

# 2002 BCSECCOM 781

## Notice of Hearing

Arthur Murray Smolensky

### Section 161 of the *Securities Act*, RSBC 1996, c. 418

- ¶ 1 A hearing will be held (the Hearing) to give Arthur Murray Smolensky an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:
1. under section 161(1)(b) of the Act that Smolensky cease trading in any securities;
  2. under section 161(1)(c) of the Act that any or all of the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to Smolensky;
  3. under section 161(1)(d)(i) of the Act that Smolensky resign any position that he holds as a director or officer of any issuer;
  4. under section 161(1)(d)(ii) of the Act that Smolensky be prohibited from becoming or acting as a director or officer of any issuer;
  5. under section 161(1)(d)(iii) of the Act that Smolensky be prohibited from engaging in investor relations activities;
  6. under section 161(1)(f) of the Act that Smolensky be reprimanded;
  7. under section 161(1)(f) of the Act that Smolensky's registration be suspended or restricted or that conditions be imposed on his registration;
  8. under section 174 of the Act that Smolensky pay prescribed fees or charges for the costs of, or related to, the Hearing; and
  9. any other orders as may be appropriate in the circumstances.

## 2002 BCSECCOM 781

### **Facts**

- ¶ 2 The Commission will be asked to consider the following facts and allegations in making its determination:

### **Parties**

1. The Respondent, Smolensky, was at all material times a director and chairman of Global Securities Corporation (Global) and has been registered with the Commission since 1988 as a trading director and officer of Global.
2. Global is a company incorporated under the laws of British Columbia. At all material times it was registered under the Act as a broker or investment dealer.
3. Cayman Islands Securities Ltd. (CIS) is a company incorporated in Cayman Islands and is a securities dealer in Cayman Islands. CIS maintains an account at Global over which Smolensky has trading authority. Smolensky had a beneficial interest in CIS at all material times.
4. Hua Hwa Enterprise Ltd. (Hua Hwa) is a company incorporated in Cayman Islands. It maintains an account at Global over which Smolensky has trading authority.
5. Lacasse Cecille Investments Ltd. (Lacasse) is a company incorporated in Cayman Islands. It maintains an account at Global over which Smolensky has trading authority.
6. Trooper Technologies Inc. (Trooper), presently named Stream Communications Network, Inc., is a company incorporated in British Columbia. Trooper traded on the Vancouver Stock Exchange (VSE) at all material times. Trooper was subsequently listed for trading on the Canadian Venture Exchange (CDNX) and is now listed on the TSX Venture Exchange.

### **Artificial Price**

7. On August 14, 1997, 609,078 shares of Trooper traded on the VSE. That was, and remains, the highest daily volume of shares traded in Trooper.
8. During the course of the August 14, 1997 trading day Trooper's share price declined from \$1.43 to \$1.05 on no news.
9. Smolensky dominated the trading in Trooper on August 14, 1997 through his trading authority over Lacasse, Hua Hwa, and CIS accounts at Global.

## 2002 BCSECCOM 781

10. Under Smolensky's direction, selling by the CIS account at Global in the last five minutes of the August 14, 1997 trading day caused Trooper's share price to close at a low of \$1.05.
11. In addition to other trades on August 14, 1997 the CIS account, as directed by Smolensky, sold short 27,254 shares at prices lower than the last trade before the short sale, in breach of VSE Rule C.1.38
12. Over 88% of Trooper's selling volume on August 14, 1997 was through the accounts at Global over which Smolensky had trading authority.
13. Smolensky directed the trading on August 14, 1997 knowing it would result in an artificial price for Trooper shares, in breach of section 57(a) of the Act.

### **Purpose of Artificial Price**

14. At the material time, the VSE permitted issuers to offer securities under private placements at a discount of 20% from the closing price of the last trading before the VSE received public notice of the private placement.
15. After the close of trading on the VSE on August 14, 1997, and before the opening of trading on the following day, Trooper announced a completed private placement agreement for the sale of 10,000,000 units in Trooper at \$0.84 per unit (the Private Placement).
16. Smolensky was aware of the Private Placement and its imminent announcement while he was conducting or directing trading in Trooper shares on August 14, 1997.
17. The purpose of Smolensky's trading was to reduce Trooper's share price so that Trooper could price the Private Placement at a lower price per share than that which would have otherwise been permitted by the VSE.

### **Insider Trading**

18. The Private Placement was a material fact with respect to Trooper. It was not generally disclosed until Trooper announced it after the close of trading on August 14, 1997.
19. At all material times, Smolensky was in a special relationship with Trooper, within the meaning of section 3 of the Act, because:

## 2002 BCSECCOM 781

- (a) Global, where Smolensky was Chairman and a trading director and officer, had arranged a portion of the Private Placement, proposed a price for it, and earned a finder's fee of 10%; and
  - (b) Smolensky was a director and substantial shareholder of Skana Holdings Ltd., a subscriber to the Private Placement.
20. By selling Trooper shares held by CIS, Hua Hwa, and Lacasse, Smolensky was able to reduce the offering price on the Private Placement to \$.84. The result was a large gain to the placees, including Skana Holdings Ltd., when the price of Trooper shares rose substantially on news of the Private Placement.
21. During all material times Smolensky traded in the securities of Trooper with knowledge of the undisclosed material fact of the Private Placement and in breach of section 86(1) of the Act.
22. Ultimately, the VSE disallowed the Private Placement price of \$.84 in light of the suspicious trading on August 14, 1997. The VSE repriced the offering at \$1.35, which it determined was the appropriate price for the Private Placement based on Trooper's average trading price before August 14, 1997.

### **CDNX Settlement**

23. Smolensky and the CDNX entered into a settlement dated April 5, 2001 in which, among other things, he acknowledged:
- (a) his participation as a registered representative in the trading of Trooper shares on August 14, 1997;
  - (b) that he had been aware of the proposed timing and price of the Private Placement during the trading; and
  - (c) that he ought to have known that the proposed arrangement was an undisclosed material fact relating to Trooper.
24. Among other things, Smolensky was fined \$115,000.00 by the CDNX.

### **Breaches of the Act**

25. Smolensky has breached sections 57 and 86 of the Act.

### **Public Interest**

26. Smolensky acted contrary to the public interest and failed to maintain market integrity in the securities industry in British Columbia.

## 2002 BCSECCOM 781

- ¶ 3 Smolensky may be represented by counsel at the Hearing, and may make representations and lead evidence. Smolensky is requested to advise the Commission of his intention to attend the Hearing by informing the Commission Secretary at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca).
- ¶ 4 Smolensky or his counsel is required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on Wednesday, September 25, 2002, at 10:00 am if he wishes to be heard before the Commission sets a date for the Hearing.
- ¶ 5 Determinations may be made in this matter if Smolensky, or his counsel, do not appear at the Hearing.
- ¶ 6 September 11, 2002
  
- ¶ 7 Steve Wilson  
Executive Director