

2002 BCSECCOM 789

SCHEDULE "A"

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Settlement Agreement

Brian Paul Kuhn

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between Brian Paul Kuhn (Kuhn) and the Executive Director of the British Columbia Securities Commission.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Kuhn acknowledges the following facts as correct:
1. Kuhn was at all material times registered under the *Securities Act, RSBC 1996, c. 418* as an investment advisor and was an employee of an investment dealer that is registered under the Act (the Investment Dealer).
 2. William Ronald Moll (Moll) and Glen Anthony Carl Rosen (Rosen) were at all material times residents of British Columbia, and have never been registered in any capacity under the Act.
 3. From around February 1999 to around November 1999, Moll and Rosen carried on business as “North American Marketing”, “North American Marketing Ltd.”, “North American Enterprises” and “North American Enterprises Ltd.” (collectively, North American). On September 8, 1999, Moll and Rosen incorporated 592087 B.C. Ltd., doing business as North American.
 4. North American purported to manufacture, market and distribute Tire Tux also know as Tire-Glo, a car tire detailing and polishing product.
 5. From around February 1999 to July 1999, Kuhn while employed at the Investment Dealer, traded in shares of North American with approximately thirty-one investors (the Investors), for proceeds of approximately \$175,000 (the North American Securities). Kuhn recommended the purchase of the North American Securities as an investment in the seed stock of a private company that may go public.
 6. Twenty-two of the Investors lived in British Columbia and most of them were clients of Kuhn at the Investment Dealer.

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7. Kuhn provided most of the Investors with documents relating to North American, which he had received from Rosen, that made certain representations (the North American Representations), including:
 - (a) North American had an exclusive agreement with Tire-Glo Ltd., the owner of Tire-Glo, to manufacture, licence and market Tire-Glo;
 - (b) North American projected the sale of:
 - 250,000 bottles of Tire-Glo by December 31, 1999;
 - 750,000 bottles in 2000; and
 - over 2,000,000 bottles in 2001;
 - (c) North American offered for sale 750,000 shares of North American at a share price of \$0.35 per share; and
 - (d) North American was to go public on either the Alberta Stock Exchange or the NASD OTCBB by August 31, 1999.
8. The North American Representations were false.
9. Kuhn failed to exercise sufficient due diligence on behalf of his clients to confirm that each of the North American Representations were accurate.
10. Most of the Investors made their cheques payable to Moll or Rosen. The Investors gave these cheques to Kuhn, who then forwarded them to either Rosen or Moll. In exchange for their investment, many of the Investors received from Rosen or Moll share certificates that had printed on their face “North American Enterprises Ltd.” and “592087 B.C. Ltd.”
11. Four of the Investors made their cheques payable to Kuhn’s spouse, who at that time was employed as a distributor with North American. These cheques totaled \$14,000 and were not endorsed for deposit into a trust account.
12. The Investment Dealer did not authorize the trading by Kuhn in the North American Securities.

Breaches of the Act

13. Kuhn failed to exercise sufficient due diligence on behalf of his clients with respect to the North American Securities and, as such, he acted contrary to section 14 of the *Securities Rules*, BC Reg. 194/97.

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14. Kuhn failed to ensure that the \$14,000 in investor funds referred to in paragraph 2, item 11 were segregated and held in a trust account, contrary to section 58 of the Securities Rules.

Mitigating Factor

- ¶ 3 The Executive Director has taken into account the fact that Kuhn has no previous disciplinary history with the Commission and that he cooperated with Commission staff as mitigating the sanctions that would otherwise have applied in the public interest

Undertaking

- ¶ 4 Kuhn undertakes:
1. that within 60 days of signing this settlement agreement he will make restitution to any of the four investors referred to in paragraph 2, item 11 who have not yet been reimbursed and will provide proof of reimbursement to the Executive Director; and
 2. that upon signing this settlement agreement he will pay to the Commission the sum of \$15,000 of which \$5,000 represents a portion of the costs of the investigation.

Order

- ¶ 5 Kuhn consents to an order by the Executive Director (the Order) that:
1. under section 161(1)(c) of the Act, any or all of the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Kuhn, for the later of:
 - (a) seven years from the date of the Order; and
 - (b) the date he makes restitution to the four investors in accordance with paragraph 4, item 1;except that under section 45(2)(7) of the Act he is allowed to trade securities he currently holds through a registered dealer and that once he complies with paragraph 4, items 1 and 2, he may under section 45(2)(7) of the Act trade securities in an account in his own name, through one registered dealer;
 2. under section 161(1)(d) of the Act, Kuhn be prohibited from becoming or acting as a director or officer of any issuer and from engaging in investor relations activities in British Columbia for the later of:

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- (a) seven years from the date of the Order; and
- (b) the date he makes restitution to the four investors in accordance with paragraph 4, item 1.

Waiver

- ¶ 6 Kuhn 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 Agreement.
- ¶ 7 September 5, 2002

“Brian Kuhn”
Brian Kuhn

“K. Piowerbeski” _____)
Witness Signature _____)
Kevin Piowerbeski _____)
Witness Name (please print) _____)
PO Box 3117 SMB _____)
Grand Cayman, CI _____)
Address _____)
Executive Coach _____)
Occupation _____)

- ¶ 8 September 11, 2002

Steve Wilson
Executive Director