

2010 BCSECCOM 79

Settlement Agreement

David Malcolm Ruthven

Securities Act, RSBC 1996, c. 418 (the Act)

¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and David Malcolm Ruthven (Ruthven) agree as follows:

Agreed Statement of Facts

Background

1. Ruthven is a 63-year old resident of Mission, British Columbia.
2. Frey Mining Company Ltd. (Frey Mining) is a Nevada company. It offered for sale a security that promised to give investors a percentage of the future sale proceeds of gold and precious metals from a Utah mine (the Frey Mining Security).
3. Moenkopi Resources Inc. (Moenkopi) is a Nevada company. It offered for sale a security that purported to allow investors to receive ten times their initial investment upon Moenkopi receiving its first payment from a high-yield private placement program (the Moenkopi Security).
4. Mercury Capital S.A. (Mercury) is a Turks and Caicos company. It offered for sale a security that purported to allow investors to participate in a high-yield non solicitation feeder program. Mercury promised to pay investors 25% per month for four months with the return of all principal at the end of the fourth month (the Mercury Security).
5. Between 2002 and 2006 (the Relevant Period), Ruthven solicited his friends and acquaintances to purchase the securities of Frey Mining, Moenkopi and Mercury (the Companies).
6. During the Relevant Period, Ruthven was not registered to trade securities under the Act.
7. The Companies have never filed a prospectus to distribute their securities under the Act.
8. The Companies sold at least USD \$1,081,572 of their securities to at least 33 investors. Ruthven helped sell USD \$497,000 to 11 investors (the Distributions).

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9. Ruthven received USD \$29,775 in commissions for bringing in investors for the Companies.
10. Ruthven invested USD \$25,000 in Frey Mining and Mercury Securities. He has not recovered any money on his Frey Mining investment and only recovered USD \$5,000 on his Mercury investment.

Misconduct

11. By helping to solicit and facilitate the Distributions, Ruthven:
 - (a) traded in securities without being registered, contrary to section 34(1) of the Act; and
 - (b) distributed securities without filing a prospectus, contrary to section 61 of the Act.

Public interest

12. Ruthven acted contrary to the public interest by engaging in the conduct set out above.

Undertaking

13. Ruthven undertakes to pay \$18,000 to the Commission in settlement of this matter.

Order

- ¶ 2 The Executive Director will issue an order that (the Order):
1. under section 161(1)(b) of the Securities Act, RSBC 1996, c. 418, Ruthven cease trading in and be prohibited from purchasing any securities, except that he may trade and purchase securities through 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;
 2. under section 161(1)(d)(i) and (ii) of the Act, Ruthven be prohibited from becoming or acting as a director or officer of any issuer except a private issuer in which he or members of his family are the sole shareholders; and
 3. under section 161(1)(d)(v) of the Act, Ruthven be prohibited from engaging in investor relations activities

for a period of five 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 agreement solely for the purpose of making a similar Order.

Waiver

- ¶ 4 Ruthven 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.

Counterpart

- ¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

- ¶ 6 January , 2010

David Malcolm Ruthven

- ¶ 7 David Malcolm Ruthven

Sharon Ruthven)
Witness Signature)
Sharon Ruthven)
Witness Name (please print))
8318 Peakcock Street)
Mission, BC)
Address)
Accounting)
Occupation)

- ¶ 8 February 8, 2010

Martin D. Eady

- ¶ 9 Martin D. Eady
Acting Executive Director