

2007 BCSECCOM 350

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

Submissions completed June 1, 2007

Date of Decision June 21, 2007

Submissions filed by

Douglas B. Muir	For the Executive Director
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Decision

Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. This decision should be read with our Findings in this matter made on April 25, 2007 (see 2007 BCSECCOM 198).
- ¶ 2 The executive director filed submissions on sanctions. Anderson, who did not appear nor was represented at the hearing that led to our Findings, sent a letter to commission staff. In the letter, he says he is currently incarcerated in New York and is “unable to appear in response” to the Findings. He also says he is “facing personal bankruptcy” and is not in a position to pay a fine.
- ¶ 3 Anderson created and promoted two investments, Frontier Assets and the Alpha Program, both of which we found to be fraudulent. 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.
- ¶ 4 In Frontier (which Anderson represented as a separate company but was merely a name Anderson used to promote the investment), investors lent money to

2007 BCSECCOM 350

Anderson for investment in a variety of investments. However, instead of investing their money, he used the money he raised from new investors mostly to pay interest to existing investors.

- ¶ 5 Anderson raised about \$7.7 million through Frontier. 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.
- ¶ 6 In Alpha, Anderson told investors their funds would be used to invest in a new commodity exchange called Flat Electronic Data Interchange (FEDI).
- ¶ 7 Of the \$7 million Anderson raised, it appears that about \$3 million went to FEDI. FEDI never started operations, and Anderson says it yielded "zero profits". The investors have lost their investment.
- ¶ 8 Anderson used almost all of the remaining \$4 million he raised from investors, not to invest in FEDI, but for other purposes. Most of this is still outstanding. There is no evidence to suggest that any of this money will ever be repaid.
- ¶ 9 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*.
- ¶ 10 Anderson has never been registered under the Act, and no prospectus has ever been filed under the Act for Frontier or Alpha.

Findings

- ¶ 11 We found 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

2007 BCSECCOM 350

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.

Discussion

- ¶ 12 The executive director seeks a permanent cease trade order against Anderson, and orders permanently prohibiting him from being a director or officer of any issuer, and from engaging in investor relations activities. The executive director also seeks an administrative penalty against Anderson of \$250,000.
- ¶ 13 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission discussed the factors relevant to sanction as follows (at page 24):

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

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

- ¶ 14 Anderson's misconduct is serious. He contravened sections 34(1) and 61(1), the foundation investor protection provisions of the Act. These provisions are designed to prevent situations just like the one that has resulted from his conduct.

2007 BCSECCOM 350

- ¶ 15 Section 34(1) requires that those who trade in securities be registered. It is the means by which the Act intends to ensure that purchasers of securities are offered only securities that are suitable. Section 61(1) of the Act requires that those who wish to distribute securities file a prospectus with the Commission. Its intent is that investors and their advisers get the information they need to make an informed investment decision.
- ¶ 16 Even more seriously, Anderson made misrepresentations to investors that went to the heart of their intended investments, and he perpetrated a fraud on them.
- ¶ 17 Through his serious misconduct, Anderson significantly harmed investors and damaged the integrity of British Columbia's capital markets. Anderson raised about \$14.7 million from 352 investors. Almost all of this money is gone, with no apparent likelihood of recovery.
- ¶ 18 We are not aware of any mitigating circumstances. As for Anderson's past conduct, we note that he continued to distribute Alpha securities in British Columbia after having been disciplined for doing so in Ontario.
- ¶ 19 Anderson's conduct shows he is not fit to participate in our capital markets. We must also make orders that will demonstrate the consequences of the conduct he exhibited, and that will have an appropriate deterrent effect.
- ¶ 20 The commission has made orders of the type sought by the executive director in case involving fewer investors and fewer losses. In our opinion, the orders we are making are consistent with decisions made by past panels in similar circumstances (see, for example, *Barker* 2005 BCSECCOM 146; *Sniper Sports Ltd.* 2005 BCSECCOM 560; *Maudsley* 2005 BCSECCOM 577).
- ¶ 21 Anderson says that he is facing bankruptcy and will therefore not be able to pay an administrative penalty. However, for the purposes of general deterrence, it is appropriate to impose a penalty to deter other market participants from similar wrongdoing. In these circumstances, we are imposing the maximum penalty available under the Act at the time of Anderson's misconduct.
- ¶ 22 Therefore, considering it to be in the public interest, we order:
1. under section 161(1)(b) of the Act, that Anderson cease trading in and is prohibited from purchasing securities or exchange contracts permanently;

2007 BCSECCOM 350

2. under section 161(1)(d)(i), that Anderson resign any position he holds as a director or officer of any issuer, except an issuer all the securities of which are owned beneficially by him, his wife or his children;
3. under section 161(1)(d)(ii), that Anderson is prohibited permanently from becoming or acting as a director or officer of any issuer except an issuer all the securities of which are owned beneficially by him, his wife or his children;
4. under section 161(1)(d)(iii), that Anderson is prohibited permanently from engaging in investor relations activities; and
5. under section 162, that Anderson pay an administrative penalty of \$250,000.

¶ 23 June 21, 2007

¶ 24 **For the Commission**

Brent W. Aitken
Vice Chair

Neil Alexander
Commissioner

Robert J. Milbourne
Commissioner