

# 2012 BCSECCOM 383

**Paul Lester Stiles**

*Securities Act, RSBC 1996, c. 418*

## Hearing

<b>Panel</b>	Brent W. Aitken Kenneth G. Hanna Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
<b>Date of hearing</b>	May 17, 2012	
<b>Submissions completed</b>	July 26, 2012	
<b>Date of Decision</b>	October 3, 2012	
<b>Appearing</b> Jeremy Gellis	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 In a Notice of Hearing issued May 3, 2012 the executive director alleges that Paul Lester Stiles distributed securities without being registered contrary to section 61 of the Act and made misrepresentations contrary to section 50(1)(d) of the Act.
- ¶ 3 Stiles did not appear at the hearing. We granted the executive director's application that we hear evidence and submissions concurrently on both liability and sanction. Stiles filed no submissions.

### II Background

- ¶ 4 Stiles was a resident of British Columbia at the relevant time.

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- ¶ 5 The executive director alleges that in 2011 and 2012 Stiles distributed securities purportedly in a company called Velocity Entertainment Inc., contrary to section 61 of the Act because no prospectus was filed in connection with the distribution and there was no available exemption from the requirement to file a prospectus.
- ¶ 6 The executive director also alleges that Stiles made misrepresentations in connection with the distribution.
- ¶ 7 In August 2011 a Commission staff investigator, in the course of a routine search of the electronic media, discovered this posting (posted in July) on the Vancouver Craigslist website:
- “We are a film and television production house in Vancouver. We have a US source to fund 2 feature films we are producing. We require \$2.6 million or 10% of the budget. This money would be held in trust – in your trust account and never touched. We will pay you 12% interest on the funds. Both features have 25-30% tax and production incentives. This money is not released till [sic] the final audit after production. We will have an Entertainment Accountant perform a forensic calculation of the tax benefits and production incentives. Banks in Canada will gap finance this amount with a line of credit. Your funds will be held in trust for 12 months – and make 12% interest – or – \$312,000.”
- ¶ 8 The identical posting was also posted in August.
- ¶ 9 Posing as an investor, the Commission staff investigator replied to the posting by email, asking whether there was a minimum amount required to invest, and for clarification about what was offered in return.
- ¶ 10 The investigator received an email response from Stiles, signed “Paul Stiles, Velocity Entertainment Inc.”
- ¶ 11 In the ensuing email correspondence, Stiles:
- told the investigator that Velocity would “repay and guarantee” \$30,000 in six months for a \$15,000 loan
  - sent the investigator materials showing that Velocity had about \$100,000 in accounts at the Bank of Montreal

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- sent the investor a document entitled “Investment Agreement” between the investor and, purportedly, Velocity that contained the investment terms described above, that stated the funds would be used for pre-production accounting and legal work, and that showed an address for Velocity in downtown Vancouver
  - gave the investigator instructions on how to invest – directing her to wire funds to an account at TD Canada Trust that TD later identified as Stiles’ personal bank account.
- ¶ 12 Stiles made another posting on Craigslist in March 2012. Posing as an investor, another Commission staff investigator replied to the posting by email. In the ensuing correspondence, Stiles offered the investigator returns of \$25,000 in 60 days for a loan of \$20,000, \$13,000 for \$10,000, or \$9,000 for \$7,500.
- ¶ 13 Velocity does not exist. Two companies with this name and with Stiles as a director were incorporated, one in British Columbia and one in Alberta. Both have since been dissolved for failure to file annual returns (the British Columbia one in December 2005 and the Alberta one in November 2007).
- ¶ 14 The address shown in the investment agreement is a mail drop. The box number Stiles showed as the address for Velocity has not been used by it since May 2007.
- ¶ 15 In response to Commission staff enquiries, the Bank of Montreal stated it was unable to locate any records in the name of Stiles or Velocity.
- ¶ 16 Stiles offered the first investigator a return of 100% in 6 months, which annualized on a non-compounded basis would be 200%. The non-compounded annualized returns he offered the second investigator ranged from 152% to 203%.
- ¶ 17 In September 2009 Stiles posted similar solicitations on Craigslist and in October 2009 Commission staff warned him that his capital raising activities were in contravention of the Act.
- ¶ 18 In March 2010 Stiles posted another similar solicitation on Craiglist.
- ¶ 19 In April 2012 Commission staff emailed Stiles, telling him that they were aware of his Craigslist postings in the summer of 2011 and in March 2012. They again cautioned him that his capital raising activities appeared to be in contravention of the Act and reminded him of the October 2009 caution letter.

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¶ 20 Stiles sent this in response:

“I am a film maker. I placed an ad for a loan specifically to cover the expenses of an entertainment account, legals and the purchase of a completion bond. This would release the gap financing for a major feature film I am producing. I attach all details about the project.

I WOULD INVOLVE A LAWYER FOR SIGNATURES AND ALL WOULD BE HANDLED LEGALLY.

I AM NOT ATTEMPTING TO SCAM ANYONE.”

### **III Findings**

#### **A “Security”**

¶ 21 There can be no contravention of either section 50(1)(d) or section 161(1) unless the instrument involved is a security as defined in the Act.

¶ 22 Section 1(1) defines “security” to include an “evidence of indebtedness” and “an investment contract”.

¶ 23 The investment was a loan and the loan agreement was evidence of indebtedness.

¶ 24 An investment contract is an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glen W. Turner Enterprises, Inc.* 474 F. 2d 476 (1973), *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.)

¶ 25 The arrangement required an investment of money. The investors’ profits were to come from the efforts of persons other than themselves. The evidence is clear that once they deposited their funds, the investors’ role would have been passive – any profits were to come from Stiles’ management of his film production projects. The commonality that is required by the cases cited above would have existed between Stiles and the investors.

¶ 26 We find that the investment that Stiles offered the two Commission staff investigators was both an evidence of indebtedness and an investment contract, and accordingly was a security.

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### **B Misrepresentation**

- ¶ 27 Section 50(1)(d) says that “A person . . . with the intention of effecting a trade in a security, must not . . . make a statement that the person knows, or ought reasonably to know, is a misrepresentation.”
- ¶ 28 Section 1(1) of the Act defines “trade” to include “a disposition of a security for valuable consideration” and “any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a disposition of a security for valuable consideration.
- ¶ 29 Section 1(1) of the Act defines “misrepresentation” to include “an untrue statement of a material fact” and “an omission to state a material fact that is . . . necessary to prevent a statement that is made from being false or misleading . . . .” That section also defines “material fact” as “a fact that would reasonably be expected to have a significant effect on the market price or value” of the security in question.
- ¶ 30 When offering the Velocity securities to the two Commission investigators, Stiles:
- told them Velocity was the issuer of the securities and was the other party to the loan agreements. Velocity does not exist;
  - told them Velocity has an office in downtown Vancouver. It has no such office (and could not, since it does not exist);
  - provided the first investor with materials showing that Velocity had a cash balance in two accounts at the Bank of Montreal totalling about \$100,000. Velocity has no bank accounts at the Bank of Montreal, nor has it ever had such accounts;
  - told the first investigator that her loan would be totally secure (and therefore free from risk) and offered her a return of 100% in 6 months, which annualized on a non-compounded basis would be 200%; and
  - despite being asked by the second investigator about risk, did not disclose the risk associated with the loan and offered him non-compounded annualized returns ranging from 152% to 203%.
- ¶ 31 The returns Stiles offered the two investigators are impossible to achieve in the absence of significant risk, as this Commission has found in previous cases (see *International Fiduciary Corp SA*, 2008 BCSECCOM 107 at para. 45; *Manna Trading Corp. Ltd.*, 2009 BCSECCOM 426 at para. 101).

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- ¶ 32 Each of these untrue statements and omissions alone, and certainly all of them together, would be reasonably expected to have a significant effect on the value of the investment. The value of any investment is inextricably linked to the risk associated with it. What Stiles told, or omitted to tell, the investigators was important to the assessment of risk: whether the debtor existed; whether it had a credible business presence; whether it had money in the bank; the risks associated with promised returns of 200%.
- ¶ 33 There is no doubt that Stiles knew the statements were untrue. He had to have known that everything he represented was false.
- ¶ 34 We find that Stiles made blatant and serious misrepresentations. Clearly, he did so with the intention of trading in securities. We find that Stiles contravened section 50(1)(d).
- ¶ 35 Fraud was not alleged. This is for the simple reason that neither of the investigators actually sent funds to Stiles. The dishonesty was present, but not the deprivation.
- ¶ 36 That said, Stiles attempted fraud. It is difficult to draw any conclusion other than that, had the money been invested, the pecuniary interests of the investors would have been put at risk. The money was to be forwarded to a company that did not exist on the strength of a loan agreement, obviously unenforceable, with that company. The money would have gone, not to the company's bank account, but to Stiles' personal account. The returns offered implied significant risk.

### **C Illegal distribution**

- ¶ 37 Stiles' serious misrepresentations in contravention of the Act, his attempted fraud, and his contempt for British Columbia's system of securities regulation (discussed below), are the foundation of the orders we are making in this decision.
- ¶ 38 We therefore do not consider it necessary to make a finding on the allegation that he contravened section 61.

### **IV Sanctions**

- ¶ 39 The executive director seeks orders:
1. prohibiting Stiles from trading securities for 20 years;
  2. prohibiting Stiles from engaging in investor relations activities; and
  3. requiring Stiles to pay an administrative penalty of \$15,000.

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¶ 40 In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified the factors relevant to sanction as follows (at page 24):

“In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent’s conduct,
- the harm suffered by investors as a result of the respondent’s conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent’s conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent’s conduct,
- the respondent’s past conduct,
- the risk to investors and the capital markets posed by the respondent’s continued participation in the capital markets of British Columbia,
- the respondent’s fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.”

### ***Seriousness of the conduct; damage to markets***

¶ 41 In *Manna Trading Corp Ltd.*, 2009 BCSECCOM 595 the Commission said (at para. 18), “Nothing strikes more viciously at the integrity of our capital markets than fraud.” It is the most serious misconduct prohibited by the Act.

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¶ 42 This is an attempted fraud, and the orders we make in the public interest should reflect that. Attempted frauds have the same potential to seriously impair the integrity and reputation of our markets as do actual frauds, especially if it were to appear that attempted frauds drew consequences significantly less serious than actual ones.

### *Enrichment; harm to investors*

¶ 43 Since no actual investment was made, there was no enrichment and no investors advanced funds.

### *Mitigating or aggravating factors*

¶ 44 There are no mitigating factors. A consideration of aggravating factors is not relevant when the misconduct is already at the more serious end of the range.

### *Past conduct; risk to investors and markets*

¶ 45 Stiles was warned in 2009 about his illegal activities and ignored it. When he was warned again in April 2012 his reply shows he has contempt for our system of securities regulation. His misconduct has been going on for three years. His conduct shows that he has attempted fraud before and will continue to do so. His attempted fraudulent conduct and his defiance of the regulatory system shows he presents a significant risk to investors and markets.

### *Specific and general deterrence*

¶ 46 The sanctions we impose must be sufficiently severe to ensure that the respondents and others will be deterred from engaging in similarly reprehensible conduct.

### *Previous orders*

¶ 47 In previous decisions in fraud cases, the Commission has made permanent orders and imposed significant financial sanctions. We have considered these precedents in determining appropriate orders for Stiles' attempted fraud.

¶ 48 The orders are of necessity less onerous than would apply in the case of an actual fraud because, for example, there is no investment on which to base an order for disgorgement. That said, it is worth remembering that the exercise of the Commission's jurisdiction in making orders under section 161(1) are protective and preventative, intended to prevent likely future harm to securities markets: *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132. It follows that when it comes to making protective and preventative orders in the public interest, those who attempt fraud are likely to find themselves under orders similar to those who actually commit it.



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¶ 49 Section 162 authorizes the Commission to impose an administrative penalty for a contravention of the Act. In making misrepresentations, Stiles contravened section 50(1)(d). That was the dishonesty associated with his attempted fraud. However, his attempt to perpetrate the deprivation that would have led to a finding of fraud was unsuccessful, so there was no contravention of the section of the Act that prohibits fraud. Therefore, in making our order for an administrative penalty, we did not follow the criteria that a panel would customarily apply in the circumstances of an actual fraud, although we did order a penalty higher than that asked by the executive director to reflect the seriousness of Stiles' misrepresentations. We thought it appropriate to base the administrative penalty on the amount Stiles was prepared to accept from the investigators as a consequence of those misrepresentations.

¶ 50 We also made orders under section 161(1) beyond what the executive director sought, on the basis that Stiles represents a threat to our markets and it is in the public interest that his participation in those markets be curtailed.

### **V Orders**

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

1. under section 161(1)(b) of the Act, that Stiles cease trading in, and is prohibited from purchasing, securities and exchange contracts, permanently;
2. under sections 161(1)(d)(i) and (ii), that Stiles resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;
3. under section 161(1)(d)(iii), that Stiles is permanently prohibited from becoming or acting as a registrant or promoter;
4. under section 161(1)(d)(iv), that Stiles is permanently prohibited from acting in management or consultative capacity in connection with activities in the securities market;
5. under section 161(1)(d)(v), that Stiles is permanently prohibited from engaging in investor relations activities; and

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6. under section 162, that Stiles pay an administrative penalty of \$35,000.

¶ 52 October 3, 2012

¶ 53 **For the Commission**

Brent W. Aitken  
Vice Chair

Kenneth G. Hanna  
Commissioner

Suzanne K. Wiltshire  
Commissioner