

# 2004 BCSECCOM 82

## Order

### Charles Wiebe

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

#### Background

- ¶ 1 The Executive Director has entered into a Settlement Agreement with Charles Wiebe (Wiebe), a copy of which is attached as Schedule A.

#### The Order

- ¶ 2 The Executive Director, considering it to be in the public interest to do so, orders, by consent, that:
1. under section 161(1)(c) of the *Securities Act*, RSBC 1996, c. 418 the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to Wiebe for a period of 10 years, except that he may trade in securities for his own registered retirement savings plan through a single account with a person registered to trade in securities under the Act;
  2. under section 161(1)(d)(i) of the Act, Wiebe resign any position he holds as a director or officer of any issuer other than an issuer where all of the securities are owned directly and beneficially by him, his wife or his parents;
  3. under section 161(1)(d)(ii) of the Act, Wiebe is prohibited from becoming or acting as a director or officer of any issuer, other than an issuer described in paragraph 2 of the Settlement Agreement, for a period of 10 years; and
  4. under section 161(1)(d)(iii) of the Act, Wiebe is prohibited from engaging in investor relations activities for a period of 10 years.

- ¶ 3 February 4, 2004

- ¶ 4 Brenda Leong  
A/Executive Director

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## Schedule A Settlement Agreement

Charles Wiebe

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

- ¶ 1 The following settlement of issues has been reached between Charles Wiebe (Wiebe) and the Executive Director.

#### Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Wiebe acknowledges the following facts as correct.

1. Wiebe is currently a resident of Abbotsford, British Columbia.
2. In or about January of 1997, Wiebe traveled to Las Vegas, Nevada, at the request of Michael Lee Mitton (Mitton) and purchased 3,728,000 of the 4,000,000 issued and outstanding shares of H&R Enterprises, Inc. (H&R), a company whose shares traded on the OTC Bulletin Board in the United States. At the time Mitton was, and continues to be until 2008, subject to an order issued by the Superintendent of Brokers that prohibits him from acting as a director or officer of any issuer and from trading in British Columbia.
3. Between January 1997 and September 1997 (the Material Time), Mitton manipulated the price of the shares of H&R by:
  - (a) distributing the shares of H&R to nominees and promoters;
  - (b) issuing press releases which contained false and misleading information;
  - (c) causing H&R to issue 2,455,000 shares from treasury to nominees, without H&R receiving payment for the shares;
  - (d) instructing the nominees to open brokerage accounts at various brokerage houses in British Columbia and elsewhere; and
  - (e) directing the trading of the shares of H&R in the accounts of the nominees such that the shares were traded in a circular fashion at ever increasing prices.

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4. As a result of the manipulation described above, the price of the shares of H&R rose from approximately \$2.00 US in August 1997 to a peak of \$6.75 US on September 25, 1997.
5. During the Material Time, Wiebe acted as a nominee for Mitton by maintaining five brokerage accounts in his own name, or in the names of companies for which he had trading authority, at two brokerage houses in British Columbia. Wiebe also opened and maintained a brokerage account in his own name at a brokerage house in the United States (together, the Accounts). All of the trading in the Accounts was done on the instructions of and for the benefit of Mitton.
6. During the Material Time, Wiebe also acted as an officer and de facto director of H&R.
7. Wiebe's actions as a nominee of Mitton and as an officer and de facto director of H&R enabled Mitton to carry out the manipulation of the price of the shares of H&R as described above.
8. As a result of the manipulation, profits of approximately \$1.8 million Cdn were withdrawn from the Accounts. All, or substantially all of this amount was transferred to third parties, as directed by Mitton.

### **Breaches of the Act and the Securities Rules**

9. Wiebe breached section 57(a) of the *Securities Act*, RSBC 1996, c. 418 and section 41.1 of the *Securities Act*, SBC 1985, c. 83 (the Former Act) by participating in transactions that he knew or ought to have known contributed to a misleading appearance of trading activity or artificial price for the shares of H&R.
10. Wiebe breached section 61 of the Act and section 42 of the Former Act by trading the shares of H&R he received from treasury without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to section 140 of the *Securities Rules*, B.C. Reg. 194/97, as amended and section 133 of the *Securities Regulation*, B.C. Reg. 478/95.

### **Public Interest**

11. Wiebe acted contrary to the public interest by acting as a nominee for Mitton.

### **Mitigating Factors**

- ¶ 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:

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1. Wiebe received no benefit from trading in the Accounts, from acting as a nominee for Mitton, or from acting as an officer or de facto director of H&R other than a salary he received as an employee of Capital Hill Ventures Ltd., a wholly owned subsidiary of H&R.
2. Wiebe had not previously been involved in the securities industry and was unaware that the price of the shares of H&R was being manipulated.
3. Wiebe is not currently acting as a director or officer of a reporting issuer, conducting investor relations activities or registered under the Act to trade or advise in securities.
4. Although Wiebe agrees that the monetary portion of the sanction that otherwise would have applied in this case would have been \$60,000, the Executive Director has taken into account that Wiebe is impecunious and is a discharged bankrupt.

### **Undertaking**

¶ 4 Wiebe agrees and undertakes as follows:

1. to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines, from the date of this agreement;
2. to not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question;
3. to pay to the Commission the sum of \$12,500, of which \$2,500 represents the costs of the investigation; and
4. to pay to the Commission a further sum of \$50,000 if Wiebe wishes to act as a director or officer of a reporting issuer, conduct investor relations activities or be a registrant.

### **Order**

¶ 5 Wiebe consents to an order by the Executive Director (the Order) that:

1. under section 161(1)(c) of the Act, the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to Wiebe for a period of 10 years, except that he may trade in securities for his own registered retirement savings plan through a single account with a person registered to trade in securities under the Act;

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2. under section 161(1)(d)(i) of the Act, Wiebe resign any position he holds as a director or officer of any issuer other than an issuer where all of the securities are owned directly and beneficially by him, his wife or his parents;
3. under section 161(1)(d)(ii) of the Act, Wiebe is prohibited from becoming or acting as a director or officer of any issuer, other than an issuer described in paragraph 2, for a period of 10 years; and
4. under section 161(1)(d)(iii) of the Act, Wiebe is prohibited from engaging in investor relations activities for a period of 10 years.

### **Waiver**

¶ 6 Wiebe 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.

¶ 7 January 28, 2004

¶ 8 “C.D. Wiebe”  
Charles Wiebe

“N. Hanna” )  
Witness Signature )  
N. Hanna )  
Witness Name (please print) )  
701 W. Georgia St. )  
Vancouver, BC V7Y 1L2 )  
Address )  
Legal Secretary )  
Occupation

¶ 9 February 4, 2004

¶ 10 Brenda Leong  
A/Executive Director