	June 26, 2017	
Appearing	Shaneel Sharma	For the Executive Director

Findings

I. Introduction

- [1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- [2] In a temporary order and notice of hearing issued December 12, 2016 (2016 BCSECCOM 409), the executive director alleged that Volkmar Guido Hable:
- (a) directly or indirectly, engaged in or participated in conduct relating to Samaranta Mining Corporations' shares that he knew, or reasonably should have known, resulted in or contributed to an artificial price for Samaranta's shares, contrary to section 57(a) of the Act; and
 - (b) submitted a financial report to the executive director that, in a material respect and in light of circumstances under which it was made, was false or misleading, contrary to section 168.1(1)(a) of the Act.
- [3] During the hearing, the executive director called one witness, a Commission investigator, tendered documentary evidence and made written submissions.
- [4] Although he had notice of the hearing and provided written correspondence to the Secretary of the Commission, the respondent did not attend the hearing, tender any evidence or provide any written or oral submissions.

II. Background

- [5] Hable was a resident of Whistler, British Columbia during 2013.
- [6] Since May 20, 2011, Hable had been a director and the President and CEO of Samaranta. He resigned as the President and CEO of Samaranta on July 16, 2012 and became its Executive Vice President of Mining and Exploration on the same date. Hable resigned as a director of Samaranta on February 12, 2013. Samaranta terminated Hable from his position as Executive Vice President of Mining and Exploration on February 22, 2013.
- [7] As at February 12, 2013, the following corporations had brokerage accounts with a Swiss bank:
- Samarium Group Pte. Ltd. (Samarium)
 - Blue Dragon Mining Investments Ltd. (Blue Dragon)
 - China Metals Investment Ltd. (China Metals)
- [8] Hable had control and direction over these three corporate accounts. Hable, along with his minor children, was the beneficial owner of the shares of each of Samarium, Blue Dragon and China Metals.
- [9] As at February 12, 2013, a corporation called Hable Investment Management Societe Par Actions De Regime (Hable Investment) had two Canadian brokerage accounts.
- [10] Hable had control and direction over these two corporate accounts. Hable was the beneficial owner of the shares of Hable Investment.
- [11] As at February 12, 2013, Samarium, Blue Dragon and China Metals held a total of 4,957,055 shares of Samaranta in their Swiss accounts. As at the same date, Hable Investment held a total of 110,000 shares of Samaranta in its two Canadian brokerage accounts. In total, Hable (along with his minor children) had beneficial ownership of 5,067,055 shares of Samaranta.
- [12] On February 12, 2013, Hable e-mailed representatives of the Swiss bank where the three corporate accounts were located and instructed them to offer for sale all of the 4,957,055 shares of Samaranta at \$.03 per share. These shares were offered for sale at that price on the TSXV on February 12, 2013 but none were sold.
- [13] On February 13, 2013, Hable e-mailed representatives of the Swiss bank and instructed them to lower the offer price on all 4,957,055 shares to \$.02 per shares. Following this change in price, a total of 410,000 shares of Samaranta were sold by Blue Dragon on February 13, 2013 at \$0.02 per share.
- [14] The remaining 4,547,055 shares of Samaranta owned by Samarium, Blue Dragon and China Metals remained on offer at \$.02 during the trading days of February 14 and 15, 2013 but none were sold. February 16, 17 and 18, 2013 were not trading days (due to the weekend and a statutory holiday).

- [15] On February 18, 2013, a company called Samarium Group Holding, with an address c/o Samarium, submitted a letter to Samaranta saying that it was going to make a take-over bid for at least 51% of the shares of Samaranta at \$.12 per share (plus warrants, the terms of which are not relevant to this hearing).
- [16] In this letter, Hable is listed as one of the directors of Samarium Group Holding. Hable signed the letter. In an interview with Commission staff under oath on November 10, 2015, Hable admitted that he wrote this letter and that it was he who determined that the offer price for the Samaranta shares in the letter should be \$.12 per share.
- [17] On February 19, 2013, before the market opened, Samarium Group Holding issued a press release containing the terms of the proposed offer to acquire the Samaranta shares. Hable drafted this press release.
- [18] Prior to the market opening on February 19, 2013 and after the issuance of the press release by Samarium Group Holding, Samarium's, Blue Dragon's and China Metals' outstanding offers to sell 4,547,055 Samaranta shares at \$.02 were withdrawn and these shares were then reoffered for sale at \$.04 per share. Although there was no direct evidence that Hable provided instructions for the change in the offer price, we infer that Hable did so. We make this inference based upon the account opening information which makes clear that Hable was the only person authorized to provide trading instructions over these accounts. Further, there was clear evidence that Hable provided the original sale instructions.
- [19] On February 19, 2013, the shares of Samaranta traded on the TSXV for approximately two hours before the shares were halted by the exchange at the request of Samaranta. During these two hours, a total of 3,681,000 shares of Samaranta were traded in a total of 122 trades. Samaranta's average daily trading volume (prior to February 19, 2013) was just over 76,000 shares. When the Samaranta shares were halted they were trading at \$.035 per share, a 75% increase in the price over the previous closing price of the shares.
- [20] On February 19, 2013, Samaranta issued a press release indicating that it had had no prior notice of the offer from Samarium Group Holding, even though one of Samarium Group Holding's directors (Hable) was still a senior officer of Samaranta.
- [21] On February 20, 2013, the shares of Samaranta resumed trading.
- [22] During the trading days of February 20, 21 and 22, 2013:
- Samarium, Blue Dragon and China Metals sold all of their remaining 4,547,055 Samaranta shares at prices between \$.025 and \$.055; and
 - Hable Investment sold all of its 110,000 Samaranta shares at prices between \$.025 and \$.035,

for total proceeds of \$157,596.96.

- [23] On February 22, 2013, after all the Samaranta shares had been sold (as described above), Samarium Group Holding issued a press release indicating that it was not proceeding with its previously announced take-over bid for the Samaranta shares.
- [24] On February 25, 2013, Samaranta issued a press release stating that Samarium Group Holding never provided it with any evidence that it had the financial ability to carry out its announced take-over bid and that Samaranta did not believe that the announced offer was genuine.
- [25] At some point following these events, the Commission commenced an investigation into the respondent's conduct as described above.
- [26] On July 15, 2015, a Commission investigator sent Hable a letter requesting certain documents and asking for proof of Samarium Group Holding's financial ability to carry out its announced intention to complete a take-over bid for the shares of Samaranta.
- [27] Hable did not supply the documents requested or provide any evidence in support of Samarium Group Holding's financial ability to complete the take-over bid.
- [28] At his interview with Commission staff on November 10, 2015, Hable was again asked for certain documents and evidence of Samarium Group Holding's financial ability to carry out the take-over bid. Hable did not supply these documents or provide any such evidence.
- [29] Hable was again asked for these materials in August of 2016.
- [30] Hable provided to the Commission investigator a document that purported to be the 2012 Annual Report for a company called Samarium Group (Holding) Pte. Ltd. (Samarium Pte.). This annual report described Samarium Pte. as a Singapore incorporated entity.
- [31] The Commission contacted the Monetary Authority of Singapore (the government agency responsible for corporate registry of Singapore corporations) and was advised that it had no record of a company called "Samarium Group (Holding) Pte. Ltd."
- [32] In fact, Commission investigators compared the purported 2012 Annual Report for Samarium Pte. and found that it substantially matched (described in more detail below) the Annual Report for another entity called Sing Investments & Finance Limited. (Sing Investments)
- [33] It is clear that the purported 2012 Annual Report for Samarium Pte. is really an altered version (and hence fabricated) of the Annual Report for Sing Investments. We make this finding based on a comparison of the original 2012 Annual Report for Sing Investments versus the purported 2012 Annual Report for Samarium Pte. In the 94 page Annual Report that purports to be for Samarium Pte. the only differences from the Sing Investments document are as follows:

- the first 30 pages of the Sing Investments Annual Report were deleted – this material provided a description of the Sing Investments’ board of directors and a number of their corporate and board practices;
- page footers were changed to reference Samarium Pte. rather than Sing Investments;
- dollar amounts under a heading “Subsidiary Funds” for fiscal 2012 and 2011 were altered in the Statements of Financial Position.

[34] All other text and all other numbers in the two Annual Reports are identical. There are hundreds, if not thousands, of numbers in the original Sing Investments Annual Report. It is simply not possible that the Samarium Pte. Annual Report is anything other than an altered version of the Sing Investments document.

III. Positions of the parties

[35] The executive director’s position is that:

- a) Hable knowingly created an artificial price for the Samaranta shares by issuing a press release for a take-over bid that was not genuine and thereby contravened section 57(a) of the Act; and
- b) Hable submitted a false financial report to a Commission investigator and thereby contravened section 168.1(1)(a) of the Act.

IV. Analysis and Findings

A. Applicable Law

Standard of Proof

[36] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada held:

49 In the result, 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.

[37] The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.

[38] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

Definition of a security

[39] Section 1(1) of the Act defines “security” to include “(a) a document, instrument or writing commonly known as a security”, “(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person”, “(d) a

bond, debenture, note or other evidence of indebtedness, share, stock...” and “(i) an investment contract.”

Section 57(a)

- [40] Section 57(a) of the Act states that a person “must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract.”

Section 168.1(1)(a)

- [41] Section 168.1(1)(a) states a person must not:

Make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

- [42] In *Re Nuttall* 2011 BCSECCOM 521, at paragraph 44, the Commission said the following regarding materiality:

The materiality threshold in section 168.1(1)(a) measures the degree to which the information given is false or misleading – how far it departs from the truth – not its relevance to the investigation.

B. Analysis

Market Manipulation

- [43] Section 57(a) of the Act requires the executive director to establish four elements in order to prove a contravention of that section:

- did the conduct of the respondent relate to securities or exchange contracts?
- was there either (or both) a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract (what we will refer to as the form of the manipulation)?
- was there the requisite causal connection between the respondent’s conduct and the form of the manipulation (i.e. did the respondent, directly or indirectly, engage in conduct that results in or contributes to the form of the manipulation?) and
- did the respondent have the requisite mental state for the contravention (i.e. did the respondent know, or should they have reasonably known, that their conduct had the requisite causal connection to the form of manipulation?)

- [44] The allegation of market manipulation in this case relates to the shares of Samaranta. There is no question that the shares of Samaranta are “securities” under the Act and that Hable’s alleged misconduct therefore relates to securities for the purposes of section 57(a) of the Act.
- [45] Both Samaranta itself (through its February 25, 2013 press release) and the executive director in the notice of hearing suggest that Samarium Group Holding’s announcement of an intention to make a take-over bid for the shares of Samaranta at \$.12 per share, as reflected by Samarium Group Holding’s letter to Samaranta on February 18, 2013 and press release on February 19, 2013, was not genuine.
- [46] Both Samaranta and the executive director suggest that Samarium Group Holding did not have the financial ability to make such an offer to the Samaranta shareholders.
- [47] While this may well be true, as we have no evidence from the respondent to suggest that, in fact, Samarium Group Holding had the financial ability to make such an offer, it is not necessary for us to make this determination (as our findings do not turn on this point).
- [48] What is incontrovertible from the evidence is that, immediately following Samarium Group Holding’s announcement of an intention to make a take-over bid for all of the Samaranta shares at \$.12, Hable directed that all of the Samaranta shares held by Samarium, Blue Dragon and China Metals be offered for sale at \$.04 per share (up from the previous offering price of \$.02 per share). All of these shares, along with the 110,000 Samaranta shares owned by Hable Investment, were then sold in the market (at prices between \$.025 and \$.055) in the immediate aftermath of this announcement and before Samarium Group Holding announced its intention not to proceed with the purported take-over bid. It is also relevant that Hable was both clearly attempting to sell his Samaranta shares in the market prior to the take-over bid announcement and could not do so and that the take-over bid was withdrawn immediately after Hable was able to dispose of all of his Samaranta shares.
- [49] It is simply not possible to view the Samarium Group Holding take-over bid as genuine given this behavior. If Hable were genuinely interested in acquiring all of the Samaranta shares at \$.12 per share, why would he be selling all of the Samaranta shares that he already owned (particularly at prices significantly lower than his purported offer price of \$.12 per share)? We have no difficulty in inferring that the purported take-over bid for the shares of Samaranta by Samarium Group Holding was not genuine and was made with the express intent of creating demand for and a better price for Hable’s Samaranta shares.
- [50] The fake take-over bid had the intended effect. The Samaranta shares were trading at \$.02 per share immediately prior to February 19, 2013, the date of the Samarium Group Holding press release announcing the bid. In the aftermath of this announcement, the Samaranta shares traded at prices exceeding \$.05 per share, or over a 150% increase in the price. The trading price for the Samaranta shares following the Samarium Group Holdings press release clearly resulted from the market being misled about the take-over

bid. We find that there was an artificial price created in the shares of Samaranta commencing on February 19, 2013 and ending on February 22, 2013.

- [51] We also find that Hable caused this artificial price for the Samaranta shares. He admitted that he drafted the Samarium Group Holding letter to the Samaranta board of directors. He was listed as one of the directors of Samarium Group Holding. Samarium Group Holding's address was given as the address for Hable's company, Samarium. Hable drafted and issued the Samarium Group Holding press release announcing the intention to make the take-over bid. There was no evidence that anyone other than Hable was responsible for any aspect of what occurred. Hable was directly causally responsible for the artificial price created in the shares of Samaranta.
- [52] Lastly, we also find that Hable had the requisite knowledge that his actions in creating a fake take-over bid would create an artificial price for the Samaranta shares. Hable had experience with public companies. He had been a director and senior officer of Samaranta. Anyone with any knowledge of public companies would know that the announcement of an intention to make a take-over bid for the shares of a public company, at a price significantly in excess of that company's current trading price, will send the price of those shares up.
- [53] It also is evident that Hable was aware that this would be the result of his issuing the press release relating to the purported take-over bid, as he withdrew his offer to sell his Samaranta shares at \$.02 per share and re-issued his sell order at \$.04 immediately following the issuance of the press release (and before the markets opened on that day).
- [54] It is even more obvious that Hable had this knowledge in this case, as it is apparent that the whole scheme was designed with the express intention of increasing demand for (and the price of) the Samaranta shares in order that he could sell his Samaranta shares.
- [55] We find that Hable contravened section 57(a) of the Act.

Contravention to section 168.1(1)(a)

- [56] We also find that Hable contravened section 168.1(1)(a) of the Act.
- [57] The Commission investigator was a person appointed under the Act at the time that Hable provided the purported 2012 Annual Report for Samarium Pte. It is clear that this document was a fabrication. The evidence suggests that there is not a company incorporated in Singapore called "Samarium Group (Holding) Pte. Ltd."
- [58] More importantly, it is obvious that the document is a poorly altered version of a real Annual Report for another company, as set out above in paragraphs 33 and 34.
- [59] Hable filed a fabricated document with the Commission and thereby contravened section 168.1(1)(a) of the Act.

Conclusion

[60] We find that Hable contravened both section 57(a) and 168.1(1)(a) of the Act.

[61] We direct the executive director and the respondent to make their submissions on sanction as follows:

By July 18, 2017 The executive director delivers submissions to the respondent and to the secretary to the Commission.

By August 2, 2017 The respondent delivers his response submissions to the executive director and to the secretary to the Commission.

Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By August 9, 2017 The executive director delivers reply submissions (if any) to the respondent and to the secretary to the Commission.

June 26, 2017

For the Commission

Nigel P. Cave
Vice Chair

Don Rowlatt
Commissioner

Suzanne K. Wiltshire
Commissioner