

2008 BCSECCOM 171

Order

David John Fulkco

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

Background

- ¶ 1 The Executive Director has entered into a Settlement Agreement with David John Fulkco (David Fulkco), 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)(a) of the Act, David Fulkco will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
 2. under section 161(1)(b) of the Act, David Fulkco will cease trading in and be prohibited from purchasing any securities or exchange contracts for 15 years from the date of this Order, except that he may trade in one account in his own name through a registered representative if he provides a copy of this Order to the registered representative before any trade; and
 3. under sections 161(1)(d)(i), (ii) and (v) of the Act, David Fulkco will resign any position he may hold, and be prohibited from becoming or acting, as a director or officer of any issuer and be prohibited from engaging in investor relations activities for 15 years from the date of this Order.

- ¶ 3 March 31, 2008

Langley E. Evans

Langley E. Evans Acting For:

- ¶ 4 Brenda M. Leong
Executive Director

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Schedule “A”

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Settlement Agreement

David John Fulkco

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

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and David John Fulkco (David Fulkco) agree as follows:

Agreed Statement of Facts

1. David Fulkco is a resident of British Columbia and was registered under the Act as a scholarship plan salesperson between 1990 and 1991. David Fulkco was not registered in any capacity under the Act at the time of the misconduct described in this Settlement Agreement.
2. Between November 2003 and May 2005, through his sole proprietorship Abriel Assets Management, David Fulkco solicited investors (Investors) to enter into investment contracts with Kevin Jason Steele (Steele) whereby:
 - (a) Investors agreed to give money to Steele which he then pooled in an account at a United States brokerage firm (the Account);
 - (b) Steele used the money in the Account to trade commodity futures contracts; and
 - (c) Steele promised to share with Investors the profit he earned from his trading business, which he told Investors would result in returns on their investments of approximately 8% per month(the Securities).
3. No prospectus was ever filed for the Securities and none of the exemptions under the Act applied to their distribution.
4. Relying on false information provided by Steele, David Fulkco made the following misrepresentations to Investors to convince them to invest with Steele:
 - (a) the sales of the Securities to Investors complied with the Act and other securities legislation;
 - (b) Steele was an authorized commodity futures contract trader;

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- (c) Steele was a very successful commodity futures trader; and
 - (d) Steele would earn the Investors at least an 8% monthly return on their investments.
5. David Fulkco provided this same information to his father, Wallace Fulkco (Wally Fulkco), who subsequently provided it to Investors to convince them to invest with Steele.
 6. David Fulkco also misrepresented to Investors that he had conducted and would continue to conduct thorough due diligence on Steele and his trading. David Fulkco's due diligence inquiries on Steele and his trading was inadequate.
 7. Steele was not a successful trader and did not earn any profits for Investors. Steele also misappropriated Investors' money for his personal use and used Investors' principal investments to pay some Investors he misrepresented as profits.
 8. On November 22, 2005, the United States District Court for the Northern District of Illinois Eastern Division found that, through the conduct described in this Settlement Agreement, Steele created false statements and defrauded investors, contrary to the United States *Commodity Exchange Act*. The court ordered Steele to pay investors approximately US\$7.4 million in restitution and ordered a civil monetary penalty of US\$6.2 million against him.
 9. On May 16, 2006, Steele pleaded guilty in the Provincial Court of British Columbia to one count of fraud over \$5,000, contrary to section 380 of the Criminal Code, respecting the conduct described in this Settlement Agreement. On June 19, 2006, Steele was sentenced to six years in prison on this matter.
 10. As a result of David and Wally Fulkco's conduct, 214 Investors invested approximately US\$7.6 million with Steele. Of these investors, 162 are British Columbia residents who gave Steele a total of approximately US\$6 million. Investors lost approximately US\$7 million as a result of Steele's trading losses and his misuse of their funds.
 11. David Fulkco and his father Wally Fulkco jointly invested approximately US\$212,000 with Steele. They did not get this money back but did receive

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approximately US\$302,000 money in purported commissions on profits for soliciting Investors.

Misconduct

12. In soliciting Investors to invest in the Securites, David Fulkco:

- (a) traded in securities without being registered under the Act, contrary to section 34(1) of the Act;
- (b) distributed securities without having filed a prospectus, contrary to section 61 of the Act; and
- (c) made statements that he knew, or ought to have known, were misrepresentations, contrary to section 50(1)(d) of the Act.

Public Interest

13. David Fulkco acted contrary to the public interest by engaging in the conduct set out above.

Inability to Pay

14. David Fulkco has declared bankruptcy and there is no reasonable prospect of him paying \$125,000 that would otherwise be assessed in the public interest for the misconduct described in this settlement.

Order

¶ 2 The Executive Director will issue an order (the Order) that:

1. under section 161(1)(a) of the Act, David Fulkco will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
2. under section 161(1)(b) of the Act, David Fulkco will cease trading in and be prohibited from purchasing any securities or exchange contracts for 15 years from the date of the Order, except that he may trade in one account in his own name through a registered representative if he provides a copy of this order to the registered representative before any trade;
3. under sections 161(1)(d)(i)-(iii) of the Act, David Fulkco will resign any position he may hold, and be prohibited from becoming or acting, as a director or officer of any issuer and be prohibited from engaging in investor relations activities for 15 years from the date of the Order.

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Consent to Reciprocal Orders

- ¶ 3 Any securities regulator in Canada may rely on the facts admitted in this Settlement Agreement solely for the purpose of making an order similar to the one contemplated above.

Waiver

- ¶ 4 David Fulkco 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 other than as agreed upon by the parties

- ¶ 5 December 12, 2007

- ¶ 6 David Fulkco
David John Fulkco

Susan Fulkco)
Witness Signature)
Susan Fulkco)
Witness Name (please print))
115 – 937 Skogstad Way)
Address)
Victoria, BC)
)
Daycare)
Occupation)

- ¶ 7 March 31, 2008

Langley E. Evans

Langley E. Evans Acting For:

- ¶ 8 Brenda M. Leong
Executive Director