

2012 BCSECCOM 304

Notice of Hearing

Colin Robert Hugh McCabe and Erwin Thomas Speckert

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

- ¶ 1 The Commission will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (Act), based on the following facts:

Background

1. Colin Robert Hugh McCabe (McCabe) resided in Abbotsford, British Columbia at all relevant times. He has never been registered as an adviser or in any other capacity under the Act.
2. McCabe was the sole officer and director of Jake Landon Publishing Inc. (Jake Landon), a British Columbia company that published a tout sheet distributed by direct mail called *Elite Stock Report* in which McCabe made stock purchase recommendations under his own name.
3. McCabe also used the name *Elite Stock Report* for emails and monthly newsletters, in which he recommended stocks to subscribers who paid up to US \$1,200 annually to receive his recommendations.
4. McCabe used pseudonyms in other tout sheets published by British Columbia companies controlled by him, including:
 - (a) *Roger Gaines Resource Stock Advisor*, in which he touted stocks under the name and persona of “Roger Gaines”.
 - (b) *The Stock Profiteer Investment Newsletter*, in which he used the name and persona of “Joe Marino”.
5. Erwin Thomas Speckert (Speckert) resides in Minden, Ontario and Zurich, Switzerland, and is the managing director of a Swiss company called Everest Asset Management, AG (Everest). Speckert acts as an intermediary for undisclosed persons who secretly promote securities in or through British Columbia.
6. Between October 2009 and July 2010, McCabe’s companies collectively invoiced Emma Marketing Services Inc. (Emma Marketing), a British Virgin Islands company controlled by Speckert, a total of US \$8.2 million for touting

2012 BCSECCOM 304

companies quoted on the Over The Counter Bulletin Board (OTCBB) in the United States.

Touting Guinness Exploration Inc.

7. In or about late December 2009, McCabe received a phone call from someone who only identified himself as “Erwin”. This individual was, in fact, Speckert.

First round

8. Speckert asked McCabe to feature Guinness Exploration Inc. (Guinness), a thinly traded company whose shares were quoted on the OTCBB, in the *Elite Stock Report* tout sheet. McCabe, without knowing his caller’s true identity, and without making any enquiries, agreed to do so for US \$1.5 million.
9. On January 19, 2010, McCabe emailed his *Elite Stock Report* VIP subscribers to recommend that they buy Guinness shares. That day, the trading volume for Guinness increased about 120,000% from its closing volume the previous day.
10. Between January 21, 2010 and January 25, 2010, McCabe billed Speckert’s British Virgin Islands company, Emma Marketing, US \$1.5 million, by faxing four Jake Landon invoices to a fax number in Switzerland.
11. Speckert caused the invoices to be paid in the following manner:
 - (a) He caused Emma Marketing to bill another British Virgin Islands company for investor relations services.
 - (b) The British Virgin Islands company transferred funds to an account in Switzerland.
 - (c) The account was in the name of a third British Virgins Islands company, this one controlled by Speckert, and held at Everest, the firm where he is managing director (the Everest account).
 - (d) Between January 27, 2010 and February 4, 2010, a bank account held in the name of Jake Landon in Surrey, British Columbia, received a series of wire transfers totaling US \$1.5 million from the Everest account.
12. In February 2010, McCabe distributed by direct mail an issue of the *Elite Stock Report* tout sheet in which he touted Guinness and made the following representations:
 - (a) Guinness had acquired over 8,000 acres of land in the middle of the Tintina Gold Belt in the Yukon Territory well before the region had turned into a red-hot play in May 2009.
 - (b) It was an advanced property, with an estimated recoverable resource in excess of 1 million ounces of gold.

2012 BCSECCOM 304

- (c) Emma Marketing had paid US \$350,000 to the publisher of the *Elite Stock Report* to enhance the public's awareness of Guinness. Emma Marketing would not pay any additional sums.

13. These statements were all false or misleading.

- (a) Guinness had entered into the purchase agreement for Tintina Gold Belt property only about three months before, on November 19, 2009.
- (b) Guinness obtained a NI 43-101 technical report on the property dated November 27, 2009. It stated that the work necessary to define a mineral resource had not been completed.
- (c) At the issuance of the February 2010 issue, the publisher of the *Elite Stock Report*, Jake Landon, had been paid US \$1.5 million in respect of its invoices to Emma Marketing.

Second round

14. In or about early March 2010, Speckert telephoned McCabe and asked him to feature Guinness again in another *Elite Stock Report* tout sheet. McCabe, who still only knew his caller to be an individual called "Erwin", and without making any enquiries, agreed to do so for US \$650,000.

15. On March 12, 2010, McCabe billed Emma Marketing by faxing two Jake Landon invoices totaling US \$650,000 to the same fax number in Switzerland to which he had sent the previous invoices.

16. Speckert caused the invoices to be paid in a manner similar to how the previous invoices had been paid:

- (a) He caused Emma Marketing to bill a Singapore company for investor relations services.
- (b) The Singapore company transferred funds to the Everest account.
- (c) Between March 17 and 18, 2010, Jake Landon's bank account in Surrey, British Columbia, received a series of wire transfers totaling US \$650,000 from the Everest account.

17. In March 2010, McCabe distributed by direct mail another issue of the *Elite Stock Report* tout sheet. He made the same false or misleading promotional statements about Guinness as he had in the February issue.

18. In March 2010 *Elite Stock Report*, McCabe also stated that Emma Marketing had paid Jake Landon US \$400,000 for disseminating information about Guinness.

2012 BCSECCOM 304

19. This was false or misleading. At the issuance of the March 2010 issue, Jake Landon had been paid a total of US \$2.15 million in respect of its invoicing to Emma Marketing, of which US \$650,000 had been for the March 2010 issue alone.

Third round

20. In or about early May 2010, Speckert telephoned McCabe to ask him to once again feature Guinness in another *Elite Stock Report* tout sheet. McCabe, still ignorant of his caller's true identity and without making any enquiries, agreed to do so for US \$500,000.

21. The financing for the touting followed the same pattern as on the previous occasions.

- (a) On May 10, 2010, McCabe billed Emma Marketing by faxing two Jake Landon invoices totaling US \$500,000 to the same Swiss fax number as on the previous occasions.
- (b) Speckert caused Emma Marketing to bill a United Kingdom company for investor services.
- (c) The United Kingdom company transferred funds to the Everest account.
- (d) Between June 1 and June 14, Jake Landon's bank account in Surrey, British Columbia, received a series of wire transfers totaling USD \$500,000 from accounts Speckert controlled at Everest.

22. In May 2010, McCabe distributed by direct mail a third issue of the *Elite Stock Report* tout sheet promoting Guinness. In this issue, he reiterated all the false or misleading statements he had made in the February 2010 issue, including the notice that stated Jake Landon had received total compensation of US \$350,000 from Emma Marketing. By this time, McCabe, through Jake Landon, had in fact been paid a total US \$2.65 million for touting Guinness.

23. For his part, Speckert was paid a total of US \$200,000 for acting as intermediary between McCabe and the offshore companies who paid for touting Guinness in the three *Elite Stock Reports*.

Other touting

24. On or about December 8, 2010, McCabe received an email from an individual about conducting investor relations for Tuffnell Ltd. (Tuffnell), an issuer whose shares were quoted on the OTCBB. The individual indicated that he preferred to pay McCabe through an account that was not in Canada. Without making any inquiries, McCabe agreed to perform the work on those terms.

25. Between December 8, 2010 and February 11, 2011, McCabe issued three Jake Landon invoices totaling US \$1.2 million in respect of this work. The invoices

2012 BCSECCOM 304

included wire instructions to pay them by wiring funds to a bank account in Hong Kong controlled by McCabe.

26. On or about December 15, 2010, McCabe received an email from an individual about conducting investor relations for Gunpowder Gold Corp., an issuer whose shares were quoted on the OTCBB. This individual indicated that he wanted to pay for the work from outside North America to a location that was also outside North America. Without making any inquiries, McCabe agreed to perform the work on those terms.
27. Between December 19, 2010 and February 17, 2011, McCabe issued three Jake Landon invoices totaling US \$1.2 million in respect of this work. The invoices included wire instructions to pay them by wiring funds to McCabe's Hong Kong bank account.

Interviews

McCabe

28. On July 8, 2010, Commission investigative staff conducted an interview of McCabe, during which he made false or misleading statements about the circumstances surrounding his payment for touting services:
 - (a) He claimed that he was paid US \$350,000, \$400,000, and \$350,000 for touting Guinness in the February, March, and May 2010 issues, respectively, of the *Elite Stock Report* tout sheet.
 - (b) The only bank account he used for his business was the one located in Surrey, British Columbia.

Speckert

29. On August 25, 2010, Commission investigative staff conducted an interview of Speckert, who stated that:
 - (a) He was "Erwin" who engaged McCabe to tout Guinness.
 - (b) He had arranged the payments to McCabe for his touting services.
 - (c) He would not disclose who was behind the touting of Guinness because to do so would violate the laws of Switzerland.

Misconduct

30. By publishing false or misleading statements in the *Elite Stock Report* tout sheet, McCabe made misrepresentations contrary to section 50(1)(d) of the Act.

2012 BCSECCOM 304

31. By making false or misleading statements on July 8, 2010 during the course of a compelled interview, McCabe acted contrary to section 168.1(1)(a) of the Act
32. By facilitating the secret promotion of securities in or from British Columbia the Respondents harmed the reputation and credibility of the province's securities market and regulatory environment.

Public interest

- ¶ 2 It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.

Hearing Process

- ¶ 3 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on Tuesday, September 4, 2012, at 9:00 am if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 4 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 5 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.
- ¶ 6 July 31, 2012.

Paul C. Bourque

- ¶ 7 Paul C. Bourque, Q.C.
Executive Director