2005 BCSECCOM 560

Sniper Sports Ltd., 592087 B.C. Ltd., and Glenn Anthony Rosen (also known as Anthony G. Rosen & Glenn Anthony Carl Rosen)

Sections 161 and 162 of the Securities Act, RSBC 1996, c. 418

Hearing

Panel	Robin E. Ford	Commissioner
	Marc A. Foreman	Commissioner
	Roy Wares	Commissioner
Dates of Hearing	December 1, 3 and 6, 2004	
Date of Decision	August 31, 2005	

Appearing

Ralph Sahrmann	For the Executive Director

Submissions on Sanctions by

Ralph Sahrmann	For the Executive Director
Kristine Mactaggart	
Joseph A. Bernardo	

Decision

Table of Contents

Introduction

¶ 1 On May 7, 2003, the Executive Director issued a notice of hearing to the respondents Sniper Sports Ltd, 592087 BC Ltd and Glenn Anthony Rosen (also known as Anthony G Rosen and Glenn Anthony Carl Rosen). It was amended on November 22, 2004 to remove William Ronald Moll who entered into a settlement agreement with the Executive Director on November 16, 2004.

¶ 2 The Executive Director alleges that, from February 1999 to March 2001, the respondents conducted illegal trading in securities, made misrepresentations and committed fraud, contrary to the *Securities Act*, RSBC 1996, c. 418.

¶ 3 On November 15, 2004, the Executive Director issued a notice of hearing with respect to Statik Sports Inc and Rosen and issued temporary orders that:

1. under section 161(1)(a) of the Act, Statik and Rosen comply with and cease contravening the Act and the regulations;

2. under section 161(1)(b) of the Act, Statik and Rosen cease trading in and be prohibited from purchasing any securities or exchange contracts; and

3. under section 161(1)(d) of the Act, Rosen resign from any positions he may hold as, and be prohibited from becoming or acting as, a director or officer of any issuer, and Statik and Rosen be prohibited from engaging in investor relations activities,

for a period ending on November 30, 2004.

¶ 4 On November 17, 2004:

1. we decided to hear both matters together and adjourned both hearings to December 1, 3 and 6, 2004; and

2. considering it to be necessary and in the public interest, we extended the temporary orders until December 6, 2004.

¶ 5 At the conclusion of the hearing on liability December 6, we asked the Executive Director to file written submissions on sanctions.

¶ 6 On December 6, 2004, we ruled orally that the evidence supported a *prima facie* case of breach by Statik and Rosen of sections 34(1)(a), 61, 50(1)(d) and 57 of the Act and that the conduct of Statik and Rosen was contrary to the public interest. Under section 161(3), we ruled that it was necessary and in the public interest that we extend the temporary orders against Statik and Rosen until we rendered our decision in the Statik matter.

¶ 7 Commission staff filed submissions on sanctions on December 9, 2004, and a bill of costs on April 15, 2005 (which was also sent to the respondents).

¶ 8 On January 27, 2005, as directed by us in the hearing, staff filed the affidavit of Larry Galvin, sworn on December 16, 2004, of service on Rosen and on Statik (through Rosen as director of Statik) of:

- staff's submissions on sanctions in the matter of Sniper Sports, 592087 BC Ltd and Rosen and in the matter of Statik and Rosen, and
- our ruling extending the temporary orders against Statik and Rosen.

We enter the affidavit as exhibit 17.

¶ 9 On May 30, 2005, we wrote to the parties asking for further submissions on several issues. Staff provided submissions dated June 20, 2005. They sent their submissions by registered mail to Rosen at his last known address. Rosen and Statik have not provided submissions in response, although we invited them to do so.

¶ 10 Rosen was indicted on November 19, 2003. On January 11, 2005, the British Columbia Supreme Court convicted Rosen of theft. An individual had given $6,000 to Rosen with the direction that Rosen use the money to purchase shares of Sniper Enterprises Inc. The Court found that Rosen intentionally, and contrary to the terms of the direction, used the money instead to buy "Tire Glo" product. Rosen received a six-month conditional sentence and the Court ordered him to pay restitution of $6,000.

¶ 11 This is our decision in the matter of Sniper Sports Ltd, 592087 BC Ltd and Rosen. We issue our decision in the matter of Statik and Rosen separately.

Facts

¶ 12 We heard from 2 witnesses, both Commission investigators. None of the respondents appeared at the hearing although properly served, and none provided written submissions on sanctions, although we invited them to do so.

¶ 13 Staff interviewed Rosen, Brian Paul Kuhn and Moll under oath about their conduct relating to 592087 BC Ltd. Rosen and Moll chose not to be represented by a lawyer. In addition, staff interviewed under oath some of the investors and one prospective investor in Sniper Sports (Smyth, Reibin, M Ragan and Kriedemann) and two investors in 592087 BC Ltd (Orser and Landy). Many investors also filled out questionnaires, provided relevant documents to staff and spoke, or provided statements, to staff. The transcripts, questionnaires, documents and notes of unsworn oral interviews were entered into evidence at the hearing. Staff also introduced into evidence additional documentary evidence, some of which we refer to below.

¶ 14 We do not set out the details of each investment and each investor here. What follows provides a general picture of the circumstances and nature of the investments sufficient to provide adequate support for our findings.

A. Rosen

¶ 15 Rosen was at all material times a resident of British Columbia. (In some documents, one of his first names "Glenn" is spelled "Glen".) Rosen has never been registered under the Act.

B. Rosen and Sniper Enterprises Inc

¶ 16 Sniper Enterprises Inc was incorporated under the laws of British Columbia on April 16, 1980. Its name was changed from Intirmac Industrial Corp to Sniper Enterprises Inc on December 7, 1998.

¶ 17 Rosen was a director and the president of Sniper Enterprises from October 29, 1998 to May 23, 2000. During this period, staff sent Sniper Enterprises a caution letter regarding an unregistered distribution. So far as we are aware, Rosen is no longer involved with Sniper Enterprises.

¶ 18 Sniper Enterprises was then a reporting issuer listed for trading on the Vancouver Stock Exchange, then the CDNX and its successor, the TSX Venture Exchange.

¶ 19 On or around March 7, 1998, Sniper Enterprises issued 970,769 of its voting shares to Rosen as part of a non-brokered private placement, making Rosen the owner of 16.08% of the outstanding shares of Sniper Enterprises. Rosen reported this position in his insider trading report of November 9, 1998, although he filed late.

¶ 20 Staff obtained copies of statements for Rosen's account at IPO Capital Corp which was opened in March 1999 and closed in August 1999. They discovered that Rosen had not reported a number of transactions involving securities of Sniper Enterprises. Staff also obtained a copy of a letter dated April 19, 1999 that IPO sent to Rosen reminding him that he must file insider trading reports on a regular basis.

¶ 21 On November 30, 1999, Commission staff issued an order under section 164 of the Act that Rosen cease trading in the securities of Sniper Enterprises on the ground that he had failed to file insider reports as required by section 87 of the Act.

¶ 22 In response to the cease trade order, Rosen bulk-filed three insider reports on December 7, 1999, for the months of March, April and May 1999. The insider reports Rosen filed in response to the cease trade order:

- failed to disclose the full extent of the trading activity recorded in the IPO account statements,
- reported only dispositions and not acquisitions, and
- failed to show securities he acquired during a non-brokered private placement approved by the VSE on March 30, 1999.

¶ 23 After several phone calls from staff, in July 2000 Rosen met with staff who explained the deficiencies to him. Staff gave Rosen an opportunity to fix the deficiencies. He agreed to fix them. Despite this, several months later, he returned the original forms to staff unaltered.

¶ 24 In addition to his failure to file insider reports, Rosen did not file a Form 4B until requested to do so by staff. (Form 4B was required to be completed under section 73.1 of the Act which was re-numbered to section 90 on the proclamation of the Revised Statutes of BC 1996 on April 21, 1997.) The Form 4B was also deficient. First, although asked to give his employment history for the previous ten years, the history that he provided in the Form did not go back that far. Second, the section on offences, current charges, indictments or proceedings had been left blank. Third, he failed to sign and swear the affidavit attached to the Form.

¶ 25 Staff explained the Form 4B deficiencies to Rosen in July 2000. He agreed to fix them. However, he returned the original Form 4B to staff several months later, unaltered.

¶ 26 Rosen has not filed any insider trading reports or Forms 4B or amended reports or forms since then.

¶ 27 In October 2000, staff inquiries uncovered a second account held by Rosen at Wolverton Securities Limited through which he traded shares in Sniper Enterprises. Rosen did not disclose this account in his previous discussions with staff and did not report the transactions.

¶ 28 On October 27, 2000, Commission staff issued an order under section 164 of the Act that cease traded the securities of Sniper Enterprises because it had failed to file its required financial statements and quarterly reports.

¶ 29 Rosen failed to report a substantial amount of trading activity. Staff estimate that, from around March 1999 to June 1999, Rosen's trading activity in securities of Sniper Enterprises accounted for almost 30% of the total trading activity in the securities of Sniper Enterprises on the then Vancouver Stock Exchange. During each of the months of March and April 1999, Rosen's trading accounted for more than 40% of the total trading activity in securities of Sniper Enterprises on the VSE.

C. Rosen and 592087 BC Ltd (North American)

¶ 30 592087 BC Ltd was also described to investors as North American Marketing Ltd, North American Marketing, North American Enterprises Ltd and North American Enterprises. In this decision, we refer to 592087 BC Ltd as North American. We have treated shares issued and other things done in the name of North American

before the incorporation of 592087 BC Ltd as issued or done by, or on behalf of, 592087 BC Ltd.

¶ 31 North American was incorporated under the laws of British Columbia on September 8, 1999. It was dissolved on February 21, 2003 for failure to file annual reports without, it appears, any accounting to shareholders. Its only directors were Rosen and William Ronald Moll.

¶ 32 North American Marketing Ltd is a British Columbia company incorporated on January 23, 1998, but it appears to be completely unrelated to Rosen and Moll.

¶ 33 North American Enterprises Ltd was a BC company that was dissolved on May 29, 1969. It appears to be completely unrelated to Rosen and Moll.

¶ 34 Rosen suggested to staff during his interview on June 22, 2000 that there was some misunderstanding about the use of the name "North American Marketing". He claimed that he thought he would have no problem incorporating as “North American Marketing Ltd”, but his secretary, who had called the Registrar of Companies in Victoria, "must have got the story mixed up". When they attempted to incorporate under the name "North American Marketing Ltd", he said, they were told by someone at the Companies Branch that they could not incorporate under that name because it had already been taken. Therefore, they incorporated as "North American Enterprises Limited, which is 592087 B.C. Limited". (transcript, pp. 14-15)

¶ 35 The Corporate Registry in Victoria reported to staff that they had no record of any application made by Rosen or Moll, either before or after September 8, 1999 (the date of incorporation of 592087 BC Ltd) for the names "North American Marketing" or "North American Enterprises". There is no record with the Registrar of Companies that discloses any right of Rosen or 592087 BC Ltd to use the name North American Enterprises.

¶ 36 North American has never been registered under the Act.

¶ 37 North American’s registered and records office is Dept. 122 - 8849 120th Street, Delta BC, V4C 6R6, but it is no longer in use. In his interview on July 5, 2000, Moll told staff that the company address was a post office box that his late wife used to rent. He said that the current corporate office of North American, so far as he was aware, was Rosen's residence.

¶ 38 In various other documents, the address of North American is described as 106 - 4713 Byrne Rd., Burnaby, BC. According to the Criss-Cross directory, Marine

Way Auto Repairs was located at this Byrne Road address. Marine Way was owned by Mike Kapoor. We discuss Kapoor's involvement with Rosen below.

Issue of shares

¶ 39 From about February 1999 to June 2000, Rosen told prospective investors that North American manufactured, marketed and distributed a car tire detailing and polishing product called “Tire-Glo”, also known as “Tire-Tux”.

¶ 40 At least 37 investors purchased shares of North American (not including Rosen and those working with or for him, or for North American). About 29 of those investors resided in British Columbia. The rest were from Alberta. About 32 of the North American investors purchased their shares through Kuhn, who was registered under the Act as an investment advisor and employed by IPO Capital Corp. Thirty of the investors solicited by Kuhn were clients of IPO.

¶ 41 Kuhn told staff in interview on August 15, 2000 that although he used his client base at IPO to solicit investments in North American, he did not report his trading activity with respect to North American to his employer IPO. The funds he solicited did not go through the IPO trading accounts for these clients and it appears that the investments were neither reviewed nor authorized by IPO. IPO terminated Kuhn's employment for his involvement with Rosen and North American, for conduct unbecoming a registrant. On September 11, 2002, the Executive Director entered into a settlement agreement with Kuhn. In it, Kuhn accepted that he had failed to exercise sufficient due diligence on behalf of his clients.

¶ 42 At least two of the North American investors purchased North American shares directly from Rosen. Both were BC residents. Generally, however, Rosen accepted the investments made by investors solicited by Kuhn and Moll. Rosen used Kuhn and Moll as his agents to solicit the investments; then he caused North American to accept the subscriptions and to issue the shares. Staff’s information from investors reveals that the amounts invested ranged from $525 to $50,000. Most of the investors invested between $1,000 and $5,000. North America raised at least $232,710 from the 37 investors. Apart from restitution paid by Kuhn to four investors, totalling $14,000, on the evidence before us, no investors have been repaid or compensated.

¶ 43 The North American investors received share certificates that had either “North American Enterprises Ltd.” or (after it was incorporated) “592087 BC Ltd.”, or both, printed on their face.

¶ 44 Kuhn told staff that most of the investors made their cheques or bank drafts payable to Rosen, to Moll, or to Kuhn's wife, and not to North American. In most

instances the cheques were received by Kuhn and forwarded to Rosen or Moll. One investor made out a cheque payable to North American Marketing, which was deposited at the North Shore Credit Union in Burnaby. Damon Hoy, who also worked for Rosen, told staff that Rosen asked him to open this bank account (the only corporate bank account of which he was aware) to deposit proceeds from sales and to write cheques to pay for supplies. He said that he opened the account in April 1999 in the name of North American Marketing, deposited the cheque, and closed the account in September 1999.

¶ 45 Rosen said in interview that Kuhn agreed to help him raise money through his friends and relatives "and raise probably 70 to $80,000, 50 to give back to myself, and 20 to 30,000 to do the labels, do the product marketing, buy the bottles, buy the solution, do the hard work and … everything that goes together with bringing a product to market". Rosen told staff he had never met the majority of the people who invested in North American, as they were brought in by Kuhn. (transcript, pp. 4, 5, 8) Rosen estimated that $85,000 to $95,000 was raised from North American investors. (p. 13)

¶ 46 He said that North American did not have a bank account although they had intended to open one up once they incorporated. Cheques from investors were made out either to Rosen or Moll. Funds from investors were never deposited in an account, they were always cashed. (pp. 16, 17) Rosen said he had personal bank accounts in the United States, but no accounts at all in Canada. (p. 39)

¶ 47 Moll became a director of North American on September 8, 1999, at the time of the incorporation of 592087 BC Ltd, after most of the funds had been solicited from the investors. Moll has never been registered under the Act.

¶ 48 Moll told staff in interview that he was a business manager for an NHL player, Alexander Mogilny. He had met Rosen through Sniper Enterprises in 1998 when Mogilny did a promotional endorsement of the Sniper hockey stick. (Mogilny was a star ice hockey player, formerly with the Vancouver Canucks.) Moll got involved with North American during the spring or summer of 1999 as something to do, given that the hockey season was over.

¶ 49 Moll said that some of the investors made out cheques to him, he cashed them through his bank account, and he gave the cash to Rosen. Moll told staff that his main role in the company was to drive Rosen around because Rosen was having serious headaches and was too ill to drive. He received a salary of $200-$300 per week and estimated that he earned a total of $7,500 in the period he worked for Rosen.

¶ 50 Rosen described Moll as a "runner". He said he paid Moll a wage of $1,500 per month. Moll's involvement in North American was "very, very, very little". "… [If] I run a company, I do it my way". (p. 15, 39) Even after shares had been issued to the investors, it appears that Rosen held more than 30% of the shares. In any event, he clearly had de facto control and Moll's role was limited.

Representations

¶ 51 Most, if not all, investors received:

- oral representations from Kuhn, Rosen or Moll, and
- one or more of the one-page "company profile", update letters from Rosen and other documents,

which contained the statements set out under headings (a) and (b) below (referred to in the notice of hearing as the North American Misrepresentations).

(a) North American had an exclusive agreement with Tire-Glo Ltd, the owner of Tire-Glo, to manufacture, licence and market Tire-Glo.

¶ 52 Most of the investors told staff that Kuhn or Moll provided them with a one-page document entitled "North American Marketing - Company Profile - Business Proposal - Tire-Glo International" signed by Rosen. We have been given three virtually identical versions of this document, provided by investors to staff, dated April 20, May 20 and May 31, 1999. In it, Rosen made the following statements:

- North American Marketing has issued 1,000,000 shares at a share price of $0.35;
- On or before May 10, 1999 North American Marketing will incorporate as a limited company at a share price of $0.90 per share (the May 10 date was changed to June 10, 1999 in the May 20, 1999 version, and was left out altogether in the May 31, 1999 version); and
- North American Marketing's goal is to go public on the Alberta Stock Exchange or the NASDAQ OTC on or before August 31, 1999.

¶ 53 To quote from the May 31, 1999 version:

> North American Marketing was developed to market, distribute and manufacture the most outstanding 3 in 1 Car Detailer that will be penetrating the market soon. This product is known as "Tire-Glo". Tire-Glo serves 3 purposes in the car detailing market. You have a solution that enables you to clean your tires without wiping, simply spray it on and

> watch it glow. It will clean upholstery, including consoles and dashboards …
>
> There are many other competitors on the market. … We believe that Tire-Glo will be the world's #1 leader in Automobile Detailing with great price points and a product that is anything short of phenomenal.
>
> North American Marketing's projections are over 250,000 bottles sold be (sic) the end of December, 1999, 750,000 bottles in the year 2000 and over 2 million bottles sold in the year 2001. …
>
> North American Marketing is offering 750,000 shares at a share price of $0.35 per share. This will enable North American Marketing to provide and service inventory, receivables, marketing and distribution of the World's Greatest Car Detailer, "Tire-Glo". …
>
> … it leaves all competition in the dark.

¶ 54 In interview on November 21, 2001, Orser told staff that Kuhn told her that North American would be a good opportunity, available to friends and family only. He told her it would be listed on the stock exchange. He gave her a copy of the profile dated April 20, 1999. (transcript, pp. 6, 7, 9) She invested $2,000 by cheque payable to Rosen dated April 29, 1999.

¶ 55 Landy told staff in interview on November 13, 2001 that Kuhn told him in July 1999 that an investment in North American would be beneficial. Kuhn told him that the shares were to be listed by late August.

¶ 56 Some of the investors (including Landy) were also given a copy of an unsigned agreement between Richmor Properties Ltd, Sharpe Capital Ltd and North American Marketing Ltd. In this document, North American purports to grant Richmor and Sharpe the right to negotiate the acquisition of a NASDAQ shell and vend North American into it. In the heading to the agreement is the date May 1999. Attached as Schedule "A" to the agreement is an "Exclusive Licence & Distribution Agreement" dated February 15, 1999 between North American Marketing, Hoy, Rosen and Tire-Glo Ltd which purports to grant North American Marketing the "exclusive world rights to Manufacture, Licence and Market the Tire-Glo".

¶ 57 The Licence & Distribution Agreement is signed by Rosen on behalf of North American Marketing and (apparently) by Kapoor on behalf of Tire-Glo Ltd. The signature of Kapoor is (apparently) witnessed by Marilyn Warren, Rosen's then common law wife.

¶ 58 Rosen said in interview that he was a silent partner with Kapoor in Marine Way Automotive. This, he said, is where he first saw the Tire-Glo product. He bought the Tire-Glo formula from Kapoor for $50,000 with his own money in May 1999. There was no contract. (transcript, pp. 2, 4)

¶ 59 Rosen said that he thought Kapoor had a patent for the formula but later discovered this was not so. Kapoor "somehow conglomerated a few different products together…". (pp. 19, 20) Rosen and Kapoor were going to apply for a patent, but Rosen was informed by his patent lawyers that once he patented the formula everyone would know what was in it; therefore he did not apply for a patent. (p. 20) Rosen said he was not informed by his patent lawyers at the time that the name "Tire-Glo" was already registered in the US by the company Fuller Brush. (p. 20)

¶ 60 Rosen told staff that he took the formula to Great Western Chemical Company on Annacis Island "to find out whether it [would] be cost efficient to go ahead and bottle it", and "…it came back with flying colours that we would be able to make a huge profit margin of at least 100 to 150 percent". "The solution is being made up for us at Great Western Chemical Company in Annacis Island, which is all outlined inside the business plan under Product …" (p. 5, 30)

¶ 61 Great Western Chemical Company told staff that they had done some analysis of the formula, but did not get paid for their work and nothing ever came of it.

¶ 62 Moll, in interview on July 5, 2000, told staff that the Tire-Glo product was bottled and stored "in the mechanic shop" - "in a big addition". There were barrels of this formula still there, as far as he knew. He had helped Rosen to fill and label bottles from 45 gallon barrels. Rosen had bought the "secret" formula from "this East Indian fellow who is a friend of Mike's". He did not know anything else about the product, except he thought it was manufactured in Richmond somewhere. (pp. 38 - 40)

¶ 63 Hoy told staff that in April 1999, Rosen purchased a quantity of Car-Brite products (which are car detailing products). He then ordered a larger quantity, but subsequently cancelled the order. Car-Brite confirmed to staff that Rosen and Hoy purchased four drums of "tire dressing" at this time.

¶ 64 Kapoor refused to meet with staff but said in writing that he did not invent the Tire-Glo formula, did not use or sell it in his business, never signed any agreement with Rosen giving him exclusive distribution rights to the formula, and never sold the Tire-Glo formula to Rosen for $50,000. Kapoor told staff that Rosen was never his partner in the mechanic shop. He simply rented space there for a short

period of time until Kapoor evicted him for not paying rent. Kapoor said he had never heard of Tire-Glo Ltd and his signature on the Richmor Licence & Distribution Agreement was forged. He signed a declaration to that effect.

¶ 65 Warren too refused to meet with staff. She told staff that she did not recall being present at the execution of the Licence & Distribution Agreement or witnessing the signature of Kapoor as indicated on the document.

¶ 66 Staff were unable to locate any company by the name of Tire-Glo Ltd in federal and provincial company searches.

¶ 67 In a letter dated October 19,1999, under the heading “North American Enterprises Ltd”, Rosen informed investors that the name of the product had been changed to "Tire-Tux" because the company Fuller Brush had a trademark on the name "Tire-Glo" in the US.

¶ 68 At least two investors received a copy of a business plan for “North American Enterprises Ltd” dated January 2000 and headed “TIRE-TUX TM The Tuxedo of Tire Dressing” before they invested. We were provided with a copy of this plan and a revised version dated June 2000 that Rosen had given to staff at the time of his interview on June 22, 2000.

¶ 69 In a search of the Canadian Trade-Mark Database, staff were unable to locate any application made by Rosen or North American for the trademark "Tire-Tux".

¶ 70 The business plan states there is a "patent-pending" on the formula. In financial statements attached to the plan, the patent pending is listed as an asset worth $250,000. The plan states that the “secret” formula is Rosen’s idea and that “Mr Rosen continues to be in charge of r & d”. No mention is made of buying the solution rights from Kapoor. The plan states: “After trying several solutions and formulas a perfect formula was conceived and working prototypes were developed.”

¶ 71 According to the plan, as at December 31, 1999, North American’s cash balance was $7,800 and assets totalled $215,200 “largely comprised of the value of the product patent applications”. It states that the company reported no income and incurred expenses of $112,000. “This figure represents salary paid, office equipment purchased and capital equipment.” According to the financial statements, the cash was located at the Peoples' Bank (a US bank).

¶ 72 Hoy told staff that he had bought bottling supplies at Richards Packaging a few times, for cash, on behalf of North American and he provided staff with receipts. The purchases were, however, relatively small. It appears that approximately

$9,500 may have been withdrawn from the North American Marketing bank account (mentioned above) to pay for manufacturing costs and supplies.

¶ 73 The plan states that "the 'write type' will carry out all artwork and design and marketing tools". The Write Type told staff that they made a banner for Tire-Glo for Rosen in 1999 which cost approximately $120.00, but did no further work.

¶ 74 Staff were unable to find any further credible evidence of how the funds from investors were spent. Rosen told staff he had spent about $155,000 ($65,000 of his own money) on things such as the solution, bottles, display cases, wages and buying the solution rights. He said he kept receipts, but did not keep accounting records. (pp. 17, 18, 19) He paid himself a wage of $2,500 per month. He said he had spent the funds. "I doubt that anybody's going to get their money back." (p. 59)

¶ 75 At the conclusion of his interview, Rosen promised to provide staff with receipts for all the money he had spent on supplies, as well as a cancelled cheque for the $50,000 he purportedly gave to Kapoor to purchase the Tire-Glo formula. Staff followed up on these matters with a letter dated June 26, 2000 and several phone messages, but Rosen did not provide staff with any further documents.

¶ 76 **We find that the statement that North American had an exclusive agreement with Tire-Glo Ltd, the owner of Tire-Glo, to manufacture, licence and market Tire-Glo was false.** In our view, North American's Tire-Glo or Tire-Tux product was nothing more than a repackaging of another firm's product or products known as "Car-Brite". Tire-Glo Ltd did not exist. No one owned the Tire-Glo formula except in the sense that it was made up from another car detailing product or products. Rosen and North American did not have an agreement with anyone to manufacture, licence and market Tire-Glo or any other formula.

(b) The shares of North American would be listed and posted for trading on a stock exchange by a particular date.

¶ 77 In letters dated August 27, 1999 or September 13, 1999 to investors (including, for example, Landy) which are virtually identical letters from Rosen to 'shareholders', Rosen made the following statements:

- North American Marketing "is now incorporated as a Limited Company with 5 million shares issued [7 million in the subsequent letter]. Each share is now worth $0.90 just as I intended it to be";

- the company "has entered into an agreement as of August 26, 1999 to go public on the NASDAQ OTC Stock Exchange";
- the underwriting will be done by Kim Lem of Lem and Associates;
- "I anticipate to be up and trading on or before December 3, 1999 [December 13, 1999 in the subsequent letter] with an opening bid of $2.35 u.s."; and
- "I see absolutely no reason why we cannot have our company to an $8.00 u.s stock (PER SHARE)".

¶ 78 The first letter is headed "North American Marketing Ltd". In the second letter, dated after the incorporation of 592087 BC Ltd, the name 592807 BC Ltd (two numbers have been reversed) has been added to the heading of the letter (below "North American Enterprises Ltd.", not "North American Marketing Ltd").

¶ 79 Rosen told staff in interview that he discussed buying a shell on the NASDAQ/OTC with Angelo Dimitracopoulos of Richmor. He said Dimitracopoulos had done work in the past for Sniper Enterprises. A contract was drawn up between Richmor, North American Marketing and Sharpe Capital of Scarborough, Ontario. "… [We] were just going to issue one million shares of the company. About three weeks after we decided to do that, another company came up which was Richmor Properties and Sharpe Capital promising to bring us public on the OTC, NASDAQ OTC stock market." "… [The] deal was, it was going to be a 70/30 split for North American to Richmor and Sharpe Capital, … North American 70 percent and Richmor and Sharpe 30 percent." (transcript, pp. 9-12)

¶ 80 In interview, Rosen said: "I wrote three letters during the course of this time. One was a little antsy, stating that we're getting ready to go public which, of course, I thought everything seemed in place until one clause came up inside the contract that we did -- we did not like it." Rosen told staff that the contract was never signed because Dimitracopoulos wanted $100,000 from Rosen up front. "So the deal was going kind of sour at the time. We did not want to raise another $100,000 …" He said:

> I did send out a newsletter stating that we were getting ready to go public on the NASDAQ OTC stock exchange and yes, I did go ahead and I forecasted which I was told that we'd probably have an opening bid of a couple of dollars. Because more or less the money was raised through the friends and through the family, which I thought -- I didn't think it was a problem, and to be honest and tell people what was going on at the time. I know that you're not supposed to mention stock prices or anything like that, but like I said at the time, I didn't think that it was a problem. I was a little bit excited. Everything was going too quick and too fast and too well." (pp. 21, 22, 23)

¶ 81 Dimitracopoulos of Richmor confirmed to staff that he had spoken with Rosen about taking North American public, but told staff that the discussions were "weak" and never got anywhere. He denied telling Rosen that he wanted $100,000 from Rosen up front as a condition of taking the company public. Rather, he said, he told Rosen that to go public through a shell would cost about $100,000. We accept his version of events.

¶ 82 Kim Lem, although familiar with Rosen through his shareholding in Sniper Enterprises, told staff that he had never heard of North American, nor was he ever approached by Rosen to do any underwriting. We accept Lem's evidence.

¶ 83 In a letter to "shareholder" dated September 30, 1999 (sent, for example, to Orser) under the heading "North American Enterprises Ltd", Rosen enclosed share certificates for "North American Enterprises". Rosen promised to deliver "our business plan and underwriting" around November 1, 1999. He did not explain why the name of the company had changed from "North American Marketing" to "North American Enterprises".

¶ 84 The business plan for "North American Enterprises Ltd" dated January 2000 and described in section (a) above discusses seeking a capital infusion of $200,000 on one page, and $250,000 on another, to fund production, marketing and distribution and to acquire a shell company on the NASDAQ OTC. It predicts that North American "should be up and trading no later than June 2000".

¶ 85 **We find that the statements described above to the effect that the shares of North American would be listed and posted for trading on a stock exchange by a particular date were without foundation and were false.**

Prospectus

¶ 86 Rosen confirmed to staff in interview that no offering memorandum was given to any of the investors, and no prospectus was filed with the Commission. (p. 15, 29) Rosen said he was aware that the distribution of securities in British Columbia required a prospectus or an exemption. "I did know you're supposed to send it out with an offering memorandum or subscription form of some sort." (p. 44)

¶ 87 He said: "It also says in the Securities [legislation] that funds can be taken and then distributed through friends and family." "And that is what I have considered everybody. They've all been friends and family of Brian Kuhn." Staff told Rosen that the legislation says that they must be friends and family of a director or senior officer of the company. (pp. 57, 58)

¶ 88 Rosen said - "I've done great business in the past. It was never my intention to take anybody's money or else I would have taken it. I would not be sitting here right now. My lawyer would, or someone else would. I work hard. … I just -- crappy timing that I happened to get sick at this time, not just with North American, with Sniper, too. … Like I said, we would have been up and we would have been trading and everything else, if I didn't get sick at the time." (pp. 63, 64)

¶ 89 It appears that Rosen may have been ill in or around the summer of 1999. However, Rosen provided no corroborating evidence about his illness or the period of his illness to staff. Others who mentioned his illness to staff were vague about its nature and duration. There is no evidence that the illness had a material impact on his conduct in the North American matter and no evidence that it had any impact at all on his conduct in the Sniper Sports matter. Accordingly, we have not taken into account any evidence of illness.

¶ 90 At the end of the interview, staff asked Rosen to sign an undertaking not to distribute or trade any securities of North American or any of its affiliates until the Commission had completed its review. Rosen returned the signed undertaking on September 12, 2000.

D. Rosen and Sniper Sports Ltd

¶ 91 Sniper Sports Ltd was incorporated under the laws of British Columbia on August 23, 2000, two months after staff's interview of Rosen in relation to his conduct with respect to North American. Sniper Sports purported to be in the business of, among other things, manufacturing and selling hockey sticks.

¶ 92 Sniper Sports has never been registered under the Act. It was dissolved on January 23, 2004 for failure to file annual reports.

¶ 93 Sniper Sports' registered and records office address at 5900 Sprott Street, Burnaby, BC is also one of the last known residential addresses staff have for Rosen.

¶ 94 During most of the period August 2000 to March 2001, Rosen was the sole director of Sniper Sports. William Ronald Moll became a director on March 26, 2001.

The Investors

¶ 95 According to staff's search of the records at the Registrar of Companies, Rosen held 510,000 or 51% of Sniper Sports' total authorised shares. From around August 2000 to March 2001, Rosen solicited and sold investments in Sniper Sports to individuals resident in British Columbia.

¶ 96 Staff discovered that at least 10 British Columbia residents had purchased shares in Sniper Sports from August 2000 to March 2001. They invested amounts ranging from $284 to $55,220. The investors received share certificates in return for their investment. Sniper Sports raised at least $92,949 from investors. On the evidence before us, no investors have been repaid or compensated.

¶ 97 At least seven investors told staff that they were solicited directly by Rosen. Three invested through some combination of solicitations by Rosen, Moll and an existing investor, Moll and the existing investor having been solicited by Rosen to act as intermediaries.

¶ 98 Group 1 comprises investors who had no previous association with Rosen including:

- Smyth
- M Ragan
- Clark
- [If Kriedemann had invested, he would have been part of this group].

¶ 99 Group 2 comprises investors who knew Rosen through their investment in Sniper Enterprises or Sniper Manufacturing including:

- Reibin
- Richmonds
- Ladret.

¶ 100 In interview on November 19, 2001, M Ragan told staff that she first heard about Sniper Sports from a friend of her husband who was doing a job at a house in Burnaby which happened to be owned by Rosen. Rosen provided Ragan with a copy of the Sniper Business Plan 2000. In August 2000, Ragan gave Rosen a cheque payable to Rosen for $3,650 initially, and then an additional $350.00, bringing her investment to $4,000. In exchange, she received a share certificate for 2,260 shares of Sniper Sports. Ragan told staff that Rosen explained to her that the cheque should be made payable to him because "he had held so many shares in his name, so he had already prepaid them, and so it was to transfer those to me". (transcript, p. 15)

¶ 101 Ragan also received a shareholders list dated September 19, 2000 headed "Sniper Pump One In!", and a letter from Rosen dated October 30, 2000.

¶ 102 Reibin told staff in interview on November 7, 2001 that on or around September 2000, Rosen called her at her residence and asked if he could come over because

he had some "exciting information" for her (p. 12). At their meeting, Rosen said he was "giving" Reibin share certificates in Sniper Sports "out of the goodness of his heart" because he felt bad that her investment in Sniper Enterprises had not worked out. (p. 19) He gave Reibin a copy of a letter signed by him and dated September 19, 2000 and a shareholders list for Sniper Sports also dated September 19, 2000.

¶ 103 Rosen asked Reibin for $284, explaining that this amount was to cover "filing costs" for issuing the share certificates in Sniper Sports. Reibin agreed to Rosen's request to convey this opportunity to other Sniper Enterprises investors, and to collect $284 from them. Reibin collected additional cheques in the amount of $284 from Ladret and her parents, the Richmonds. Rosen came by Reibin's house to pick up the cheques. A few days later, Rosen dropped off share certificates for Reibin and the others. The certificates for Reibin were in her and her husband's name, for a total of 18,400 shares.

¶ 104 Smyth told staff in interview on January 24, 2001 that Rosen talked to him about his company, Sniper Sports, provided him with a copy of the Sniper Business Plan 2000, and offered to sell Smyth shares of Sniper Sports. From September 5, 2000, Smyth received:

- letters from Rosen dated September 5, October 24, November 7, November 19 (with a licence and purchase agreement) and December 12, 2000 and January 4, 2001,
- shareholders lists dated October 16 and 31, 2000, and
- a copy of an unsigned agreement between Reebok International and Sniper Sports dated November 19, 2000.

Smyth and Rosen also talked personally at least once a week for a period.

¶ 105 Smyth invested a total of $55,220 in Sniper Sports, from September 6, 2000 to December 18, 2000 (in about nine payments, about eight cheques were payable to Rosen personally). In exchange for his money, Smyth received 18 share certificates for Sniper Sports Ltd, totalling 264,215 shares.

¶ 106 In February 2001, in response to an offer from Moll, Clark invested about $15,000 in Sniper Sports by way of cheques payable either to Moll or Rosen.

Representations

¶ 107 In connection with the promotion and issue of Sniper Sports shares, Rosen made oral and written representations to investors and prospective investors which are

set out under the headings (a) to (f) below (referred to in the notice of hearing as the Sniper Sports Misrepresentations).

¶ 108 The representations set out in the notice of hearing are all rather general in nature. Staff, however, focussed in the hearing on more specific representations and asked us to make findings about them. For example, although the notice of hearing alleges that the respondents falsely represented that Sniper Sports had a commercial warehouse and office space, staff alleged more specifically in the hearing that the respondents had falsely represented that Sniper Sports had a warehouse and office space on Edworthy Way.

¶ 109 Staff say that their intention had been to set out the alleged misrepresentations in general terms in the notice of hearing, but to address specific representations in the hearing. This is, of course, perfectly acceptable as long as the respondents have had adequate notice of the specific case they will have to meet. The respondents have not appeared or made submissions to argue that they have been treated unfairly. Accordingly, we have taken the alleged misrepresentations to be those which staff referred to in the hearing.

(a) Sniper Sports had a commercial warehouse and office space.

¶ 110 At page 5, the Sniper Business Plan 2000 states that Sniper Manufacturing Inc "has a commercial warehouse and office space located at #108-360 Edworthy Way in New Westminster where the daily operations a (sic) conducted". Although it refers to Sniper Manufacturing, clearly this sentence would have been taken by prospective Sniper Sports investors to mean that the warehouse was used on behalf of, or in relation to, Sniper Sports.

¶ 111 Sniper Manufacturing was a non-reporting issuer, incorporated in British Columbia on November 8, 1994. Rosen was the president and director of Sniper Manufacturing. Sniper Manufacturing also purported to be in the business of manufacturing or distributing hockey sticks. There is some evidence that Sniper Manufacturing did actually manufacture hockey sticks at one time. It was struck from the Corporate Registry on April 14, 2000 for failure to file required reports.

¶ 112 Chris Williams informed staff on December 18, 2001 that he and his wife were the registered owners of the warehouse at Edworthy Way and had leased it to Rosen and Sniper Manufacturing from March 1, 1997 to April 1, 1998. He said that Sniper Manufacturing had kept an inventory of hockey sticks in the warehouse, as well as manufacturing equipment to carry out the drilling, cutting and assembly of the sticks. On or about April 1, 1998, however, Williams evicted them for failure to make lease payments. We accept this evidence as correct.

From April 1998, Rosen and Sniper Sports had no warehouse and office space at Edworthy Way.

¶ 113 **We find that the representation that Sniper Sports had a commercial warehouse and office space located at #108-360 Edworthy Way in New Westminster was false.**

(b) A certain British Columbia company was manufacturing segments of the hockey sticks that Sniper Sports sold.

¶ 114 At page 5, the Sniper Business Plan 2000 states that the manufacturing of the unfinished hockey shafts and inserts for Sniper Manufacturing was carried out by Indalex, a division of Caradon Limited, located in Port Coquitlam, British Columbia. Again, in our view, this statement would have been taken by prospective Sniper Sports investors to mean that the manufacturing was on behalf of, or in relation to, Sniper Sports.

¶ 115 The Credit Manager at Indalex Aluminum Solutions told staff that Indalex had done some work for Rosen in 1998, but the company had not done anything with, or heard anything from, Rosen or Sniper since then. We accept this evidence as correct. Indalex was not manufacturing segments of hockey sticks for Sniper Sports or Sniper Manufacturing after 1998.

¶ 116 In addition, Rosen told at least one prospective investor that Sniper Sports was manufacturing sticks. Kriedemann told staff in interview on November 20, 2001 that, in late October or early November 2000, Rosen told him that Sniper Sports was manufacturing the hockey stick; they had sold 15,000 sticks in the last six months at a price between $30 and $110, primarily in Germany and Britain. In future, they were, Rosen said, going to be distributed through Wal-Mart and Canadian Tire. (transcript, p. 27)

¶ 117 In a letter dated May 17, 2001 from Rosen to Clark, Rosen wrote: “I have been busy with the proposal from Canada Tire and now we have been accepted to become a vendor for all of the ‘TARGET’ stores across the United States, this will be another $700,000 order.”

¶ 118 However:

- Canadian Tire wrote to staff to say it “has never heard of Sniper as a manufacturer of hockey sticks …”; and

- Target wrote to staff to say it "has not been able to identify any records indicating the purchase or order of hockey sticks or any other product from Sniper Sports …".

¶ 119 **We find that the representation that Indalex was manufacturing the unfinished hockey shafts and inserts for the hockey sticks that Sniper Sports sold was false.**

(c) Sniper Sports had an agreement to merge with a large sporting goods manufacturer.

¶ 120 Rosen told some of the Sniper Sports investors, orally and in writing (eg, letters of October 24 and November 19, 2000 to Smyth), that one of "the top five sportswear and sporting goods manufacturers" was interested in merging with Sniper Sports and buying out Sniper Sports at US $3.80 per share. The letter of October 30, 2000 from Rosen, "President, CEO - Sniper Sports Ltd" to Ragan (identical to that of October 24 to Smyth) states:

> We have been approached by one of the top 5 sportswear and sporting goods manufacturers in the world, the name of this company with [sic] be withheld until our intent has been put to legal ease and the board of directors have 100 % re-assurance that this is the proper decision to make for us and all of the shareholders. An offer has been sent to us after meeting with the President and discussing the possibilities of a joint merger …

¶ 121 Although Rosen did not mention the name of this sporting goods company to most investors, he told Smyth that the company was Reebok International Ltd. Rosen also provided a document to Smyth purporting to be an agreement between Sniper Sports and Reebok International Ltd in Montreal dated November 19, 2000.

¶ 122 Staff spoke with the Associate General Counsel of Reebok International in Massachusetts. He wrote to staff to confirm that he had spoken with Reebok's General Counsel, its patent counsel, and the managing director of Reebok's Canadian subsidiary, each of whom told him that no such agreement existed, and they had never heard of Rosen or Sniper Sports. We accept this evidence as correct. Reebok did not approach Sniper Sports and the purported agreement was a sham.

¶ 123 Rosen also told Smyth about an alternative deal, involving the "Sittler Group" of companies, also known as Sports Media Marketing Ltd. He told Smyth that Sports Media had approached him about doing a deal with Sports Media, instead

of Reebok, and that Sports Media was prepared to inject $1.5 million into Sniper, which would be divided up to early shareholders of Sniper Sports.

¶ 124 Rosen gave Smyth an unsigned "Licence and Purchase Agreement - Letter of Intent" between Rosen/Sniper Sports and Power Markets/Sports Media, dated November 19, 2000, under which Rosen and Sniper Sports would merge their interests in the Sniper hockey stick into Power Markets Inc.

¶ 125 Under this Agreement, Power Markets was to purchase the assets of Rosen and Sniper Sports, in exchange for cash and free trading stock in the "public company", Power Markets. On December 12, 2000, Rosen sent Smyth an update letter, stating:

> we have nearly completed a deal with our new partners, 'SPORTS MEDIA MARKETING', they are a currently wholly owned subsidiary with their offices located in Toronto, Ontario…. The last piece of the deal consists of the approval of our transfer of Patents, Trademarks, and Tradenames, they were filed with the proper registrars on December 11, 2000 and a waiting period of 14 days. Once this is complete, we will be endorsing a check to you in the said amounts stated below. … [No] changes … can be made till we start trading on the NASDAQ OTC stock exchange in late January 2001.

Smyth told staff that none of this came to pass. No cheques were delivered to him.

¶ 126 According to the unsigned agreement, Sports Media is a company incorporated under the laws of Ontario, with a corporate address in Toronto, Ontario. Staff asked the Ontario Securities Commission about the corporate status of Sports Media. The OSC told staff that they found no record of Sports Media in either the corporate profile or business names/limited partnerships sections of the Companies' Branch database for Ontario. We accept this evidence as correct. No merger between Rosen/Sniper Sports and a company called Sports Media Marketing was imminent or "nearly competed". The deal was a sham.

¶ 127 **We find that the representations that Sniper Sports had (or was negotiating) an agreement to merge with Reebok or with Sports Media Marketing were false.**

(d) Sniper Sports had an agreement to list its shares on a stock exchange under the name of a shell company.

(e) Once the listing on the stock exchange occurred, the shares of Sniper Sports would be exchanged for shares of the shell company.

¶ 128 The Sniper Sports investors told staff that Rosen said to them, both orally and in writing, that Sniper Sports would be going public on the OTC-BB, under the name of Power Markets Inc, a US shell company. When Power Markets' shares were listed, investors' shares in Sniper Sports would, Rosen said, be exchanged for shares in Power Markets.

¶ 129 Ragan told staff that, in August 2000, Rosen offered her shares in Sniper Sports, telling her that this was the last chance for her to buy these shares because they planned to go public on the NASDAQ in a week or two. (transcript, p. 6) Rosen told her that on listing the price "would be a lot higher than what the sale price was".

¶ 130 Reibin told staff that in September 2000, Rosen told her he was hoping Sniper Sports would go on the NASDAQ very soon. "… [He] said this was very time sensitive. People that wanted to get in on the certificates of Sniper Sports Limited had approximately I think it was a week to get their paperwork together." (p. 26) In his letter to her dated September 19, Rosen said "we should be trading within six weeks".

¶ 131 Reibin said of Rosen's statements that he expected listing on NASDAQ very soon - "… I … took it sort of mid-range of what he said, because I was used to him sort of being a bit of a promoter and sort of overdoing things a bit…. I believe what he said, but I didn't believe that would [be] as fast and as smooth as he said it would. [Q: You believed it would take more time?] Yes, that's right." (pp. 46, 47)

¶ 132 On the last page of the shareholders list dated September 19, 2000 which Rosen had provided to Ragan, Reibin and others, it says: "Sniper Sports Limited is incorporated at a share price of $1.20 US", and then in brackets: "$1.77 Canadian". Further down it says: "All people listed above [including Ragan, Smyth, and Reibin] will receive their share certificate in the public company: Power Markets Inc." The shareholders list described Sniper Sports Ltd as "a subsiduary (sic) of 'Power Markets Inc.' (NASDAQ OTC)". In the letter to Smyth from Rosen dated December 12, 2000, Sniper Sports Ltd is described as "a division of 'Power Markets Inc.' - NASDAQ OTC".

¶ 133 Marie-Antoinette Shields told staff that she was a stock promoter and investor relations consultant who had done investor relations work for various issuers, including Sniper Enterprises. She was not formally interviewed.

¶ 134 Rosen told some of the Sniper Sports investors that Shields was a director of Sniper Sports and was the owner of Power Markets Inc, the US shell company through which Sniper Sports would obtain a listing on the OTC-BB.

¶ 135 On December 6, 2000, Shields told staff she was in the process of purchasing a major interest in Power Markets, an unlisted US shelf company. The proposed plan was for Power Markets to purchase Sniper Sports' patents and trademarks, in return for which Rosen would receive shares in Power Markets. Sniper Sports would not become a subsidiary of Power Markets, nor would Power Markets have any obligations to shareholders of Sniper Sports. She said Rosen had been delaying providing her with documentation of the trademarks and patents. The deal had not been completed and, although she intended to take Power Markets public, there were no immediate plans to list Power Markets on the OTC-BB. Rosen would not become a director of Power Markets and there was no intention of involving him in the management of Power Markets.

¶ 136 In a memo to Smyth from Rosen dated January 4, 2001, Rosen wrote:

> We have concluded our deal with our new partners and received verbally this morning our trading date which is the week of January 29, 2001 - February 2, 2001. Also we will be hand delivering all shareholders pay out checks on January 9, 2001 … while we issue yourself your new publicly trading share certificates in 'Power Markets Inc'.

¶ 137 On January 8, 2001, Shields told staff that the Power Markets deal was "still on the table", although there was no firm agreement. They were, she said, still conducting due diligence on the patents and trademarks. A company search by staff confirmed that she was not a listed director of Sniper Sports. We accept Shields' version of events.

¶ 138 Staff searched the Canadian patents and trademarks databases which showed a patent application for "a game stick with separable handle". Rosen was one of two named inventors. The owner and applicant were stated to be 483865 BC Ltd DBA Sniper Manufacturing. There was nothing to indicate that the patent had been issued. Sniper Manufacturing was shown to hold a registered trademark for 'Sniper'. (Sniper Manufacturing was dissolved in April 2000.)

¶ 139 In a handwritten letter to Clark dated May 7, 2001, Rosen wrote:

> we will start trading on May 28th. Our opening bid is now set and filed for … $3.10 US, we will trade around this mark for about a week then I will [illegible] the announcement of our deal with our Major retailer and take the stock [illegible] around $5.00 and keep it there until the end

> [illegible], at that time I will be making another huge announcement and push it to [illegible]. I would like to see it steady at $7.00. There is still a very small amount of shares left …

¶ 140 On May 3, 2001, staff spoke by telephone with John Gibbons, Compliance Examiner of the OTC Compliance Unit of the National Association of Securities Dealers. He said that no application had been received from Sniper Sports or Power Markets to be quoted on the OTCBB. We have no credible evidence that Sniper Sports and Rosen were about to (or did) go public through Power Markets Inc.

¶ 141 **We find that the representations that Sniper Sports had or would soon have an agreement to list its shares on the OTC-BB or NASDAQ under the name of Power Markets Inc, a US shell company and that, once the listing occurred, the shares of Sniper Sports would be exchanged for shares of the shell company were without foundation and false.**

(f) The shares of the shell company would trade within a particular price range.

¶ 142 Rosen told some of the Sniper Sports investors that the public shares of Sniper Sports would open at a price of $2.80 to $3.20 US per share (see, for example, the Smyth transcript, p. 41).

¶ 143 Kriedemann told staff in interview that in November 2000 a friend gave him the Sniper Business Plan 2000. He understood from the plan that Rosen was guaranteeing that the share price would go public between $2.80 and $3.20 US. (transcript, p. 9) Rosen offered him and his friend shares in Sniper Sports in November at US $0.55 per share, promising them that they would go up in price once the company went public through Power Markets in December 2000. (pp. 16, 17) This seemed like a good deal to them because the shareholders list dated September 19, 2000 said that Sniper "is incorporated at a share price of $1.20 US". (p. 29) Kriedemann said that Rosen led them to believe that he had bought Power Markets (a NASDAQ shell) for $500,000. (p. 20) Kriedemann and his friend had second thoughts. They decided not to invest in Sniper Sports.

¶ 144 Reibin told staff that Rosen said "they were going to try to open around $3.00 US. … He mentioned it at all of the meetings and then when I did speak to him on the phone, he said I even have some better news. It's not going to $3.00 US, it's going to be $4.00 US or something." (p. 49)

¶ 145 **We find that the representations that the shares of the shell company would trade within a particular price range described above were without foundation and false.**

Rosen's guarantee to refund

¶ 146 Rosen personally guaranteed to refund Smyth's investment if he was not satisfied with his purchase of the shares of Sniper Sports (letter of November 19, 2000). Smyth asked Rosen to make good on this promise. Rosen delivered a cheque from Sniper Sports on January 9, 2001 for $175,000 (substantially more than Smyth had invested) which was post-dated January 16. The bank informed him that the account had been closed and there was no money in it. He did not receive a refund.

¶ 147 Kriedemann also told staff that Rosen personally guaranteed the investment and promised to refund their money. (transcript, p. 29)

Prospectus

¶ 148 Although some investors were provided with the Sniper Business Plan 2000, none of the investors was provided with offering documents such as a prospectus or an offering memorandum. Sniper Sports did not file a prospectus, preliminary prospectus or offering memorandum with the Commission.

E. Rosen and Statik Sports Inc

¶ 149 We also heard evidence about Rosen's and Statik Sports' conduct in a solicitation and promotion in 2003 and 2004 which was very similar to that of Sniper Sports. Our findings on that conduct are in *Statik Sports Inc* 2005 BCSECCOM 561. We have taken into account our findings of fact in *Statik Sports Inc* in deciding what orders to make against Rosen, Sniper Sports and North American under section 161 of the Act.

Allegations

¶ 150 In the notice of hearing, the Executive Director alleges that:

Rosen

¶ 151 In relation to Sniper Enterprises, Rosen while owning more than 10% of Sniper Enterprises and while acting as a director of Sniper Enterprises:

(a) failed to file an insider report in the required form within 10 days of becoming an insider, contrary to section 87(2) of the Act;

(b) failed to file insider reports in the required form disclosing changes in his ownership of, or control, or direction over, securities of Sniper Enterprises, contrary to section 87(4) of the Act; and

(c) failed to file a personal information form, contrary to section 90 of the Act.

¶ 152 In relation to North American, from February 1999 to June 2000, Rosen:

(a) without registration under the Act, and without an exemption from the registration requirements of the Act, traded shares of North American, contrary to section 34(1)(a) of the Act;

(b) participated in an illegal distribution of the shares of North American, contrary to section 61 of the Act;

(c) while engaging in investor relations activities or with the intention of effecting a trade in the shares of North American:

(i) represented, without obtaining the prior approval of the Executive Director, that the shares of North American would be posted on an exchange, or quoted on a quotation and trade reporting system, contrary to section 50(1)(c) of the Act;

(ii) made the North American Misrepresentations when he knew or ought to have known that the statements were false statements of facts that could reasonably be expected to affect significantly the market price or value of the shares of North American, contrary to section 50(1)(d) of the Act; and

(d) perpetrated fraud on persons in British Columbia by making the North American Misrepresentations, contrary to section 57 of the Act.

¶ 153 In relation to Sniper Sports, from August 2000 to March 2001, Rosen:

(a) without registration under the Act, and without an exemption from the registration requirements of the Act, traded shares of Sniper Sports, contrary to section 34(1)(a) of the Act;

(b) participated in an illegal distribution of the shares of Sniper Sports, contrary to section 61 of the Act;

(c) while engaging in investor relations activities or with the intention of effecting a trade in the shares of Sniper Sports:

(i) represented that he would repurchase shares of Sniper Sports, or would refund all or any of the purchase price of the shares of Sniper Sports, contrary to section 50(1)(a) of the Act;

(ii) gave an undertaking relating to the future value or price of the shares of Sniper Sports, contrary to section 50(1)(b) of the Act;

(iii) represented, without obtaining the prior approval of the Executive Director, that shares of Sniper Sports would be posted for trading on an exchange, or quoted on a quotation and trade reporting system, contrary to section 50(1)(c) of the Act;

(iv) made the Sniper Sport Misrepresentations when he knew or ought to have known that the statements were false statements of facts that could reasonably be expected to affect significantly the market price or value of the shares of Sniper Sports, contrary to section 50(1)(d) of the Act; and

(d) perpetrated fraud on persons in British Columbia by making the Sniper Sports Misrepresentations, contrary to section 57(b) of the Act.

592087 BC Ltd

¶ 154 From February 1999 to June 2000, 592087 traded its securities without any applicable exemption from registration requirements of the Act and Rules, contrary to section 34(1)(a) of the Act.

¶ 155 From February 1999 to June 2000, 592087 distributed its securities without filing a prospectus, and without any applicable exemption from the prospectus requirements of the Act, contrary to section 61 of the Act.

Sniper Sports Ltd

¶ 156 From August 2000 to March 2001, Sniper Sports traded its securities without any applicable exemption from the registration requirements of the Act and Rules, contrary to section 34(1)(a) of the Act.

¶ 157 From August 2000 to March 2001, Sniper Sports distributed its securities without filing a prospectus, and without any applicable exemption from the prospectus requirements of the Act, contrary to section 61 of the Act.

Analysis and Findings

Trading without registration and distributing without a prospectus

¶ 158 Section 34(1)(a) of the Act says: "A person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . ." A "trade" is defined in section 1(1) to include "a disposition of a security for valuable consideration" and "any act, … solicitation, conduct or negotiation directly or indirectly in furtherance of [that activity]". Shares in a company are a "security" as defined in section 1(1).

¶ 159 Section 61(1) of the Act says: "Unless exempted under this Act or the regulations, a person must not distribute a security unless . . . a preliminary prospectus and a prospectus respecting the security have been filed with the executive director". "Distribution" is defined in section 1(1) to mean "a trade in a security of an issuer that has not been previously issued".

¶ 160 Sniper Sports and North American sold shares for valuable consideration that had not been previously issued. We find that they traded and distributed securities under the Act. Rosen was Sniper Sports' and North American's directing mind and will, and caused them to trade and distribute their shares. We find that Rosen traded in and distributed securities in that he acted, solicited or negotiated, directly or indirectly, to further "a disposition of a security for valuable consideration", namely the sale of Sniper Sports and North American shares for money to the investors.

Exemptions

¶ 161 The legislation provides exemptions from sections 34 (1) and 61(1). The onus of showing that any of those exemptions applies rests on the person who seeks to rely on the exemption (see *Bilinski* 2002 BCSECCOM 102). The respondents did not appear or present a defence, but staff nevertheless took us through the exemptions which might apply to show that they did not. The evidence before us shows that none of the exemptions applied.

¶ 162 None of the investments exceeded the $97,000 minimum and neither Rosen, Sniper Sports nor North American complied with any of the conditions attached to the exemptions that require a minimum investment or an offering memorandum. (See former sections 45(2)(5) and 74(2)(4) of the Act and former sections 89(a) and (b), 128(a) to (c) of the *Securities Rules*, BC Reg. 194/97; these provisions have been superseded by *National Instrument* 45-103 Capital Raising Exemptions.)

¶ 163 The "private issuer" exemption (formerly sections 46(j) and 75(a) of the Act, now in NI 45-103) did not apply because, apart from perhaps a few exceptions, the investors were, with respect to Sniper Sports and North American, "members of the public". In the case of North American, they were, for the most part, clients, friends or family of Kuhn, who was not a director or officer of North American.

¶ 164 Rosen and North American might have argued that they could rely on Kuhn's (or his employer, IPO's) status as a registered representative or dealer. Staff say that they cannot rely on this exemption because Kuhn was trading outside the scope of his employment with IPO or because some trades were not conducted through the

dealer. We asked staff to provide argument in support of the proposition that Kuhn was trading outside the scope of his employment.

¶ 165 Staff say Kuhn did not trade through IPO Capital Corp - the registered dealer - as required by the express terms of section 45(2)(7). (In fact the section applies to "a trade in a security by a person acting solely through a registered dealer".) Staff say that Kuhn was not acting on behalf of IPO which also means he was acting outside the scope of his registration. Finally staff say that it would be prejudicial to the public interest to allow section 42(2)(7) to apply to trades made outside the auspices of a registered dealer.

¶ 166 All of these propositions are contestable. The fact remains, however, that the respondents have chosen not to argue against them. Nevertheless, since we do not need to make findings on this point, we have decided not to do so and to leave the issue for argument on another day in another matter. It is clear that Rosen and North American could not rely on the trades through Kuhn or IPO in any event because they did not trade solely through Kuhn or IPO.

¶ 167 In the case of Sniper Sports, Rosen may have had some previous business relationship with Reibin, the Richmonds and Ladret, since they knew him from a previous investment. However, these investors did not have a close relationship with Rosen and so the private issuer exemption was not available. The net worth of the investors, as disclosed in their responses to staff, for example in the Investor Questionnaires, did not meet the "sophisticated purchaser" test.

Misrepresentation

¶ 168 Section 50(1)(d) of the Act provides:

> A person, … with the intention of effecting a trade in a security, must not do any of the following:
>
> (a) represent that the person or another person will
> (i) resell or repurchase the security, or
> (ii) refund all or any of the purchase price of the security;
> (b) give an undertaking relating to the future value or price of the security;
> …
> (d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation.

¶ 169 "Misrepresentation" is defined in section 1 of the Act to mean:

> (a) an untrue statement of a material fact, or
> (b) an omission to state a material fact that is

(i) required to be stated, or
(ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.

¶ 170 "Material fact" is defined in section 1 of the Act to mean:

> where used in relation to securities issued or proposed to be issued, a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value of those securities.

Fraud

¶ 171 Section 57(b) of the Act provides:

> A person in or outside British Columbia must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security … if the person knows, or ought reasonably to know, that the transaction or series of transactions
>
> …
> (b) perpetrates a fraud on any person in British Columbia
> …

¶ 172 As set out in the BC Court of Appeal judgment in *Anderson v. BCSC*, 2004 BCJ 8, the elements of fraud under section 57(b) of the Act were summarized in *R v. Théroux*, [1993] 2 SCR 5 at 20, 100 DLR (4th) 624, 79 CCC (3d) 449 by Madam Justice McLachlin (as she then was) as follows:

> ... the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

¶ 173 McLachlin J also cited with approval (at 23) the words of Taggart JA who stated in *R v. Long* (1990), 51 BCLR (2d) 42, 61 CCC (3d) 156 at 174:

> ... the mental element of the offence of fraud must not be based on what the accused thought about the honesty or otherwise of his conduct and its consequences. Rather, it must be based on what the accused knew were the facts of the transaction, the circumstances in which it was undertaken and what the consequences might be of carrying it to a conclusion. [underlining added]

¶ 174 The BC Court of Appeal in *Anderson* went on to say:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

¶ 175 We must base our finding of the mental element of fraud on our findings as to what Rosen actually knew. The evidence must be clear and convincing. The Court of Appeal also stated in *Anderson* that in determining whether a person has the required *mens rea*, evidence of that person's conduct and state of mind after the commission of the prohibited act(s) is relevant.

Rosen

Sniper Enterprises

¶ 176 In relation to Sniper Enterprises, we find that Rosen, since he owned more than 10% of Sniper Enterprises and was a director of Sniper Enterprises, was an insider as defined in section 1(1) of the Act and he:

1. failed to file insider reports in the required form disclosing changes in his ownership of, or control over, securities of Sniper Enterprises during the period March 1999 to August 1999, contrary to section 87(5) of the Act [the notice of hearing refers to section 87(4) but the correct reference is clearly 87(5)]; and

2. failed to file required information (in the required Form 4B), contrary to section 90 of the Act.

¶ 177 Staff withdrew the allegation that Rosen failed to file an insider report etc contrary to section 87(2) of the Act, and so we make no findings on that allegation.

North American

¶ 178 In relation to North American, we find that Rosen, from February 1999 to June 2000:

1. without registration under the Act, and without an exemption from the registration requirements, traded securities of North American, by selling shares in the company for valuable consideration to the North American investors, or acting in furtherance of such a sale, contrary to section 34(1)(a) of the Act;

2. without filing a preliminary prospectus and a prospectus respecting the securities with the Executive Director, and without an exemption under the Act or the regulations, distributed securities of North American, by selling shares in the company that had not been previously issued for valuable consideration to the North American investors, or acting in furtherance of such a sale, contrary to section 61 of the Act; and

3. with the intention of effecting a trade in a security, namely the shares of North American, made statements that he knew or ought reasonably to have known were misrepresentations, contrary to section 50(1)(d) of the Act, as set out below.

North American Misrepresentations

¶ 179 Rosen made the following statements to North American investors:

- North American had an exclusive agreement with Tire-Glo Ltd, the owner of Tire-Glo, to manufacture, license and market Tire-Glo; and

- The shares of North American would be listed and posted for trading on an exchange by a particular date.

¶ 180 We have already found that the statements were false. We also find that they were each a statement of a material fact, namely a fact that, where used in relation to the North American shares proposed to be issued, could significantly affect, or could reasonably be expected to significantly affect, the market price or value of those shares. Therefore, each statement was a misrepresentation.

¶ 181 Clearly the statements were false. Tire-Glo Ltd did not exist. North American and Rosen had not entered into any agreement to manufacture, license or market Tire-Glo, Tire-Tux or any other car detailing product. Rosen had gone no further than to mix up some product in the premises he had rented from Kapoor. There was no agreement or prospective agreement that would have resulted in the listing

of North American shares on any exchange, directly or indirectly through an exchange of shares. There was no foundation at all for the statement that the shares would be listed by the dates specified by Rosen.

¶ 182 These facts could reasonably be expected to significantly affect the value of the North American shares. Without the exclusive right to manufacture the product Tire-Glo (or Tire Tux), the business would either have been at risk of breaching the rights held by another person or would have been very exposed to attacks on its market share by competitors. A reasonable investor would conclude that such a business (and shares in it) would have substantially less value without the rights. The fact that the shares would soon be trading on an exchange would have led a reasonable investor to conclude that he or she would soon be able to sell the shares. Liquidity has a value. In addition, a reasonable investor would have gained some confidence in the soundness and viability of the business (and the value of the shares), knowing that the business would soon pass muster with the relevant exchange and regulatory authority.

¶ 183 Rosen must have known that these statements were misrepresentations. He was the directing mind of the company and in control of all of its activities. The purported listing date was without foundation. On any reasonable assessment of the facts, the discussions had not proceeded to the stage where it could be said that the deal was a certainty, or even a likelihood, by the specified dates.

¶ 184 In any event, on the facts then, Richmor would not have agreed to it. The purported agreement with Richmor was based on the apparent licence for Tire-Glo. The "Licence & Distribution Agreement" purporting to grant North American the exclusive world rights to manufacture, licence and distribute the "Tire-Glo" formula was a sham. Rosen must have known it was a sham. There was no Tire Glo Ltd. He had not applied for the trademark. He was creating the purported "Tire-Glo" solution from a Car Brite product or products. He did not have "exclusive world rights".

¶ 185 Rosen must also have known that the facts in both statements were facts that could reasonably be expected to significantly affect the value of the North American shares and the price investors were willing to pay. That was the whole point of the promotion.

North American Fraud

¶ 186 In relation to North American, we also find that Rosen, from February 1999 to June 2000, in British Columbia, engaged in or participated in a series of transactions relating to a trade in a security, namely shares in North American, knowing that the transactions perpetrated a fraud on persons in British Columbia,

by making the North American misrepresentations, contrary to section 57(b) of the Act. The evidence is clear and convincing.

¶ 187 The *actus reas* of fraud is found in Rosen's misrepresentations which caused actual loss to North American investors (who lost their investment). Rosen must have known that the statements were false and deceitful and that the falsehood and deceit could have as a consequence that the investors' economic interests were put at risk. Rosen was the directing mind of North American; he solicited or directed the solicitation of the investors. The North American misrepresentations were part of a wider web of deceit concocted by Rosen to lure investors into an enterprise that was a sham. The *mens rea* of fraud is therefore also established.

Section 50(1)(c)

¶ 188 Since staff did not put forward any evidence to show that he did not obtain the prior written permission of the Executive Director, we do not find that Rosen's representations breached section 50(1)(c) of the Act.

Sniper Sports

¶ 189 In relation to Sniper Sports, we find that Rosen, from August 2000 to March 2001:

1. without registration under the Act, and without an exemption from the registration requirements, traded securities of Sniper Sports, by selling shares in the company for valuable consideration to the Sniper Sports investors, or acting in furtherance of such a sale, contrary to section 34(1)(a) of the Act;

2. without filing a preliminary prospectus and a prospectus respecting the securities with the Executive Director, and without an exemption under the Act or the regulations, distributed securities of Sniper Sports, by selling shares in the company that had not been previously issued for valuable consideration to the Sniper Sports investors, or acting in furtherance of such a sale, contrary to section 61 of the Act;

3. with the intention of effecting a trade in a security, namely the shares of Sniper Sports:

   (a) represented that he would repurchase the security, or would refund all or any of the purchase price of the security, in that he represented to one prospective investor and one investor that he would refund the purchase price of their shares in Sniper Sports, contrary to section 50(1)(a) of the Act;

   (b) gave an undertaking relating to the future value or price of the security, in that he told some Sniper Sports investors that the public shares of Sniper

Sports would open at a price of $2.80 to $3.20 US per share, contrary to section 50(1)(b) of the Act;

(c) made statements that he knew or ought reasonably to have known were misrepresentations, contrary to section 50(1)(d) of the Act, as set out below.

Sniper Sports Misrepresentations

¶ 190 Rosen made the following statements to Sniper Sports investors:

- Sniper Sports had a commercial warehouse and office space at Edworthy Way;
- Indalex was manufacturing the unfinished hockey shafts and inserts for the hockey sticks that Sniper Sports sold;
- Sniper Sports had or would have an agreement to merge with Reebok, or with Sports Media Marketing;
- Sniper Sports had or would have an agreement to list its shares on the OTC-BB or NASDQ under the name of Power Markets Inc, a US shell company, and once listed, the shares of Sniper Sports would be exchanged for shares of the shell company; and
- The shares of the shell company would trade within a specified price range.

¶ 191 We have already found that the statements were false. We also find that each was a statement of a material fact, namely a fact that, where used in relation to the Sniper Sports shares proposed to be issued, could significantly affect, or could reasonably be expected to significantly affect, the market price or value of those shares. Therefore, each statement was a misrepresentation.

¶ 192 Clearly the statements were false. From August 2000 to March 2001:

- there was no Sniper Sports warehouse or office space at Edworthy Way;
- Indalex was not manufacturing hockey sticks for Sniper Sports or Sniper Manufacturing (which had been dissolved);
- there was no agreement or prospective agreement to merge with Reebok, or with Sports Media Marketing;
- there was no agreement or prospective agreement that would have resulted in the listing of Sniper Sports shares on the OTC-BB or NASDAQ, directly or indirectly through an exchange of shares with Power Markets Inc; and
- there was no foundation for the statement that the shares would be listed by the specified dates or would trade at the specified prices.

¶ 193 Each of these facts could reasonably be expected to significantly affect the value of the Sniper Sports shares. Without a warehouse or any manufacturing of the components, there could be no assembly, distribution or sale of hockey sticks. Without sales, there would be no income. Without a merger, there would be no additional capital investment or other support that would add substantial value to the business. Without the listing, the investors would be restricted in their ability to sell the shares on and the investment would not have the credibility that comes with listing. If the shares were not to trade at the specified prices, then they would be significantly less valuable.

¶ 194 Rosen must have known that each of these statements was a misrepresentation. He was the directing mind of the company and in control of all of its activities. He would have known that he had been evicted from the warehouse and that Indalex was no longer manufacturing the hockey sticks. The purported mergers were shams of his own creation. The purported listing was without foundation. On any reasonable assessment of the facts, the discussions had not proceeded to the stage where it could be said that the deal was a certainty. The deal could never have proceeded. Rosen did not hold the necessary patents and trademarks. In any event, the actual deal under discussion was substantially different from the one Rosen described to investors.

¶ 195 Rosen must also have known that the facts in each of these statements were facts that could reasonably be expected to significantly affect the value of the shares and the price investors were willing to pay. That was the whole point of the promotion.

Sniper Sports Fraud

¶ 196 In relation to Sniper Sports, we also find that Rosen, from August 2000 to March 2001, in British Columbia, engaged in or participated in a series of transactions relating to a trade in a security, namely shares in Sniper Sports, knowing that the transactions perpetrated a fraud on persons in British Columbia, by making the Sniper Sports misrepresentations, contrary to section 57(b) of the Act. The evidence is clear and convincing.

¶ 197 The *actus reas* of fraud is found in Rosen's misrepresentations which caused actual loss to Sniper Sports investors (who lost their investment). Rosen must have known that the statements were false and deceitful and that the falsehood and deceit could have as a consequence that the investors' economic interests were put at risk. Rosen was the directing mind of Sniper Sports; he solicited or directed the solicitation of the investors. The Sniper Sports misrepresentations were part of a wider web of deceit concocted by Rosen to lure investors into an enterprise that was a sham. The *mens rea* of fraud is therefore also established.

Section 50(1)(c)

¶ 198 Since staff did not put forward any evidence to show that he did not obtain the prior written permission of the Executive Director, we do not find that Rosen's representations breached section 50(1)(c) of the Act.

592087 BC Ltd (North American)

¶ 199 We find that:

- from February 1999 to June 2000, 592087 BC Ltd, through Rosen, traded its securities without being registered under the Act and without any exemption from the requirements, by selling shares in the company for valuable consideration to the North American investors, contrary to section 34(1)(a) of the Act; and

- from February 1999 to June 2000, 592087 BC Ltd, through Rosen, distributed its securities without filing a prospectus, and without any exemption from the prospectus requirements, by selling shares in the company that had not been previously issued for valuable consideration to the North American investors, contrary to section 61 of the Act.

Sniper Sports Ltd

¶ 200 We find that:

- from August 2000 to March 2001, Sniper Sports Ltd, through Rosen, traded its securities, without being registered under the Act and without any exemption from the requirements, by selling shares in the company for valuable consideration to the Sniper Sports investors, contrary to section 34(1)(a) of the Act; and

- from August 2000 to March 2001, Sniper Sports Ltd, through Rosen, distributed its securities without filing a prospectus, and without any exemption from the prospectus requirements, by selling shares in the company that had not been previously issued for valuable consideration to the Sniper Sports investors, contrary to section 61 of the Act.

Orders

¶ 201 Staff say it is in the public interest that we make the following orders:

1. under section 161(1)(b) of the Act, that all persons cease trading in any securities of Sniper Sports and North American;

2. under section 161(1)(c) of the Act, that any or all of the exemptions described in sections 44 - 47, 74, 75, 98 or 99, do not apply to the respondents Sniper Sports, 592087 and Rosen;

3. under section 161(1)(d) of the Act, that Rosen resign any position he holds as a director or officer of any issuer, and that he be prohibited from becoming or acting as a director or officer of any issuer;

4. under section 161(1)(d) of the Act, that Rosen be prohibited from engaging in investor relations activities;

5. under section 162 of the Act, that the respondents each pay an administrative penalty; and

6. under section 174 of the Act, that the respondents each pay prescribed fees or charges for the costs of or related to the hearing.

¶ 202 *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 contains a non-exhaustive list of factors that are usually relevant to making orders against a person under sections 161(1) and 162:

- the seriousness of person's conduct,
- the harm suffered by investors as a result of the person's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the person's conduct,
- the extent to which the person was enriched,
- factors that mitigate the person's conduct,
- the person's past conduct,
- the risk to investors and the capital markets posed by the person's continued participation in the capital markets of British Columbia,
- the person'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.

¶ 203 Staff say we should permanently exclude Rosen from the capital markets and from investor relations activities so he cannot continue to victimize the public. He has, say staff, in any event, provided no evidence to suggest he intends to or is able to change his behaviour. We agree.

¶ 204 This case has features which justify significant sanctions against Rosen and his defunct companies including:

1. Rosen's North American and Sniper Sports schemes victimized at least 47 investors, whose total capital put at risk (and apparently irretrievably lost) was at least $311,659;

2. the respondents have shown no intention to make restitution or provide investors with any accounting for their funds; and

3. Rosen engaged in wilful deceit, repeatedly.

¶ 205 Like this case, the case of *601949 BC Ltd* 2004 BCSECCOM 447 involved unregistered trading of securities by an issuer which did not file a prospectus under the Act. No exemption applied and it contravened sections 34 and 61 when it issued its shares to 10 investors for an aggregate consideration of about $240,000. Callies, the directing mind, admitted to contravening sections 34 and 61 and committing fraud by taking money from an elderly, unsophisticated investor. Like Rosen he claimed he was relying on an exemption from the requirements. He was also found to have failed in his duties as a director and officer and acted contrary to the public interest. The Commission ordered 25-year prohibitions against both respondents and that Callies pay an administrative penalty of $125,000 and the costs of or related to the hearing.

¶ 206 We have not taken into the account the penalties imposed on Moll and Kuhn under their respective settlement agreements. The circumstances are not the same. Moll's role in both matters was secondary. He solicited only a small number of the investors.

¶ 207 Kuhn was a registrant and a significant cog in the wheel in the North American matter, but again his role was more limited than that of Rosen. He co-operated with the Commission and there was no evidence of deliberate deceit.

Rosen

¶ 208 In our view, Rosen's conduct is worse than Callies. Like Callies he knew or, by the time of the Sniper Sports solicitation, should have known, that he was trading in breach of sections 34 and 61 (the foundation investor protection provisions). He committed fraud on a wider scale. He also knew that in giving an undertaking relating to the future value or price of a security he had breached the securities legislation, and that he had breached section 87(5) of the Act in failing to file insider trading reports.

¶ 209 He is a director of companies and should have been well aware of the requirements of the securities legislation through his position as president and director of Sniper Enterprises Ltd. To trade without registration and without a prospectus, and (knowingly) to make fraudulent misrepresentations and to decline to report insider trading are very serious breaches. Rosen's conduct seriously harmed investors and damaged the integrity of the securities market in British Columbia.

¶ 210 Unlike Callies, we have no evidence that Rosen enriched himself, apart from a monthly salary. However, Rosen has not accounted for the monies he took from investors, and he has shown no remorse or intention to repay investors or in any other way to accept the consequences of his misconduct. Quite the opposite. He later started another solicitation very similar to the Sniper Sports solicitation knowing full well that staff would view the promotion as a serious breach of securities laws.

¶ 211 Rosen clearly poses a continuing risk to investors in British Columbia. He contravened the most important requirements of the Act over a period of at least three years. He deliberately spun a web of lies to entangle innocent and inexperienced investors. Clearly, he should be banned from the markets. In considering the period of time of the ban, we think it right to take into account the fact that, after a notice of hearing had been issued in this matter, Rosen began again to solicit funds for the purported manufacture and sale of the Sniper hockey stick. He used the same method of operation, but incorporated and used a different company (Statik Sports Inc) and worked with different individuals. (See our findings in *Statik Sports Inc* 2005 BCSECCOM 561. This is powerful evidence that Rosen is very unlikely to change his behaviour. His conduct overall also leaves us in no doubt that he is unfit to hold a position of trust as a director or officer of an issuer.

¶ 212 This is also a clear case for the imposition of an administrative penalty. In considering the amount, we have taken into account other similar cases, in particular the case of *601949 BC Ltd* mentioned above. Rosen's conduct was more serious and the harm caused was greater. In addition, Rosen continued to breach (or to remain non-compliant with) the securities legislation even after staff had made clear to him the obvious breaches of the insider trading requirements and, in the case of North American, his apparent breaches of the requirements to be registered and to provide a prospectus.

¶ 213 Rosen also signed an undertaking that he would not continue to trade in North American shares. This should have brought home to him the potential seriousness of the review which staff had undertaken. Instead he deliberately went on to

promote and issue shares in Sniper Sports in a manner that bore a striking similarity to the North American promotion.

¶ 214 There are few, if any, mitigating factors. We do not know what motivated Rosen. Clearly he knowingly deceived investors and wilfully disregarded securities legislative requirements, but perhaps in the beginning he genuinely thought everything would be successful. It appears, for example, that Sniper Manufacturing Ltd, of which Rosen was President, did until 1998 manufacture and distribute hockey sticks. As he said to staff in 2000 - "It was never my intention to take anybody's money or else I would have taken it. I would not be sitting here right now."

¶ 215 Staff also say that with this case (and, we add, in this kind of case), we should also send a message to the wider community. This case should serve not only to deter Rosen, but also to deter others involved in the market from illegal trading and deceitful practices such as those conducted by Rosen.

Sniper Sports and North American

¶ 216 Both companies have been dissolved. North American, that is 592087 BC Ltd, was dissolved on February 21, 2003. Sniper Sports Ltd was dissolved on January 23, 2004. Section 346(1) of the *Business Corporations Act*, SBC 2002, c.57 provides that a legal proceeding may be brought against the company within two years after its dissolution as if the company had not been dissolved. "Legal proceeding" is defined to include "administrative or regulatory action" and therefore would include a Commission proceeding. However, the *Business Corporations Act* came into force on March 29, 2004, after the companies were dissolved. Staff say the Act therefore appears to have no application to these proceedings.

¶ 217 The *Company Act*, RSBC 1996, c.62 contained no direct equivalent to section 346 of the *Business Corporations Act*. It contained provisions only for restoring a dissolved company by application to the court.

¶ 218 Nevertheless, staff say that we should treat the dissolved companies as "persons", against which we may make an order under sections 161, 162 and 174 of the Act. Staff say that, liberally interpreted, in accordance with the purpose of the legislation and under our public interest jurisdiction, "person" should be taken to include dissolved companies. It is true that in section 1(1) of the Act, "person" is more widely defined than in the *Interpretation Act*, RSBC 1996, c.238. A "trust, fund, association, and any other organized group of persons" is, for example, a "person" under the Act. And, as staff point out, under the *Company Act*, the liability of directors and officers may survive the dissolution of a company.

¶ 219 However, as staff pointed out in the oral hearing, the companies no longer exist. It may be that they can be revived, but there is no evidence before us to show they have been revived. We do not think that the definition of "person" may reasonably be extended to a person that no longer exists except to the extent that this may be permitted under the *Business Corporations Act*.

¶ 220 Staff are concerned that the companies may be revived in the future. If so, then the Executive Director may wish to address then whether enforcement action is required. In our view, we can make (and have made) findings of fact and law about their conduct before they were dissolved. However, other than under section 161(1)(b), there is no action we can take now against the dissolved companies.

¶ 221 However, in making orders, we wish to ensure, to the extent we can, that the companies cannot in future again be put to an improper purpose.

Orders

¶ 222 Accordingly, considering it to be in the public interest, we order:

1. under section 161(1)(b) of the Act, that all persons cease trading in any securities of Sniper Sports Ltd and 592087 BC Ltd;

2. under section 161(1)(c) of the Act, that the exemptions in the Act do not apply to Rosen permanently;

3. under section 161(1)(d)(i) of the Act, that Rosen resign any position he holds as a director or officer of any issuer;

4. under section 161(1)(d)(ii) of the Act, that Rosen be prohibited from becoming or acting as a director or officer of any issuer permanently;

5. under section 161(1)(d)(iii) of the Act, that Rosen be prohibited from engaging in investor relations activities permanently;

6. under section 162 of the Act, that Rosen pay an administrative penalty of $175,000.

¶ 223 It is the Commission's usual practice to award costs against an unsuccessful respondent under section 174 of the Act and *Securities Regulation*, BC Reg. 196/97, section 22. The respondents were given notice that staff would seek costs of the hearing. We received no submissions from the respondents on costs.

¶ 224 We order that Rosen pay the prescribed fees or charges of or related to the hearing in the amount of $44,764.60, reduced by $2,500, the amount Moll agreed to pay in his settlement, for a total of $42,264.60.

¶ 225 August 31, 2005

¶ 226 **For the Commission**

Robin E. Ford
Commissioner

Marc A. Foreman
Commissioner

Roy Wares
Commissioner