2008 BCSECCOM 214

Laurence Michael Schlosser

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

Hearing

Panel	Brent W. Aitken, John K. Graf, Suzanne K. Wiltshire,	Vice Chair Commissioner Commissioner
Hearing dates	November 5 – 9, 2007	
Submissions completed	January 31, 2008	
Decision date	April 29, 2008	

Appearing

Lisa Ridgedale	For the Executive Director

Findings

I Introduction

¶ 1 This is a hearing under sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418. In a notice of hearing dated January 18, 2007, the Executive Director alleged that from December 2000 to January 2005 Laurence Michael Schlosser

- distributed securities of Global Village West Marketing Group without being registered to do so, and without filing a prospectus, contrary to sections 34 and 61 of the Act,
- made misrepresentations, contrary to section 50(1)(d), and
- perpetrated a fraud, contrary to section 57.

¶ 2 We heard the matter in November 2007. Schlosser had notice of the proceedings and was aware of them, but did not appear. The executive director filed submissions on both liability and sanctions on November 19, 2007.

II Schlosser's Death

¶ 3 Schlosser died on December 21, 2007. In some cases, that would be the end of the matter, but this is not one of those. We have found that Schlosser defrauded British Columbia investors, and we consider it to be in the public interest to make our findings public. Our findings may be helpful in preventing future investors from suffering the same fate in similar circumstances.

¶ 4 We are not making any orders. In circumstances where a respondent dies, we would not make personal orders. Financial orders (such as those under section 161(1)(g) – disgorgement, or section 162 – administrative penalty) are another matter, but in this case the evidence is that Schlosser's estate has no significant assets.

III Background

¶ 5 The evidence included

- oral testimony from seven individuals who invested money with Schlosser
- the transcript of a March 26, 2006 interview of Schlosser, under oath, by commission staff
- banking documents and credit card records
- other documents related to the investments and to Schlosser's activities

¶ 6 Schlosser has never been registered under the Act. No prospectus for Global Village securities has been filed under the Act.

¶ 7 Schlosser carried on business under the name Global Village West Marketing Group. It was not a separate legal entity. Its ostensible business was placing advertising on waste receptacles located in high-traffic locations. The idea was to supply waste receptacles free of charge to businesses that needed them, and to make money on the advertising.

¶ 8 For each $7,000 invested, Schlosser gave the investor a promissory note for $14,000, payable one year after the date of investment. Schlosser signed the promissory notes on his own behalf and purportedly on behalf of Global Village.

¶ 9 Schlosser sold at least $288,000 of securities of Global Village to 11 British Columbia investors. Most of the investors met him and came to trust him through his participation in a substance abuse support group or because they went to the same church.

¶ 10 He did not repay the promissory notes when due. All of the investors lost the money they invested, and received no return on their investment.

¶ 11 Schlosser prepared the business plans he showed investors and all of the projections and other documents he used to induce them to invest. He also prepared the promissory note he gave investors.

¶ 12 Schlosser told investors before they invested that:

- their investment would double in value within one year
- he had signed advertising contracts with major corporations, such as Adidas, TaylorMade, Viacom, and Starbucks
- receptacles in place were projected to be 600 in the first year, rising to nearly 4,000 after six years
- he expected Global Village to be in an immediate positive cash flow position within three months and to be profitable within the first year

¶ 13 Schlosser told one investor before she invested that Global Village was to be sold to a large advertising firm for millions of dollars.

¶ 14 None of this was true. In his interview with commission staff, Schlosser said:

- the projections and reports he provided to investors were just "numbers out of a hat"
- he simply made up the promised 100% return
- he "never sold anything, actually" – that he had no contracts for advertising, none to put the receptacles in place, and none for supply of the receptacles
- anything he told investors "was just projections"
- there was no agreement, or even negotiations, for the sale of the business
- "I kept lying to myself that I was going to make this thing work"
- he shredded most of the documents he had related to Global Village at a time when he was contemplating suicide
- he was broke and was about to be evicted; his car had been repossessed, and he had pawned any significant assets he had

¶ 15 Schlosser spent some of the investors' money on travel and other expenses which he said he incurred in his attempts to secure contracts. He spent the rest of the investors' money on personal expenses that he said was in lieu of salary, although he did not tell the investors that any of their funds would be put to that purpose. These included expenses for

- groceries and restaurant meals
- clothing purchases and dry cleaning
- retail purchases
- home utility bills and insurance premiums
- automobile leasing, maintenance and insurance payments

¶ 16 Schlosser commingled his business and personal spending, so it is difficult to conclude with certainty how much to attribute to each, but the evidence suggests that the amounts he spent on personal items were significant, relative to the amounts he says he spent on Global Village business. As he had no significant source of income, other than the capital he was raising, most or all of what he spent on personal items came from the money he raised from investors.

¶ 17 Schlosser saw the investment as high risk. In his interview, Schlosser said that at the time he was taking investments, "I had no collateral, I had no business, I had no nothing. So it was they were taking a chance on myself."

¶ 18 After it became clear that none of the investors would recover any of their investment, Schlosser emailed some of them, saying, "I have been referred to as a pathological liar and a con and I believe I am both."

IV Analysis and Findings

¶ 19 The executive director alleges that Schlosser contravened the legislation by:

1. trading in securities without being registered and distributing securities without filing a prospectus
2. making misrepresentations, and
3. perpetrating a fraud.

A. Illegal trading and distribution

¶ 20 The Executive Director alleges that Schlosser contravened sections 34(1) and 61(1).

¶ 21 Section 34(1) says "a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . .".

¶ 22 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.

¶ 23 If we are to find that Schlosser contravened sections 34(1) and 61(1), we must first find that:

1. there were securities involved,
2. Schlosser traded those securities in British Columbia, and
3. for section 61(1), his trades were a distribution.

¶ 24 Section 1(1) defines security:

> "security" includes . . . (d) a bond, debenture, note or other evidence of indebtedness . . .

¶ 25 The Global Village investments were evidenced by promissory notes, which fall within that definition, and are therefore securities, and we so find.

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);

¶ 26 Schlosser created and promoted Global Village. He prepared all of the materials used to solicit the investors and sold them the Global Village securities in British Columbia. He controlled the flow of cash. All of these activities fall within paragraphs (a) and (f) of the definition of trade. We find that Schlosser traded securities in British Columbia.

¶ 27 Section 1(1) defines distribution as "a trade in a security of an issuer that has not been previously issued". The Global Village promissory notes were securities not previously issued. We find that Schlosser's trading in these securities were distributions.

¶ 28 We have found that the Global Village promissory notes are securities, and that Schlosser traded and distributed those securities in British Columbia.

¶ 29 Schlosser has never been registered under the Act. He filed no prospectus for the promissory notes. Therefore, in the absence of an applicable exemption, he contravened sections 34(1) and 61(1) when he traded the Global Village securities.

¶ 30 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.

¶ 31 We therefore find that Schlosser contravened sections 34(1) and 61(1) when he traded and distributed the Global Village securities.

B Misrepresentation

¶ 32 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."

¶ 33 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."

¶ 34 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.

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

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

¶ 36 Schlosser made untrue statements:

- the investment would double in value within one year
- he had signed advertising contracts with major corporations, such as Adidas, TaylorMade, Viacom, and Starbucks
- receptacles in place were projected to be 600 in the first year, rising to nearly 4,000 after six years
- he expected Global Village to be in an immediate positive cash flow position within three months and to be profitable within the first year
- Global Village was to be sold to a large advertising firm for millions of dollars.

¶ 37 Schlosser omitted to tell investors that he would be spending some of their invested funds on personal expenses.

¶ 38 We find that each of these statements and the omission relate to a material fact because each would significantly affect the value of the securities of Global Village. We therefore find that Schlosser's untrue statements and his omission related to material facts.

¶ 39 Schlosser knew at the time he made the statements and omission, that

- he simply made up the promised 100% return
- he "never sold anything, actually" – that he had no contracts for advertising, none to put the receptacles in place, and none for supply of the receptacles
- anything he told investors "was just projections"
- the projections and reports he provided to investors were just "numbers out of a hat"

- there was no agreement, or even negotiations, for the sale of the business
- he was spending investors' money on personal expenses

¶ 40 We find that Schlosser knew that these untrue statements and the omission were misrepresentations, and he made these misrepresentations for the purpose of persuading the investors to invest in the Global Village securities.

¶ 41 We therefore find that Schlosser made misrepresentations to the investors and in so doing contravened section 50(1)(d).

C Fraud

¶ 42 The notice of hearing alleges that Schlosser engaged in transactions, or a series of transactions, which perpetrated a fraud, contrary to section 57.

¶ 43 Section 57(b) said, at the relevant time:

> "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."

¶ 44 We have already found that Schlosser traded securities when he solicited investors to invest in the Global Village securities. Did he know that those transactions perpetrated a fraud on persons in British Columbia or anywhere?

¶ 45 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."

¶ 46 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
> 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)."

¶ 47 The evidence provides clear and convincing proof that Schlosser committed what *Théroux* describes as a "prohibited act" and that it caused deprivation. We have found that Schlosser made misrepresentations, by definition an act of deceit. Those who invested made no return and lost all of their investment.

¶ 48 It is also our opinion that the evidence provides clear and convincing proof that Schlosser had subjective knowledge of the deceit, and that it would result in the deprivation of others.

¶ 49 We have found that Schlosser knew he was making the misrepresentations that we have found he made.

¶ 50 Schlosser also knew that, through his misrepresentations, he was putting the investors' pecuniary interests at risk. He knew that:

- Global Village was a high-risk investment
- there was no reasonable basis for the returns and projections he was providing investors – according to him, he made it all up
- his misrepresentations went to the heart of the viability of the business
- he was spending investors' money on personal expenses without telling them

¶ 51 We therefore find that Schlosser perpetrated a fraud on persons inside British Columbia, and in so doing contravened section 57(b).

V Summary of Findings

¶ 52 We find that Schlosser:

1. traded in securities without being registered to do so, contrary to section 34(1)(a) of the Act, and distributed securities without filing a prospectus, contrary to section 61(1), when he distributed the Global Village securities;
2. made misrepresentations, contrary to section 50(1)(d), when he made untrue statements of material facts about the Global Village securities; and
3. perpetrated a fraud, contrary to section 57(b), when he made misrepresentations and put the investors' pecuniary interests at risk.

¶ 53 April 29, 2008

¶ 54 **For the Commission**

Brent W. Aitken
Vice Chair

John K. Graf
Commissioner

Suzanne K. Wiltshire
Commissioner