

Citation: 2014 BCSECCOM 215

**Robert Waters**

***Securities Act, RSBC 1996, c. 418***

**Hearing**

<b>Panel</b>	Brent W. Aitken Judith Downes Gordon L. Holloway	Vice Chair Commissioner Commissioner
<b>Hearing Dates</b>	October 29 and 30, 2013	
<b>Submissions Completed</b>	February 25, 2014	
<b>Date of Findings</b>	June 5, 2014	
<b>Appearing</b>		
Veda Kenda	For the Executive Director	
Robert Waters	For himself	

**Findings**

**I Introduction**

- ¶ 1 This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 In a notice of hearing issued December 11, 2012 (2012 BCSECCOM 466) the executive director alleges that Robert Waters contravened the Act, by trading and distributing securities of Berkeley Coffee & Tea, Inc. to 45 investors for proceeds of \$312,977, without being registered and without filing a prospectus, contrary to sections 34(a) and 61(1) of the Act.
- ¶ 3 Waters appeared on his own behalf at the hearing. He entered documents, called witnesses, testified and was cross-examined, and filed submissions.
- ¶ 4 The evidence also includes information from Berkeley given to Commission staff investigators through its counsel, and includes the transcript of Waters' sworn evidence in a compelled interview by Commission staff in June 2011. Waters was not represented by counsel at the interview.

## **II Background**

- ¶ 5 Berkeley is a reporting issuer under the Act. Berkeley filed a prospectus in the United States with the Securities and Exchange Commission. It has never filed a prospectus under the Act.
- ¶ 6 Waters has never been a director, officer, control person or founder of Berkeley. Waters was registered under the Act for 15 years as an investment adviser. He has not been registered since September 1998.
- ¶ 7 In April 2011 Berkeley sold shares to 59 investors for total proceeds of \$484,950. Waters solicited the sales to 45 of these investors for total proceeds of \$312,977. Waters was not compensated for these trades. He testified, and Berkeley confirmed, that his expectation was he would earn a director or officer position at Berkeley in recognition of his assistance with the distribution, although he acknowledges that there is nothing in writing to that effect.
- ¶ 8 In May 2011 Berkeley filed an exempt distribution report in which it relied on the close friends, family and business associates exemption in section 2.5 of National Instrument 45-106 *Prospectus and Registration Exemptions*. In February 2012 Berkeley acknowledged in a letter to Commission staff that it was not entitled to rely on that exemption.
- ¶ 9 Waters does not dispute that, as alleged, he distributed Berkeley securities without being registered and without a prospectus having been filed in British Columbia. However, he testified that he was assured by Berkeley that exemptions were not necessary:

“We were absolutely assured that this was, exemptions didn't apply to us at all. It was an IPO, past, you know, cleared by, you know, by the SEC, and we could distribute it anywhere in North America, completely unequivocal insurance.”

## **III Analysis and Findings**

### **A The Issues**

- ¶ 10 Section 34(a) of the Act says “a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . . .”
- ¶ 11 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.

- ¶ 12 Section 1(1) defines “trade” to include “(a) a disposition of a security for valuable consideration” and “(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)”.
- ¶ 13 Section 1(1) defines “distribution” as “a trade in a security of an issuer that has not been previously issued”.
- ¶ 14 The evidence entered by the executive director proves, and Waters does not dispute, that he distributed Berkeley shares without being registered and that no prospectus was filed for Berkeley in British Columbia.
- ¶ 15 We find that Waters traded and distributed securities of Berkeley without being registered and without filing a prospectus, contrary to sections 34(a) and 61(1).
- ¶ 16 Waters testified that he believed that the prospectus filed by Berkeley with the SEC would qualify the shares for distribution “anywhere in North America”. We wonder how an individual who was a registered investment adviser for 15 years in British Columbia could reach that conclusion. However, the parties are free to make further submissions on that, and other relevant matters, at the sanctions phase of the hearing.

#### **IV Submissions on sanction**

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

By June 20	The executive director delivers submissions to the respondent and to the secretary to the Commission
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By June 30	The respondent delivers response submissions to the executive director and to the secretary to the Commission
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Either party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the

hearing as soon as practicable after the executive director delivers reply submissions (if any).

By July 9

The executive director delivers reply submissions (if any) to the respondent and to the secretary to the Commission

¶ 18 June 5, 2014

¶ 19 **For the Commission**

Brent W. Aitken  
Vice Chair

Judith Downes  
Commissioner

Gordon L. Holloway  
Commissioner