

2007 BCSECCOM 198

Brian David Anderson

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

Hearing

Panel	Brent W. Aitken	Vice Chair
	Neil Alexander	Commissioner
	Robert J. Milbourne	Commissioner

Dates of Hearing February 26 and March 22, 2007

Date of Findings April 25, 2007

Appearing

Douglas B. Muir For the Executive Director

Findings

I Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 In a notice of hearing dated March 21, 2006, the Executive Director alleges that between January 2000 and November 2004, Brian David Anderson contravened the Act by:
1. trading in securities without being registered,
 2. distributing securities without filing a prospectus,
 3. making misrepresentations, and
 4. perpetrating a fraud.
- ¶ 3 Anderson did not appear at the hearing, nor was he represented by counsel. The record shows that he was duly served, and knew the hearing date.
- ¶ 4 Commission staff interviewed Anderson under oath on January 26, 2005. He was represented by counsel. Anderson also responded to two staff demands for production. He was represented by the same counsel in connection with both demands. The transcript of Anderson's interview and his responses to the demands were entered into evidence at the hearing.

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II Background

A General

- ¶ 5 This hearing involves Anderson’s promotion of two investments, Frontier Assets and the Alpha Program. Through the two investments, Anderson raised about \$14.7 million from 352 investors, 57 of whom were residents of British Columbia. Other investors came from other Canadian provinces, and other countries.
- ¶ 6 Under Frontier, investors became members of the “Masters Privacy Club”, making them eligible to invest in Frontier. Frontier’s business was ostensibly investing in international businesses, commodities and securities.
- ¶ 7 Frontier was not a legal entity – it was merely a name through which Anderson conducted his activities.
- ¶ 8 Under Alpha, Anderson sold investors participations in “seats” of a purported commodity exchange called the “Flat Electronic Data Interchange” (FEDI).
- ¶ 9 Anderson is a resident of White Rock, British Columbia, and conducted the majority of his activities from his residence or elsewhere in British Columbia. He has never been registered under the Act.
- ¶ 10 No prospectus has ever been filed under the Act for Frontier or Alpha.

B Frontier

How Anderson developed Frontier and described it to investors

- ¶ 11 Anderson created and operated Frontier. He recruited a sales force, called asset consultants, and prepared the documents used by the consultants to sell Frontier to investors. His first consultants were friends, who in turn recruited others to become consultants.
- ¶ 12 Anderson promised the consultants a return of 16% per month. He authorized each consultant to decide the portion of that return that he or she would pass on to each investor. Anderson “highly recommended” that the consultants offer investors a return of between 12% and 14%, keeping 2% to 4% for themselves.
- ¶ 13 Investors first became members of the “Masters Privacy Club”. In a document Anderson prepared titled “Welcome to Masters Privacy Club”, Anderson described the club to investors as follows:

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By joining this elite membership of the Masters Privacy Club, an individual or corporate entity is exposed to a variety of information. The information is offered free of charge and is published on a semi-annual basis.

However, the purpose of the Master Privacy Club is to provide solid information concerning financial opportunities for members to invest their own funds as agreed upon by the membership for the education and benefit of the membership which shall include the funding of humanitarian projects.

- ¶ 14 The document describes a membership in the club as “elite”, yet there were no criteria for membership. Anderson says that there were no qualifications to become a member – any person whose name was put forth by a consultant became a member.
- ¶ 15 The club did not prepare original information for members. Anderson says he simply forwarded members information from third-party sources.
- ¶ 16 Investors entered into a “Joint Venture – Private Party Loan Agreement”, which identified the loan amount and identified the party contracting with the investor as “Frontier Assets”. These are relevant excerpts:

It is understood and agreed between the two parties that these funds will be transferred to a Frontier Assets project whereby the loan, plus profit, will be repaid to the lender in the amount of the principal amount loaned by [date].

Frontier Assets is a division of Alpha Frontier, Ltd. Alpha Frontier, Ltd. is financially backed by a registered International Foundation.

...

Upon acceptance, the Asset Consultant will send an official notification of approval to the lender. Frontier Assets cannot cancel the Private Party Loan Agreement after official notification of approval is issued. However, due to ever changing international financial conditions, the Program Manager reserves the right at any time to close the program, stop all monthly payments, liquidate all assets and investment programs and return all loan principal within 60 days.

- ¶ 17 After an investor agreed to invest, he or she was sent a form prepared by Anderson titled “Frontier Assets Confirmation of Participation”. These are relevant excerpts from one such document:

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Please let this letter serve as your confirmation and participation in the Frontier Asset [*sic*] program. Your Private Party Loan Agreement has been received plus your confirmation of funds has been accepted.

This is a 12-month program with a twelve-month guarantee of return, paid monthly.

You will be receiving your first payment approximately between January 15th – 30th, 2002. Your loan amount is \$1,000 USD. Your rate of return will be 10% percent [*sic*] per month for twelve months.

- ¶ 18 Anderson also prepared a document titled “Personal Letter and Instructions to Prospective Clients” that included a section headed “Frequently Asked Questions”. The document was distributed to prospective investors. These are relevant excerpts:

All loans to Frontier Assets are fully secured and guaranteed by an International Foundation. In the eventuality of a disruption in the program, the principal amount of your loan is guaranteed [*emphasis in the original*] to be returned to you within 60 days*. (See note at the bottom of document) Please understand this is merely our guarantee to you. The actual returns may prove to be much higher. . . .

. . . Alpha Frontier, Ltd. is an International Business Corporation (IBC) properly registered and in good standing with the country of Dominica. Frontier Assets is a division of Alpha Frontier, Ltd.

*Special Note: Due to ever changing international financial conditions, the Program Manager reserves the right at any time to close the program, stop all monthly payments, liquidate all assets and investment programs and return all loan principal within 60 days.

- ¶ 19 Anderson prepared a document titled “How Does Frontier Assets Make Their Income?”, which was distributed to investors and potential investors. These are relevant excerpts from that document:

Frontier Assets has been appointed as a Program Manager to a major International Business Corporation effective October 1, 2001.

This corporation has the privilege of participating at the private banking level of several significant European and Asian banks.

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Due to their banking relationship, over the past 10 years, this corporation and their [*sic*] respective foundation have developed strong business ties to major [*sic*] International Business Corporation who have [*sic*] been very successful in creating cash flow for project financing.

Frontier Assets has also developed strong ties to the resources of the Sovereign Society, International Living and the Oxford Club. Each of these divisions open doors to conservative and exceptional returns. Their programs include: significant real estate investments, international hedge funds, oil and gas exploration, international IPO's, stock funds . . . particularly puts and options, European mutual funds and Asian discounting of bank paper.

Therefore, Frontier Assets places your Private Loan funds with several [*emphasis in the original*] offshore entities. The primary group is very well diversified in all of the following:

Private Placement Investment Programs.
Real Estate development in Asia and the United States.
Manufacturing plants in Taiwan, Hong Kong and China.
Commodities worldwide including sugar, flour, corn and wheat.
Forex Exchange – Currency Trading.
Buying and Selling of specialized bank paper, i.e. CD's and Bank guarantees.

¶ 20 Anderson admits that many of the statements he made in these documents were untrue:

1. Frontier was not a division of another company – it was simply Anderson by another name. The investors in fact made loans to Anderson carrying on business under the name Frontier Assets.
2. Anderson/Frontier was not a “Program Manager” for any third party.
3. There was no guarantee of the investors’ funds. The so-called guarantee was not in writing, nor was it secured. Anderson says the guarantee was to be funded from his income as a director of an entity called the Martin de Porres Foundation. This foundation never actually made any money, and Anderson derived no income from it.
4. Anderson did not invest investors’ money as he promised he would. He says the international business corporation the documents refer to was called the Bradford Group. Anderson/Frontier invested little or none of the investors’

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money with the Bradford Group. Apart from \$275,000 he sent to the Martin de Porres Foundation to allow it to “complete a transaction”, Anderson says he used the funds raised from new investors “mostly” to pay interest to existing investors.

Investors and their losses

- ¶ 21 A total of 242 people invested in Frontier, 41 of whom were residents of British Columbia. Others were residents of Alberta, Ontario, the United States, the United Kingdom, Japan, the Bahamas, Panama, and Brazil. Anderson raised about \$7.7 million from these investors. He says that this amount, being the investors’ principal, is still owing. There is no evidence to suggest that any of this money will ever be repaid. He kept between \$40,000 and \$50,000 for himself.

C Alpha

Introduction

- ¶ 22 Anderson created and operated the Alpha program. Alpha investors purchased units of US\$5,000 each representing a participating interest in what he called “desks”, which purportedly were part of a new commodity exchange called Flat Electronic Data Interchange (FEDI).
- ¶ 23 Anderson sold the units through many of the consultants he recruited for Frontier, and prepared the documents used by the consultants to solicit investors.
- ¶ 24 Each desk required an investment of US\$125,000. Some investors bought sufficient units to fund a whole desk; others bought fewer units. Anderson pooled the funds of the latter group to fund whole desks.
- ¶ 25 Investors entered into a “Joint Venture Agreement” prepared by Anderson, which described the investment and identified the party contracting with the investor as Anderson. This is the description he provided to investors in the Joint Venture Agreement (this excerpt is from an agreement dated March 2001):

. . . I have now entered into an agreement to manage an international “desk” which will handle every kind of commodity and internet purchase. This desk is equivalent to owning a seat on the Chicago Mercantile (Commodity) Exchange or owning a seat on the New York City Stock Exchange.

. . . the desk will be turned on by April 15th. Within the first 60 days, a minimum of \$50M USD worth of business will be put through the desk. . .
. I have been informed that over the first few months that the volumes will

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grow significantly. Within a year, they are anticipating doing \$1B USD per month through each desk.

You have indicated your interest in participating in a desk. By signing this Joint Venture Agreement, you hereby commit yourself to fund One Unit . . .

Brian Anderson is the designated lessee of the desk. You . . . become a silent Joint Venture Partner in this project. The agreement is for 10 years. Your investment funds will be returned by approximately July 1, 2001 and then you will receive 100% of your investment back per month thereafter. Starting with your second anniversary or sooner, we will increase the return to approximately 200% per month . . .

. . . I am very excited about this project. I have done my due diligence and asked all the hard questions. There is no downside to this program. In the event of failure of any kind, our investment capital will be returned to us within 3 banking days.

- ¶ 26 Anderson may have been excited about the project, but not enough to invest any of his own money. He says he invested none of his own funds in FEDI.
- ¶ 27 FEDI never started operations. Anderson says it yielded “zero profits”. The investors have lost their investment.
- ¶ 28 In June 2003 the Ontario Securities Commission issued temporary orders and a Statement of Allegations against Anderson and others in connection with their trading and distribution of investments in Alpha. The OSC ordered them to cease trading the Alpha investments, and alleged that their promotion of those investments contravened the Ontario *Securities Act*.
- ¶ 29 Many of the statements Anderson made in the Joint Venture Agreements were untrue:
1. Investing in a desk was not “equivalent to owning a seat on the Chicago Mercantile (Commodity) Exchange or owning a seat on the New York City Stock Exchange”. Those are regulated entities with a history of operations. Anderson admits to the differences between these exchanges and FEDI, and says this statement was “just my personal description as to how I viewed it.”
 2. FEDI never became operational. Investors’ principal was not returned to them as Anderson promised it would be.
 3. Investors received no return on their investment.

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4. Anderson admits he did not undertake any independent due diligence on FEDI.

Oversubscription

- ¶ 30 Anderson raised about US\$725,000 more than was needed to fund the number of desks that he had under his control. He says that his share of the revenue from the desks he had under his control was enough to provide these investors with the promised returns even though there was no desk for them under the Joint Venture Agreement. He did not disclose this to the investors affected.

Disposition of the funds raised

- ¶ 31 Investors who bought sufficient units to fund whole desks were instructed to send their funds directly to FEDI. Those who bought fewer units were instructed to send their funds to an account in Anderson's name at a bank in the United States for investment in FEDI. These investors deposited about US\$4 million in this account.
- ¶ 32 In fact, the evidence confirms only about US\$375,000 of the US\$4 million was sent to FEDI. (Payments totaling US\$491,600 were also made to unknown recipients. The supporting documents for these transactions do not state the recipient. Perhaps it was FEDI. However, the supporting documents for the payments we know did go to FEDI all show FEDI as the payee.)
- ¶ 33 The remainder Anderson disbursed for other purposes. Anderson says he used investors' funds to "set up the operation". Payments out of this account (all in US dollars) included:
- \$1 million to Global Reach Trading, a "sourcing, product design and management company";
 - \$250,000 to the United Bank of Switzerland;
 - \$200,000 to the Respondent's lawyer in Panama;
 - \$114,811.75 to Anderson's wife, paid towards credit card balances, or withdrawn in cash (Anderson says his wife had nothing to do with either the Frontier Assets scheme or the Alpha Program;
 - \$111,325 to HSBC in the Cayman Island, BWI, to the benefit of Private Securities Inc.;
 - \$90,000 to Anderson's counsel, including \$40,000 paid shortly after the Ontario Securities Commission issued the temporary order and statement of allegations against Anderson;
 - \$50,000 to a Panama real estate company;
 - \$45,000 to a company by way of loan;

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- \$40,000 to H&S Financial, to satisfy a judgment against Anderson arising from litigation in Colorado.

Investors and their losses

- ¶ 34 A total of 100 people invested in Alpha, at least 16 of whom were residents of British Columbia (the evidence did not include addresses for all investors). Others were residents of Alberta, Ontario and the United States. Anderson raised over \$7 million from these investors. Most of this is still outstanding. There is no evidence to suggest that any of this money will ever be repaid.

III Analysis and Findings

A. Illegal trading and distribution

- ¶ 35 The Executive Director alleges that Anderson contravened sections 34(1) and 61(1).
- ¶ 36 Section 34(1) says “a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . .”.
- ¶ 37 Section 61(1) says “. . . a person must not distribute a security unless . . . a preliminary prospectus and a prospectus respecting the security have been filed with the executive director” and the Executive Director has issued receipts for them.
- ¶ 38 If we are to find that Anderson contravened sections 34(1) and 61(1), we must first find that:
1. there were securities involved,
 2. Anderson traded those securities in British Columbia, and
 3. for section 61(1), his trades were a distribution.

1. Were securities involved?

- ¶ 39 Section 1(1) defines security:

“security” includes

(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person

...

(d) a bond, debenture, note or other evidence of indebtedness, a share . . .

...

(l) an investment contract

...

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- ¶ 40 The Frontier investments were loans, evidenced by the Joint Venture – Private Party Loan Agreement and the Confirmation of Participation. These investments fall squarely within paragraph (d) of the definition and are clearly securities.
- ¶ 41 The Alpha investments in the Alpha Program were described in the Joint Venture Agreement as the right to participate in profits earned from Anderson’s lease of a desk. They are therefore securities as defined in paragraph (b) of the definition.
- ¶ 42 The Alpha investments were also investment contracts. Well-known common law defines an investment contract as an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glen W. Turner Enterprises, Inc.* 474 F. 2d 476 (1973), *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.)
- ¶ 43 Participation in Alpha required an investment of money. The investors’ profits were to come from the effort of persons other than themselves. As for the element of commonality, that existed between Anderson and his investors, all the commonality that is required by the cases cited above.
- ¶ 44 We therefore find that the investments in Frontier and Alpha are securities.

2. Did Anderson trade securities in British Columbia?

Section 1(1) defines trade:

“trade” includes

(a) a disposition of a security for valuable consideration whether the terms of payment be on margin, installment or otherwise . . .

. . .

(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e);

- ¶ 45 Anderson created and promoted Frontier. He directed the sales force that sold the Frontier securities, and prepared all of the materials the consultants used to solicit the investors. He managed the contracts with the investors and controlled the flow of cash.
- ¶ 46 Anderson also promoted Alpha. He used essentially the same sales force he used to sell Frontier, and similarly prepared all of the materials used to solicit investors. As with Frontier, he signed and managed the contracts with the investors and controlled the flow of much of the cash.

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¶ 47 All of these activities fall squarely within paragraphs (a) and (f) of the definition of trade.

¶ 48 We therefore find that Anderson traded securities in British Columbia.

3. Were Anderson's trades "distributions"?

¶ 49 Section 1(1) defines distribution as "a trade in a security of an issuer that has not been previously issued".

¶ 50 The Frontier and Alpha investments were securities not previously issued. We find that Anderson's trading in these securities were distributions.

4. Contraventions of sections 34(1) and 61(1)

¶ 51 We have found that the Frontier and Alpha investments are securities, and that Anderson traded and distributed those securities in British Columbia.

¶ 52 Anderson has never been registered under the Act. Neither he (in his own name or Frontier's) nor Alpha filed a prospectus.

¶ 53 Therefore, in the absence of an applicable exemption, he contravened sections 34(1) and 61(1) when he traded the Frontier and Alpha securities.

¶ 54 The legislation provides exemptions from section 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 (*Bilinski* 2002 BCSECCOM 102). There is no evidence that any of the exemptions apply.

¶ 55 We therefore find that Anderson contravened sections 34(1) and 61(1) when he traded and distributed the Frontier and Alpha securities.

B. Misrepresentations

Applicable law

¶ 56 Section 50(1)(d) of the Act says that a "person . . . with the intention of effecting a trade in a security, must not . . . make a statement that the person knows, or ought reasonably to know, is a misrepresentation."

¶ 57 Section 1(1) defines misrepresentation as "(a) an untrue statement of a material fact, or (b) an omission to state a material fact that is . . . necessary to prevent a statement that is being made from being false or misleading."

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¶ 58 Section 1(1) also defines material fact as “a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value” of the relevant securities.

¶ 59 To find that Anderson contravened section 50(1)(d), we must conclude that:

1. the untrue statements and omissions described above related to material facts, and therefore were misrepresentations,
2. Anderson knew or ought reasonably to have known that they were misrepresentations, and
3. Anderson made the misrepresentations with the intention of effecting a trade in a security.

Were the untrue statements and omissions misrepresentations?

¶ 60 These are the untrue statements and omissions Anderson made to the Frontier investors:

- Anderson/Frontier was appointed as a “Program Manager”. He/it was not.
- Frontier was a division of another company. It was not. It was merely Anderson’s alter ego.
- Investors’ funds were guaranteed. They were not. The essence of a guarantee is the additional promise to pay from a party other than the principal obligor. The so-called guarantee was nothing more than a second promise to pay from Anderson. Even so, that promise was of no value – the source of funds Anderson would have looked to for funding the promise did not pan out.
- Anderson/Frontier was investing money in a variety of investments through an entity we now know was the Bradford Group. He/it did not. Most new investors’ money went to pay the interest to existing investors.
- Anderson did not tell Frontier investors that he would use their money primarily to pay interest to existing investors. His failure to disclose this fact made his other statements, especially those about how he was managing the investors’ money, false and misleading.

¶ 61 These untrue statements and omissions, both individually and collectively, could reasonably be expected to significantly affect the value of the Frontier securities. We find that they related to material facts.

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¶ 62 These are the untrue statements and omissions he made to the investors in the Alpha Program:

- He did due diligence on FEDI. He did not.
- Investing in a desk was “equivalent to owning a seat on the Chicago Mercantile (Commodity) Exchange or owning a seat on the New York City Stock Exchange”. It was not “equivalent”. Those exchanges are regulated entities with a history of operations that traded specific types of financial instruments. FEDI had no operating history, was subject to no apparent regulatory regime, and purportedly was to “handle every kind of commodity and internet purchase”.
- FEDI would become operational in April 2001 (and on later dates, as deadlines were missed). It never became operational.
- If FEDI failed for any reason, the investors’ principal would be returned to them “within 3 banking days”. FEDI never became operational, yet the investors’ principal was not returned.
- Investors would receive returns of 100% per month on their investment at first, and then 200%. They did not. FEDI produced, in Anderson’s words, “zero profits”.
- Anderson omitted to tell the Alpha investors from whom he accepted oversubscriptions that there was no desk to fund the return on their investment.
- Anderson omitted to tell Alpha investors who sent their funds to his US bank account, that instead of forwarding their funds to FEDI, he spent them on other things. Disclosing this fact was necessary to prevent the other statements he made from being false or misleading.

¶ 63 These untrue statements and omissions, both individually and collectively, could reasonably be expected to significantly affect the value of the Alpha securities. We find that they related to material facts.

Did Anderson know, or ought he reasonably to have known, that the untrue statements and omissions were misrepresentations?

¶ 64 Anderson made the statements – he prepared all of the materials used to promote Frontier and Alpha – and knew, at the time he prepared those materials that:

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- Anderson/Frontier was not a “Program Manager”
- Frontier was not a division of another company
- Investors’ funds were not guaranteed
- Anderson/Frontier was not investing money in a variety of investments through the Bradford Group
- He was using Frontier investors’ money primarily for the purpose of paying interest to existing investors
- He did no due diligence on FEDI
- Investing in a desk was not “equivalent to owning a seat on the Chicago Mercantile (Commodity) Exchange or owning a seat on the New York City Stock Exchange”

¶ 65 Anderson also knew that he disbursed about US\$3.6 million of Alpha investors’ money instead of forwarding it to FEDI, and that he accepted oversubscriptions.

¶ 66 We find that Anderson knew that these untrue statements and omissions were misrepresentations.

¶ 67 The evidence is not sufficient for us to determine whether Anderson knew or ought to have known that his untrue statements that Alpha investors would earn the returns he held out, that if FEDI failed they would get their money back “within 3 banking days”, and that FEDI would become operational, were untrue. We therefore make no findings as to whether he knew those untrue statements were misrepresentations.

Did Anderson make the misrepresentations with the intention of effecting a trade in a security?

¶ 68 Anderson made these misrepresentations in materials he prepared for the purpose of soliciting investments in Frontier and Alpha, and in the course of distributing those securities. We find that he made them with the intention of effecting a trade in a security.

Contravention

¶ 69 We therefore find that Anderson contravened section 50(1)(d).

C. Fraud

¶ 70 The notice of hearing alleges that Anderson engaged in transactions, or a series of transactions, which perpetrated a fraud on persons inside and outside British Columbia, contrary to sections 57(b) and 57.1(b).

¶ 71 Section 57(b) says:

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57. A person . . . 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.

¶ 72 Section 57.1(b) says:

57. A person . . . 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 anywhere.

¶ 73 We have already found that Anderson traded securities when he promoted and sold the Frontier and Alpha securities. Did he know that those transactions perpetrated a fraud on persons in British Columbia or anywhere?

¶ 74 The language describing fraud in sections 57(b) and 57.1(b) is identical. Section 57(b) was considered by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. The Court said:

29 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 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.

¶ 75 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

. . . 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

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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).

- ¶ 76 The evidence provides clear and convincing proof that Anderson committed what Théroux describes as a "prohibited act" and that it caused deprivation. In the previous sections, we have found that Anderson made misrepresentations, by definition an act of deceit.
- ¶ 77 Anderson did not use the Frontier investors' money for the purposes they gave it to him. He told them it would be invested. Instead, almost all of the Frontier investors' money went to pay interest to other investors.
- ¶ 78 Anderson accepted the Alpha oversubscription funds, even though there was no desk to fund the return on those funds.
- ¶ 79 Anderson disbursed about US\$3.6 million of the Alpha investors' money on things other than FEDI.
- ¶ 80 The evidence does not show how any of these disbursements are related to FEDI, or how they would produce a return to the investors. However, it is clear that some of them are expenditures of principal with no prospect of repayment or return on investment: US\$290,000 in legal fees; US\$40,000 to satisfy a court judgment; and nearly US\$115,000 in payments to his wife, who had no connection to the business. Otherwise, we make no findings along those lines because it is not necessary to do so. Anderson made no mention to investors of any use of funds other than forwarding funds to FEDI. His disbursing essentially all of the funds on other things, proper or improper, was, in these circumstances, an act of deceit.
- ¶ 81 It is also our opinion that the evidence provides clear and convincing proof that Anderson had subjective knowledge of the deceit, and that it would result in the deprivation of others.
- ¶ 82 We have found that Anderson knew he was making misrepresentations. He knew he was telling Frontier investors that their funds would be invested in various businesses, commodities, and financial instruments, while knowingly using that money instead to pay interest to existing investors. He had to have known that using money from new investors to pay existing ones instead of investing it in return-producing assets would place the investors' pecuniary interests at risk.
- ¶ 83 Anderson knew that Alpha investors sent money to his US bank account to invest in FEDI, and knowingly used that money for other purposes. Anderson had to

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have known that especially the expenditures on counsel fees, judgment payments, and payments to his wife deprived investors of their investment and placed their pecuniary interests at risk by depriving them of any opportunity for a return on those funds.

¶ 84 Anderson accepted investments in Alpha when he knew that there were no desks available to fund the return on those investments.

¶ 85 Through Frontier and Alpha, Anderson raised a total of about \$14.7 million from 352 investors, 57 of whom were residents of British Columbia. Other investors came from other Canadian provinces, and other countries.

¶ 86 We therefore find that Anderson contravened sections 57(b) and 57.1 (b).

E. Summary of Findings

¶ 87 We find that Anderson:

1. traded in securities without being registered to do so, contrary to section 34(1), when he promoted the sale of the Frontier and Alpha securities;
2. distributed securities without filing a prospectus, contrary to section 61(1), when he distributed, through his consultants, the Frontier and Alpha securities;
3. made misrepresentations, contrary to section 50(1)(d), when he made untrue statements of material facts about the Frontier and Alpha securities, and when he omitted material facts about those securities; and
4. perpetrated a fraud, contrary to sections 57(b) and 57.1(b), when he made misrepresentations to Frontier and Alpha investors, and used their funds differently than the purposes the investors intended.

IV Submissions on Sanctions

¶ 88 We direct the parties to make their submissions on sanctions as follows:

By May 14 The Executive Director delivers submissions to Anderson and the Secretary to the Commission

By May 28 Anderson delivers response submissions to the Executive Director and the Secretary to the Commission

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Either party wishing an oral hearing on the issue of sanctions so advises the other party and the Secretary to the Commission

By June 4 The Executive Director delivers reply submissions (if any) to Anderson and the Secretary to the Commission

¶ 89 April 25, 2007

¶ 90 **For the Commission**

Brent W. Aitken
Vice Chair

Neil Alexander
Commissioner

Robert J. Milbourne
Commissioner