

2005 BCSECCOM 467

Settlement Agreement

Nelson Kenfung Siu

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between Nelson Kenfung Siu (Siu) and the Executive Director.

Agreed Statement of Facts

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

Background

1. Siu has been registered with the British Columbia Securities Commission since June 1998 and has been employed by an investment dealer, First Associates Investments Inc. (First Associates), since January 2003.
2. China Diamond Corporation (China Diamond), formerly named Pan Asia Mining Corp., is a company that was registered to do business in British Columbia on November 25, 1997. China Diamond is a reporting issuer in British Columbia and its shares are listed for trading on the TSX Venture Exchange.
3. Paula Poe (Poe) is a former director, senior officer and insider of China Diamond.
4. A Cease Trade Order (CTO) under section 164 of the Securities Act, RSBC 1996, c. 418 was issued against China Diamond on January 24, 2003. The CTO was made public that day when it was posted on the Commission's website.
5. On March 14, 2003, under section 171 of the Act, the CTO was partially revoked in order to permit China Diamond to resume trading. However, Poe and others remained prohibited from trading securities of China Diamond. This partial revocation order was made public that day when it was posted on the Commission's website.

Brokerage Account Opening

6. In March 2003, a person who knew both Poe and Siu advised Siu that Poe wanted to open an account for trading.

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7. The Poe family intermittently employed an individual (Employee) in various domestic capacities.
8. On April 2, 2003, Siu met with Poe, the Employee and various Poe family members at Poe's residence in Vancouver. When he arrived, Siu learned that the account was to be opened in the name of the Employee.
9. At the meeting, Siu filled out a New Client Application Form (Client Form) to open a brokerage account at First Associates (First Associates Account) in the Employee's name. The phone number and address for the Employee on the Client Form were Poe's phone number and address. The Employee did not give anyone trading authority over the First Associates Account.
10. At the meeting Siu received a share certificate for 350,000 shares of China Diamond for deposit in the First Associates Account. Siu was told that Poe had gifted the shares to the Employee.
11. Siu failed to make enquiries about the essential facts relating to the Employee, his client, which should have disclosed that:
 - (a) The Employee was not the beneficial owner of the shares.
 - (b) Poe initiated the opening of the First Associates Account, and told the Employee that it was for Poe's daughter's use.
 - (c) Around the same time, Poe also initiated the opening of a bank account at the Bank of Montreal (Bank of Montreal Account), and told the Employee that it was for Poe's daughter's use.
 - (d) At Poe's request, the Employee provided Poe with pre-signed blank cheques and the bankcard for the Bank of Montreal Account.

Trading

12. From April 2, 2003 to August 26, 2003, share certificates representing 1,020,249 shares of China Diamond were deposited to the First Associates Account. The shares were subsequently sold into the market (Sales).
13. When speaking to Siu on the telephone, the individual placing orders on the First Associates Account did not identify herself by name and Siu did not ask her to do so.
14. From April 3, 2003 to August 26, 2003, \$59,650, the proceeds of the Sales, were electronically transferred from the First Associates Account to the Bank of Montreal Account.

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15. Only shares of China Diamond were traded through the First Associates Account.
16. On August 26, 2003, under section 171 of the Act, the CTO was further partially revoked. This permitted Poe, among others, to trade, but only in her own personal account and subject to certain conditions. This further partial revocation order was made public that day when it was posted on the commission's website.
17. On August 28, 2003, a China Diamond share certificate for 1.6 million shares was transferred from Poe's name to the Employee's name and then deposited to the First Associates Account.
18. The Employee did not own any of the shares deposited into the First Associates Account and the Employee did not place any orders or instructions relating to the transactions conducted in the First Associates Account.

Breaches

19. Siu breached section 48 of the *Securities Rules*, BC Reg. 194/97 and his "gatekeeper" duty as a registrant to assist in maintaining the integrity of the capital markets by:
 - (a) failing to make appropriate enquiries to learn the essential facts relating to his client, which should have uncovered the true nature, purpose and ownership of the First Associates Account; and
 - (b) allowing the operation of a nominee account without proper documentation.
20. Siu breached section 14 of the Rules by accepting orders on the Employee's account from a person who was not authorized to trade in that account.
21. Siu's conduct as described in this settlement was contrary to the public interest.

Undertakings

¶ 3 Siu undertakes and agrees to:

1. pay to the British Columbia Securities Commission the sum of \$25,000; and
2. not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

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Order

- ¶ 4 Siu consents to an order by the Executive Director (the Order) that:
1. under section 161(1)(f) of the Act, Siu be placed under close supervision by his employer for a period from the date of the Order to the later of one year from the date of the Order and the date Siu pays the Commission the sum of \$25,000; and
 2. under section 161(1)(a) of the Act, Siu comply fully with the Act, the Rules and all applicable regulations, policies and guidelines.

Waiver

- ¶ 5 Siu 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 agreement.
- ¶ 6 July 7, 2005

- “Nelson Siu”
¶ 7 Nelson Kenfung Siu

“Dan Burns”
_____)
Witness Signature _____)
Dan Burns _____)
Witness Name (please print) _____)
500, Bentall Five, 550 Burrard St. _____)
Vancouver, BC V6C 2B5 _____)
Address _____)
Regional Compliance Officer _____)
Occupation _____)

- ¶ 8 July 15, 2005

- “Brenda Leong”
¶ 9 Brenda M. Leong
Executive Director