

2002 BCSECCOM 385

Schedule "A" Settlement Agreement

George Gow

Securities Act, RSBC 1996, c. 418

[para 1]

The following settlement of issues has been reached between George Gow (Gow) and the Executive Director.

Agreed Statement of Facts

[para 2]

As the basis for the undertakings and orders referred to in this settlement, Gow acknowledges the following facts as correct:

1. Gow is a retired member of the Royal Canadian Mounted Police having been given a mandatory medical discharge.
2. Specialized Surgical Services Inc. (Specialized Surgical) is a non-reporting issuer incorporated in British Columbia on March 8, 1995.
3. Specialized Surgical was attempting to open a private hospital in Coquitlam, British Columbia under the name Croft Clinic.
4. James Swanney (Swanney) was the president and majority shareholder of Specialized Surgical.
5. Swanney contacted Mark Webster Vaughan Foster (Foster) in 1996 seeking capital on behalf of Specialized Surgical.
6. Foster was employed by Royal Advent Securities Corporation (RASC) and registered as a mutual fund salesperson at the time of being initially contacted by Swanney.
7. RASC is a non-reporting issuer incorporated in British Columbia on August 3, 1994, and is a registered securities dealer under the *Securities Act, RSBC 1996, c.418* (the Act).

2002 BCSECCOM 385

8. RASC agreed to raise funds for Specialized Surgical through an unregistered affiliate Royal Advent Capital Corporation (RACC) in return for a 10% commission on all funds raised and a 5% corporate finance fee.
9. Fund raising activities were commenced in the spring of 1997. As Specialized Surgical did not have an up to date offering memorandum it was decided to use an offering memorandum of RACC.
10. From December 1996 to May 1997, the sales agent for distributions of RACC was RASC.
11. An offering memorandum dated December 11, 1996, was issued by RACC (the RACC OM). The subscription documents for the RACC shares were accompanied by a rescission option attached to the RACC shares (the Option). The Option, once exercised, purported to convert the RACC shares into an equivalent number of securities of Specialized Surgical or the Croft Clinic.
12. On or about March or April 1997, RASC, using the RACC OM, raised \$485,000 from 18 clients (the RACC Investors). Foster raised \$300,000 of this amount through his clients.
13. Specialized Surgical issued an offering memorandum (the Transitional OM) on August 26, 1997.
14. Foster and Gow became directors of Specialized Surgical on September 9, 1997.
15. On or about September 15, 1997, RACC delivered a Rescission Notice to the RACC Investors providing that they had the right of rescission relating to the RACC shares that could be exercised within 15 days of the notice date.
16. All of the investors exercised their right of rescission and exchanged their RACC shares for shares issued by Specialized Surgical.
17. The shares issued by Specialized Surgical pursuant to the Rescission Notice were subject to the terms and conditions set out in the Transitional OM.

2002 BCSECCOM 385

18. The Transitional OM contained misrepresentations including:
 - (a) that Specialized Surgical intended to repay subscription receivables of \$485,000 when they did not intend to do so;
 - (b) not disclosing that Specialized Surgical was paying commissions to the agents of RASC for the exercise of the rescission in favour of Specialized Surgical; and
 - (c) not disclosing that Foster was an agent of RASC and thereby earning commissions on the rescission.
19. Gow, who became a director of Specialized Surgical on September 9, 1997, ought reasonably to have known of the misrepresentations made in the Transitional OM dated August 26, 1997, by September 15, 1997, when the Rescission Notice was issued contrary to section 50(1)(d) of the Act and the public interest.
20. Gow, by means of the conduct described in paragraphs 17 and 18 above, was in breach of his duties as a director of Specialized Surgical contrary to section 118 of the *Company Act*, RSBC 1996, c. 62 (the Company Act).
21. Foster First Financial Corporation (Foster First) was incorporated on September 15, 1997. Foster was the president and majority shareholder of Foster First.
22. Swanney was a director and minority shareholder of Foster First.
23. Swanney signed a subordination agreement on favour of Foster First on September 23, 1997, for \$100,000 that represented the statutory working capital requirement for Foster First.
24. Foster purchased 25,001 shares of Specialized Surgical on September 30, 1997.
25. Specialized Surgical issued an offering memorandum dated November 12, 1997 (Specialized Surgical OM). This offering memorandum did not disclose that:
 - (a) Swanney was a director of Foster First;
 - (b) Foster was a director of Specialized Surgical;
 - (c) Swanney provided the operating capital for Foster First;

2002 BCSECCOM 385

- (d) Foster and Swanney each owned shares in each others companies; and
 - (e) there were more recent audited financial statements, dated November 1, 1997, than the statements disclosed dated May 31, 1997.
26. Gow, as a director of Specialized Surgical at the time of the Specialized Surgical OM, ought reasonably to have known of the misrepresentations made in the Specialized Surgical OM, contrary to section 50(1)(d) of the Act and the public interest.
 27. Gow, by means of the conduct described in paragraphs 24 and 25 above, was in breach of his duties as a director of Specialized Surgical contrary to section 118 of the Company Act and the public interest.
 28. RASC did not renew Foster's contract of employment when it expired on November 30, 1997.
 29. Foster First was registered as a securities dealer on December 18, 1997.
 30. Foster was employed by Foster First on December 22, 1997, as a mutual fund salesman.
 31. Foster, at the suggestion of staff of the Commission, resigned as a Director of Specialized Surgical on December 31, 1997.
 32. Foster First and Specialized Surgical entered into a contract on January 2, 1998, whereby Foster First was the sole financing agent for Specialized Surgical in return for a 10% commission and a 5% corporate finance fee. In addition, Foster First received a payment of 2% of gross proceeds from Specialized Surgical for any subscriptions for securities sold by any party other than Foster First.
 33. Foster was appointed Vice-President of Marketing for Specialized Surgical in February of 1998 and remained in that capacity until June 1999. This was not reported to the Commission.
 34. Specialized Surgical defaulted entirely on its February mortgage payment for the Croft Clinic land and building.

2002 BCSECCOM 385

35. On or about March 27, 1998, Foster received a transfer of 100,000 shares of Specialized Surgical from Swanney as partial compensation for past services rendered to Specialized Surgical.
36. Foster acquired 300,000 shares of Specialized Surgical from another director free of charge on April 8, 1998.
37. Gow resigned as a director of Specialized Surgical on May 21, 1998.
38. The Specialized Surgical OM of November 12, 1997, was never amended to reflect any of the material changes described in paragraphs 27 to 35 above.
39. Foster and Foster First sold approximately \$225,000 of Specialized Surgical shares to non-directors under the Specialized Surgical OM between November 12, 1997, and the resignation of Gow as a director on May 21, 1998.
40. Gow, as a director of Specialized Surgical, ought reasonably to have known of the misrepresentations made in the Specialized Surgical OM as a result of the failure to amend for the material changes described in paragraphs 27 to 35 above, contrary to section 50(1)(d) of the Act and the public interest.
41. Gow, by means of the conduct described in paragraphs 37 and 39 above, was in breach of his duties as a director of Specialized Surgical contrary to section 118 of the Company Act and the public interest.
42. Specialized Surgical raised approximately \$925,000 during the time Gow was a director. These funds were raised pursuant to the sophisticated purchaser exemption in section 128(b) of the *Securities Rules*, B.C. Reg. 194/97 (the Rules).
43. The Form 20s that were filed with the Commission by Specialized Surgical contained misrepresentations that the distributions were made to sophisticated purchasers when some of the investors did not meet the self-assessment of financial risk or net worth requirements of section 128(b) of the Rules.
44. Gow, as a director of Specialized Surgical, ought reasonably to have known of these misrepresentations, contrary to section 50(1)(d) of the Act, sections 135 and 139 of the Rules, and the public interest.

2002 BCSECCOM 385

Mitigating Factors

[para 3]

The Executive Director has taken into account the following facts as factors mitigating the sanctions which would otherwise have applied in the public interest:

1. Gow has co-operated fully with staff of the Commission in the course of this investigation.
2. Gow lost approximately \$50,000 of his own funds in this investment.
3. During the time Gow was a director of Specialized Surgical he suffered from depression and chronic pain. These conditions resulted in mild to moderate handicaps including difficulty concentrating, memory impairment, and problems making decisions such that he had a high degree of difficulty in comprehending complex legal or financial dealings and their long term ramifications.
4. As a result of Gow's medical condition, he was given a mandatory medical discharge from the Royal Canadian Mounted Police in 1996 and has been unable to work since. As well, Gow's son is ill and requires approximately \$3500 worth of medications monthly.
5. Gow is impecunious and unable to pay a fine.
6. Absent the mitigating factors a payment to the British Columbia Securities Commission of \$10,000 would have been appropriate.

Undertakings

[para 4]

Gow undertakes:

1. to comply fully with the Act, Rules, and applicable regulations; and
2. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

2002 BCSECCOM 385

Order

[para 5]

Gow consents to an order by the Executive Director (the Order) that:

1. under section 161(1)(b) of the Act, Gow cease trading in any security for a period of two years from the date of the Order;
2. under section 161(1)(c) that any or all of the exemptions described in sections 44 to 47, 74, 75, 98, or 99 do not apply to Gow for a period of two years except that Gow may trade in securities he currently holds, solely through one registered dealer, under section 45(2)(7) of the Act;
3. under section 161(1)(d) of the Act, Gow resign any position that he holds as a director and officer of any issuer and is prohibited from becoming or acting as a director or officer of any issuer until the later of:
 - (a) the date he successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers; or
 - (b) the date he satisfies the Executive Director that his medical condition has improved such that he can perform the duties and responsibilities of directors and officers; or
 - (c) two years from the date of the Order; and
4. under section 161(1)(d) of the Act, Gow be prohibited from engaging in investor relations activities until five years after the date of the Order.

2002 BCSECCOM 385

Waiver

[para 6]
Gow waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

[para 7]
May 9, 2002

“G. Gow”
George Gow

“W. Janzen” _____)
Witness Signature _____)
Walter Janzen _____)
Witness Name (please print) _____)
_____)
Sorrento, B.C. _____)
Address _____)
Welder _____)
Occupation _____)

[para 8]
May 10, 2002

Martin Eady
A/Executive Director