

# 2011 BCSECCOM 289

## Royal Crown Ventures Group Ltd. and Thomas Joseph Sears

*Securities Act, RSBC 1996, c. 418*

### Hearing

<b>Panel</b>	Brent W. Aitken Don Rowlatt Shelley C. Williams	Vice Chair Commissioner Commissioner
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**Hearing dates** March 14 and 15, 2011

**Submissions completed** April 7, 2011

**Date of Decision** June 21, 2011

### Appearing

Mila Pivnenko For the Executive Director

### Decision

#### I Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 On October 29, 2010, the executive director issued a notice of hearing alleging that Royal Crown Ventures Group Ltd. and Thomas Joseph Sears contravened the Act during the period June 2007 to September 2008 by:
- raising \$1.9 million by distributing Royal Crown shares to 95 investors, including 56 residents of British Columbia, without being registered and without filing a prospectus and, for 86 of those investors, without the benefit of exemptions from those requirements,
  - making misrepresentations with the intention of effecting a trade in Royal Crown shares, and
  - telephoning residences from British Columbia for the purpose of trading Royal Crown shares.
- ¶ 3 Neither of the respondents appeared or was represented by counsel at the hearing. We granted the executive director's request that we consider submissions on both liability and sanction together.

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- ¶ 4 Sears was a director of Royal Crown and its president and chief executive officer. The executive director proved, and we find, that Sears alone directed and managed Royal Crown's affairs.
- ¶ 5 Neither of the respondents has been registered under the Act. Royal Crown has never filed a prospectus under the Act.

### **II Findings**

#### **A Illegal distribution**

- ¶ 6 Section 34(1) of the Act says that a person must not trade securities without being registered to do so. Section 61(1) says that a person must not trade securities in a distribution without filing a prospectus. We find that the executive director proved that Royal Crown raised \$1,895,500 by distributing its shares to investors, and that \$1,835,500 of those proceeds it raised by distributing its shares without being registered, without filing a prospectus, and without the benefit of any exemptions from the registration and prospectus requirements, contrary to sections 34(1) and 61(1) of the Act.
- ¶ 7 Section 168.2 says that if "a person, other than an individual" contravenes a provision of the Act, an officer or director of the person "who authorizes, permits, or acquiesces in the contravention" also contravenes the provision.
- ¶ 8 We find that the executive director proved that Sears authorized, permitted or acquiesced in Royal Crown's contravention of sections 34(1) and 61(1), and therefore also contravened those sections through the operation of section 168.2.

#### **B Misrepresentations**

- ¶ 9 Section 50(1)(d) 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."
- ¶ 10 Section 1(1) defines a misrepresentation as "an untrue statement of a material fact, or . . . an omission to state a material fact that is . . . necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made."
- ¶ 11 Section 1(1) defines a material fact as "a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value" of the security in question.
- ¶ 12 We find that the executive director proved that Royal Crown and Sears (through the operation of section 168.2) made misrepresentations contrary to section

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50(1)(d) when, with the intention of effecting a trade in Royal Crown shares, they made these untrue statements to investors:

- Royal Crown was in possession of a large stockpile of iron ore ready to be shipped to market
- Royal Crown shares would be listed on a stock exchange or publicly traded within a short period of time
- Royal Crown investors would receive returns of 37.5% for year 1, 227% for year 2, and 417% for year 3.

### **C Telephoning residences**

- ¶ 13 Section 49(2)(b) says a person must not telephone a residence from British Columbia for the purpose of trading a security.
- ¶ 14 We find that the executive director proved that Royal Crown and Sears (through the operation of section 168.2) contravened section 49(2)(b) when they employed persons to make calls to residences for the purpose of trading Royal Crown securities.

### **D Summary of Findings**

- ¶ 15 We find that Royal Crown and Sears:
1. traded and distributed Royal Crown securities without being registered, without filing a prospectus, and without the benefit of an exemption from those requirements, contrary to section 34(1) and 61(1) of the Act;
  2. made statements that were misrepresentations, with the intention of effecting a trade in Royal Crown securities, contrary to section 50(1)(d); and
  3. telephoned residences from British Columbia for the purpose of trading Royal Crown securities, contrary to section 49(2)(b).

### **III Sanctions**

- ¶ 16 The factors relevant to sanction are set forth in *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22 (see page 24).
- ¶ 17 Sears used Royal Crown as a vehicle to illegally raise funds from investors, made misrepresentations and employed boiler-room techniques to maximize investment. This is serious conduct that damages market integrity.
- ¶ 18 Sears benefited from his illegal activity – he took, at least, just under \$500,000 of the \$1.9 million raised from investors.

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- ¶ 19 That investors were harmed is obvious. There is no evidence to suggest that they will recover any part of the \$1.9 million they invested. In these circumstances, we consider it appropriate to order disgorgement.
- ¶ 20 All of this damages the integrity and reputation of our markets, both locally and in the other jurisdictions where Sears raised money.
- ¶ 21 There are no mitigating factors.
- ¶ 22 The orders we are making are intended to deter the respondents from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.
- ¶ 23 Commission staff proposed, on the basis of past decisions, an administrative penalty of \$100,000. In our opinion, more recent cases suggest a higher penalty would be appropriate (see *Manna Trading Corp Ltd.* 2009 BCSECCOM 595, *Kim* 2010 BCSECCOM 684, and *Castiglioni* 2010 BCSECCOM 62). Although the Commission found fraud in those cases, in our opinion, similar reasoning should apply when: the respondent has engaged in an illegal distribution, the respondent has made misrepresentations in doing so, there is no evidence that the enterprise was a legitimate business, the respondent has profited by his misconduct, and the investors have little or no hope of recovering their investment.
- ¶ 24 When fraud is found, the administrative penalty ordered is often a multiple of the amount raised. Here, there is no allegation or finding of fraud, so we are ordering an administrative penalty about equal to the amount raised.

### IV Orders

- ¶ 25 Considering it to be in the public interest, we order:

#### *Sears*

1. under section 161(1)(b) of the Act, that Sears cease trading, and is prohibited from purchasing, securities or exchange contracts;
2. under section 161(1)(d)(i) and (ii), that Sears resign any position he holds as, and is prohibited from becoming or acting as, a director or officer of any issuer, registrant, or investment fund manager;
3. under section 161(1)(d)(iii), that Sears is prohibited from becoming or acting as a registrant, investment fund manager or promoter;

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4. under section 161(1)(d)(iv), that Sears is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
5. under section 161(d)(v), that Sears is prohibited from engaging in investor relations activities;
6. under section 161(1)(g), that Sears pay to the Commission the funds he obtained as a result of his contraventions of the Act, which we find to be not less than \$1,895,500;
7. under section 162, that Sears pay an administrative penalty of \$1.9 million;
8. the orders in paragraphs 1 through 5 remain in force until the latest of June 21, 2031 and the dates the amounts described in paragraphs 6, 7, 13 and 14 are paid;

### ***Royal Crown***

9. under section 161(1)(b), that all persons cease trading permanently, and are prohibited permanently from purchasing, any securities of Royal Crown;
10. under section 161(1)(b), that Royal Crown permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;
11. under section 161(1)(d)(iii), that Royal Crown is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;
12. under section 161(d)(v), that Royal Crown is prohibited permanently from engaging in investor relations activities;
13. under section 161(1)(g), that Royal Crown pay to the Commission the funds obtained as a result of its contraventions of the Act, which we find to be not less than \$1,895,500;
14. under section 162, that Royal Crown pay an administrative penalty of \$1.9 million; and
15. Sears and Royal Crown be jointly and severally liable for the amounts in paragraphs 6, 7, 13, and 14, provided that the amounts paid under paragraphs 6 and 13 shall not exceed the funds obtained by Sears' and Royal Crown's contraventions of the Act, and the amounts paid under paragraphs 7 and 14 shall not exceed \$1.9 million.

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¶ 26 June 21, 2011

¶ 27 **For the Commission**

Brent W. Aitken  
Vice Chair

Don Rowlatt  
Commissioner

Shelley C. Williams  
Commissioner