

# 2011 BCSECCOM 303

## Great White Capital Corp. and Adam Keller

### *Securities Act, RSBC 1996, c. 418*

#### Hearing

<b>Panel</b>	Brent W. Aitken David J. Smith Shelley C. Williams	Vice Chair Commissioner Commissioner
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**Hearing dates** April 28, 2011

**Submissions completed** May 20, 2011

**Date of Decision** June 27, 2011

#### Appearing

Jennifer Whately For the Executive Director

#### Decision

##### I Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 On March 8, 2011, the executive director issued a notice of hearing alleging that Great White Capital Corp. and Adam Keller contravened the Act from June 2009 to June 2010 by fraudulently taking \$523,100 from four individuals, two in British Columbia and two in Alberta.
- ¶ 3 Neither of the respondents appeared or was represented by counsel at the hearing. We granted the executive director's request that we consider submissions on both liability and sanction together.
- ¶ 4 During the relevant period Keller was a resident of British Columbia and was the sole director of Great White. He was the sole signing authority of a Great White bank account into which the investors' funds were deposited and of an account in his name at the same bank, into which he transferred the investors' funds from the Great White account.
- ¶ 5 Keller lied to investors about his background, telling them he was an expert foreign exchange trader who made millions while attending the University of

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Southern California in 2001. He never attended USC nor did he engage in foreign exchange trading (in 2001 he was 12 or 13 years old).

- ¶ 6 Keller told investors he would execute foreign exchange trades, or otherwise invest funds on their behalf. He told investors their funds would be protected by him and Great White against loss. Keller did not invest any of the investors' funds. Keller used the funds for his own personal purposes.
- ¶ 7 Keller lied to investors about how their investments were performing. He prepared false account statements that induced some investors to invest more.
- ¶ 8 None of the investors received any return. There is no evidence the investors will recover their investments. Keller's whereabouts are unknown.

### II Findings

- ¶ 9 Section 57(b) of the Act says that a person "must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or ought reasonably to know, that the conduct . . . perpetrates a fraud on any person."
- ¶ 10 In considering section 57(b), the British Columbia Court of Appeal held in *Anderson v. British Columbia (Securities Commission)* 2004 BCCA 7 that to establish fraud under that section, the elements of fraud must be present, as cited in *R. v. Theroux* [1993] 2 SCR 5. Those elements are a prohibited act (deceit, falsehood, or some other fraudulent means), deprivation caused by the prohibited act (actual loss or placing the victim's pecuniary interests at risk), and subjective knowledge by the perpetrator of both the prohibited act and that it could result in deprivation of another.
- ¶ 11 We find that the executive director proved that Keller and Great White perpetrated a fraud, contrary to section 57(b) of the Act.

### III Sanctions

- ¶ 12 The factors relevant to sanction are set forth in *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22 (see page 24).
- ¶ 13 Keller used Great White as a vehicle to steal the investors' money. Fraud is the most serious misconduct under the Act.
- ¶ 14 Keller benefited from his illegal activity – he took all of the money he raised from investors – over \$500,000 – and used it for personal purposes.

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- ¶ 15 That investors were harmed is obvious. There is no evidence to suggest that they will recover any part of the funds they invested. In these circumstances, we consider it appropriate to order disgorgement.
- ¶ 16 All of this damages the integrity and reputation of our markets.
- ¶ 17 There are no mitigating factors.
- ¶ 18 The orders we are making are intended to deter the respondents from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.
- ¶ 19 We have followed the approach in recent cases of ordering an administrative penalty that is a multiple of the amount raised by the fraud.

### **IV Orders**

- ¶ 20 Considering it to be in the public interest, we order:

#### ***Keller***

1. under section 161(1)(b) of the Act, that Keller cease trading permanently, and is permanently prohibited from purchasing, securities or exchange contracts;
2. under section 161(1)(d)(i) and (ii), that Keller resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer, registrant, or investment fund manager;
3. under section 161(1)(d)(iii), that Keller is permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
4. under section 161(1)(d)(iv), that Keller is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
5. under section 161(1)(d)(v), that Keller is permanently prohibited from engaging in investor relations activities;
6. under section 161(1)(g), that Keller pay to the Commission the funds he obtained as a result of his contraventions of the Act, which we find to be not less than \$523,100;
7. under section 162, that Keller pay an administrative penalty of \$1.6 million;

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### *Great White*

8. under section 161(1)(b), that all persons cease trading permanently, and are prohibited permanently from purchasing, any securities of Great White;
9. under section 161(1)(b), that Great White permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;
10. under section 161(1)(d)(iii), that Great White is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;
11. under section 161(1)(d)(v), that Great White is prohibited permanently from engaging in investor relations activities;
12. under section 161(1)(g), that Great White pay to the Commission the funds obtained as a result of its contraventions of the Act, which we find to be not less than \$523,100;
13. under section 162, that Great White pay an administrative penalty of \$1.6 million; and
14. Keller and Great White be jointly and severally liable for the amounts in paragraphs 6, 7, 12 and 13, provided that the amounts paid under paragraphs 6 and 12 shall not exceed the funds obtained by Keller's and Great White's contraventions of the Act, and the amounts paid under paragraphs 7 and 13 shall not exceed \$1.6 million.

¶ 21 June 27, 2011

¶ 22 **For the Commission**

Brent W. Aitken  
Vice Chair

David J. Smith  
Commissioner

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Shelley C. Williams  
Commissioner