



British Columbia Securities Commission

COR#00/120

IN THE MATTER OF THE SECURITIES ACT
R.S.B.C. 1996, c. 418

AND

IN THE MATTER OF JOHN TERRANCE PYPER

PANEL:	ADRIENNE R. WANSTALL ¹	MEMBER
	JOHN K. GRAF	MEMBER
	ROY WARES	MEMBER
SUBMISSIONS RECEIVED FROM:	PATRICK D. ROBITAILLE	FOR COMMISSION STAFF
	CATHARINE M. ESSON	FOR JOHN T. PYPER

DECISION OF THE COMMISSION

BACKGROUND

The hearing into this matter took place in December, 1999 and January, 2000. We made our findings on March 24, 2000². Written submissions have been received from Commission staff and from John Pyper with respect to what orders the Commission should consider making, in the public interest. No party requested the opportunity to make oral submissions. This decision should be read in conjunction with our findings, wherein we found that Pyper contravened section 128 of the *Securities Act*, R.S.B.C. 1996, c. 418, when he covered personal short positions in Milltronics Ltd. on April 25, 1997, Corriente Resources Inc. on May 16, 1997 and May 22, 1997 and Pacific Rim Mining Corp. on May 23, 1997.

Pyper was an equity analyst at Deans Knight Capital Management Ltd., a Vancouver portfolio management firm registered under the *Act*. In 1997, he personally sold short shares of the above named thinly traded companies and, almost immediately after each of the short sales was made, he placed or initiated orders for sales of shares of

¹ Adrienne Wanstall participated in only part of the hearing and did not participate in the findings or in this decision.

² See *In the Matter of John Terrance Pyper* [2000]13 BCSC Weekly Summary 14



the same companies from accounts managed by Deans Knight. While these sales orders were being filled, he covered his own short positions, in each case at a profit, which aggregated approximately \$13,000. Restitution has been made to each of the affected clients. Pyper has not previously appeared before the Commission.

SUBMISSIONS OF THE PARTIES

Commission staff ask that the following orders be made in the public interest:

- that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the *Act* do not apply to Pyper for a period of eight years;
- that, should Pyper seek registration under the *Act* in future, he be required to provide duplicate copies of any and all monthly brokerage statements to the compliance officer of his employer; and
- that Pyper pay an administrative penalty of \$25,000.

Further, Commission staff ask that Pyper pay the costs of the investigation and the hearing, which are stated to total \$27,502.10.

Commission staff submit there are four reasons for asking for these public interest orders: first, the seriousness of Pyper's conduct; second, the fact that the Commission did not accept much of Pyper's evidence; third, Pyper's conduct throughout the investigation and the hearing; and fourth, Pyper's lack of remorse and lack of acknowledgment of his wrongdoing. Regarding payment of costs, Commission staff submit that Pyper should pay the entire costs of the hearing because the "proceedings were certainly lengthened by Mr. Pyper's handling of his cross-examination of staff witnesses."

Pyper, on the other hand, asks that his trading exemptions be removed for a period of four years, that he be permitted to undertake not to apply for registration for a period of four years and that no monetary payments be required.

Pyper says that, due to the findings of the Commission in this matter, he is unemployable in his chosen field. He says he has applied, without success, for 75 jobs in this field in Canada and the United States of America. With a view to an alternate career, he has completed the course of studies necessary to commence articles leading to designation as a Chartered Accountant. Pyper submits that it is "extremely unlikely" he would be accepted in the Chartered Accountancy program, given the findings of the Commission in this matter. The effects on him have been, he says, "devastating".

Pyper submits that the imposition of an administrative penalty and the levying of costs, on top of the already devastating result of his conduct, would serve no useful



public interest purpose. He submits that "Even if the Commission were to impose no further sanction upon him, he would have been sufficiently punished to achieve the goals of both specific and general deterrence." Accordingly, these public interest objectives for any orders to be imposed upon him are largely, he says, already met.

Pyper's conduct at the hearing is defended by stating that "the Commission should be slow to criticize an unrepresented respondent for the conduct of his or her defence unless the respondent is obviously abusing the Commission's process. This is particularly true in a case such as this where there had been no decided cases in the area to assist a respondent in determining how the *Act* was likely to be interpreted or what evidence was likely to be relevant." Further, he says, the orders against him "...must be based on the conduct at issue in these proceedings, being frontrunning, not other matters such as his testimony at the hearing or his conduct of his own defence."

Pyper does not admit to having conducted frontrunning, but he says that he understands "...what frontrunning is, why it is wrong and that it must be avoided by investment advisors."

DECISION

Section 128 of the *Act* lays down specific standards of conduct for people managing investment portfolios. Pyper, as a Chartered Financial Analyst candidate, was bound by a code of conduct set by the Association for Investment Management and Research that was consistent with these standards.

We have found that Pyper contravened section 128 of the *Act* on four occasions. Not only did Pyper use information he had access to concerning the investment portfolios managed for Deans Knight clients, but also, when he sold shares of Corriente and Pacific Rim, he acted in a manner inconsistent with obtaining the best prices for the Deans Knight clients. While Pyper made only a relatively modest profit of \$13,000 and while he made restitution to the Deans Knight clients in that amount, he knew very well the code of conduct that investment professionals are expected to follow, but he chose not to do so.

It is the seriousness of Pyper's conduct and the public interest that we must consider in making our orders. As a result of his conduct, and our findings with respect to that conduct, Pyper may have suffered devastating consequences. He may be unemployable in the securities industry and he may not be accepted in the program to become a Chartered Accountant. Those are not, however, consequences that we must consider in making our orders in the public interest. Nor do we consider relevant the credibility of Pyper's testimony at the hearing or the method by which he chose to conduct his defence.



We believe that, in these circumstances, the eight year trading ban sought by the Commission staff is excessive. In our view, considering the public interest, a lesser period is appropriate.

As to the conditions on registration sought by Commission staff, what Commission staff are asking for in this regard is not a sanction, but a method of monitoring Pyper's future conduct. The securities regulatory system in Canada relies on registrants to monitor the conduct of their employees. The activities of these registrants are audited, either by self regulatory organizations such as the Investment Dealers Association of Canada, or by the Commission. The Commission also audits the activities of the self regulatory organizations. Accordingly, we do not see the need for this panel to impose disclosure requirements on Pyper.

Regarding monetary orders, we do not believe that orders totalling some \$52,000 are required. At the same time, we cannot accept Pyper's submission that there be no monetary orders. In considering the public interest, it is our view that market participants must bear responsibility for their conduct. Considering the circumstances of this case, an administrative penalty that approximates the amount of profit that Pyper realized as a result of his improper transactions is, we believe, appropriate. As to costs, we do not believe that respondents who choose to represent themselves should bear the additional costs resulting from that choice, as this could discourage people from entering into the hearing process if they are unable to afford counsel.

In consequence, we order:

- a) **under section 161(1)(c) of the *Act*, considering it to be in the public interest, that any or all of the exemptions described in any of sections 44 to 47, 74, 75, 98 or 99 of the *Act* do not apply to Pyper for a period of five years;**
- b) **under section 162 of the *Act*, considering it to be in the public interest, that Pyper pay, by June 30, 2000, an administrative penalty of \$13,000; and**
- c) **under section 174 of the *Act*, that Pyper pay, by June 30, 2000, \$14,000 toward the costs of or related to the hearing into this matter.**




DATED May 10, 2000.

FOR THE COMMISSION



John K. Graf
Member



Roy Wares
Member

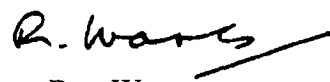


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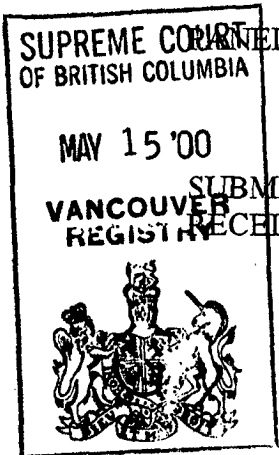
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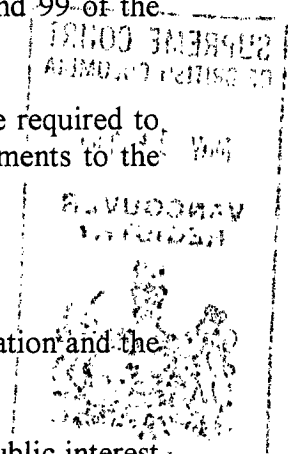
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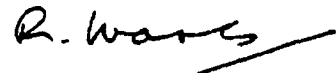


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