

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Snider, 2015 BCSECCOM 388

Date: 20151022

Rodney John Snider

Panel	Nigel P. Cave Don Rowlatt Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
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Hearing Date June 15, 2015

Submissions Completed July 23, 2015

Date of Findings October 22, 2015

Appearing
Shaneel Sharma For the Executive Director

Rodney John Snider 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 November 19, 2014 (2014 BCSECCOM 471), the executive director alleged that:

a) John Snider distributed securities of Flag Resources (1985) Limited to 11 investors for proceeds of \$140,500, without being registered and without having filed a prospectus, contrary to sections 34(a) and 61(1)(a) of the Act; and

b) Snider engaged in conduct that is contrary to the public interest.

[3] At the commencement of the hearing, the executive director narrowed his allegations of distributions in contravention of section 61(1)(a) to four investors for proceeds of \$21,000.

- [4] The executive director also withdrew the allegations that:
- a) the respondent distributed securities without being registered to do so, contrary to section 34(a); and
 - b) the respondent engaged in conduct that was contrary to the public interest.
- [5] During the hearing, the executive director called one witness – a Commission investigator, tendered documentary evidence and provided written submissions. The respondent attended the oral hearing, testified and tendered documentary evidence.
- [6] Following the hearing, the respondent filed a document that contained both submissions (which are addressed below) and a statement that the respondent would no longer participate or defend himself in the proceedings. As a consequence, the submissions on liability were conducted in writing only.

II. Background

- [7] Flag is an Alberta company engaged in the business of mining and mineral exploration. Flag has been the subject of cease trade orders in the provinces of Alberta and British Columbia from May 18, 2006 and May 9, 2006, respectively, through to the date of the commencement of the hearing.
- [8] Flag has never filed a prospectus under the Act.
- [9] Snider is a resident of British Columbia. Snider is a shareholder in Flag.
- [10] One of Flag's directors, Murdo Campbell McLeod (now deceased), was the subject of securities regulatory bans made by the Alberta and British Columbia securities commissions. The order of this commission, made in 2010, banned McLeod from becoming or acting as a director or officer of an issuer.
- [11] At some point, following the cease trade orders made against it, Flag commenced having financial difficulties. The respondent lent money to Flag in 2008. McLeod asked the respondent to find other investors who would lend funds to Flag.
- [12] Between January 2009 and May 2012, Snider convinced several of his acquaintances to contact McLeod with a view to investing in Flag.
- [13] This hearing is concerned with four of these investors. None of them testified at the hearing nor were transcripts of interviews of the four investors with Commission investigators, given under oath, tendered as exhibits. A transcript of an interview with one of the investors (not under oath) was tendered as an exhibit as were notes taken by a Commission investigator of telephone calls with the other three investors. Without other evidence to support the contents of the transcript and the interview notes, we would not place much weight on the factual matters set out in the transcript and the investigator notes. However, this evidence was supported by documentary evidence which confirmed

a significant portion of the contents of the transcript and the investigator notes. Snider's evidence during the hearing was also consistent with that given by the four investors. As such we have relied, to an extent, on the contents of the transcript and the investigator notes.

- [14] Snider admitted to showing the investors reports on Flag's assets, maps, core samples and pictures of its properties. Snider had business cards with Flag's name and logo indicating that Snider was associated with the company and performing investor relations on its behalf.
- [15] Snider directed a number of investors, including the four investors that are the subject of the remaining allegations, to McLeod and Flag. Each of these four investors loaned money to Flag on the understanding that they would receive shares and share purchase warrants in Flag when it resumed trading. None of the four investors were shareholders in Flag prior to their contact with Snider.
- [16] At least two of the investors understood that Flag was the subject of the cease trade orders. All of the investors understood that Flag, at the time of the investment, would not convert the loans into shares of Flag until it resumed trading.
- [17] In cross-examination, Snider described himself as a referral agent for Flag. Snider gave evidence that he was never an officer of Flag.
- [18] There was some evidence relating to whether Snider was made a director of Flag during the relevant period. Records from the Alberta corporate registry do not show that Snider was ever a director of Flag. Snider gave evidence that he was led to believe that the directors had voted him onto the board at a meeting that he did not attend; however, his written submissions also indicate that he was of the view that this appointment was never formalized and that he was never properly appointed as a director of Flag.
- [19] Once Snider had referred the investors to McLeod and Flag, there is no evidence to suggest that Snider was further involved in the sales of securities. McLeod collected the funds from investors and sent evidence of the investors' investment in Flag to the investors.
- [20] Flag has not resumed trading and the investors have not received any of their money back.

III. Analysis and Findings

A. Applicable Law

a) Standard of Proof

- [21] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada held:

49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must

scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[22] The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.

[23] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

b) Prospectus requirements

[24] The relevant provisions of the Act are as follows:

- a) Section 61(1) says “Unless exempted under this Act, 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.
- b) Section 1(1) defines “security” to include “(a) a document, instrument or writing commonly known as a security” and “(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person” and “(d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate....”
- c) Section 1(1) defines “distribution” as “a trade in a security of an issuer that has not been previously issued”.
- d) 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)”.

[25] Section 1.10 of the companion policy to *National Instrument 45-106 – Prospectus Exemptions* states that the person distributing securities is responsible for determining, given the facts available, whether an exemption from the prospectus requirement, set out in section 61(1), is available.

[26] In *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 163, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

37 The determination of whether an exemption applies is a question of mixed law and fact. Many of the exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.

38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship...

B. Positions of the parties

- [27] There is no dispute in these proceedings that the four investors in question made loans to Flag and that those loans were securities. There is also no dispute that the loan agreements were distributions under the Act and that no prospectus was ever filed in connection with the distributions.
- [28] The remaining issues in this case are whether Snider carried out acts in furtherance of the trades by Flag and if so, whether exemptions from the prospectus requirements were available for the four distributions.
- [29] The executive director says Snider carried out acts in furtherance of the Flag trades to the four investors in question. He further says that no evidence was led by the respondent as to the availability of any exemptions for the distributions to the four investors. He says that therefore the respondent has not met the onus of establishing that the distributions were exempt from the prospectus requirements of the Act.
- [30] Snider says that his only involvement in the distributions to the four investors was to refer the investors to McLeod and to provide information to the investors about Flag's assets. He says that this conduct does not contravene section 61 of the Act.
- [31] Snider further says that due to the length of time since the commencement of the Commission's investigation into this matter he "has no choice but to formally withdraw from participating and continuing to defend himself from the false and unproven accusations by Murdo McLeod and the Commission".

C. Analysis

- [32] The evidence is undisputed that Snider was attempting to identify investors whom he could refer to McLeod and Flag with a view to those investors investing in Flag. Snider did identify the four investors in question, referred them to McLeod and provided those investors with information about Flag's assets. It is not relevant that McLeod also carried out acts in furtherance of those distributions, including finalizing the investments. We find that Snider carried out acts in furtherance of each of the distributions to the four investors in question.
- [33] We agree with the executive director that the respondent has not satisfied the onus of providing sufficient evidence to support the factual basis for the distributions to the four investors as being exempt from the prospectus requirements of the Act. For example, there was no evidence tendered during the hearing that any of the four investors satisfied the requirements of being an "accredited investor". Further, it is irrelevant if Snider was ever formally made a director of Flag, and we make no finding on that issue. Even if Snider was made a director of Flag, none of the four investors were family members of Snider nor was his relationship to those investors one which could be characterized as

that of a close personal friend or close business associate. The investors therefore would not in any event have qualified for the “family”, “close personal friend” and/or “close business associate” exemption set out in Subsection 2.5 of *National Instrument 45-106 Prospectus and Registration Exemptions*.

[34] We find that Snider has contravened section 61(1) of the Act with respect to four investors for a total of \$21,000.

[35] Finally, we wish to address Snider’s concerns about the length of time that this proceeding has taken. The loan agreements took place in 2009 and 2012. The notice of hearing in this matter was issued on November 19, 2014, well within the limitation period set out in the Act. The hearing was held and completed expeditiously after the notice of hearing was issued. The proceeding did not take an inordinate amount of time. Further, there was no evidence that whatever time this proceeding has taken has in any way prejudiced the respondent’s ability to participate in the hearing or to defend himself. We find that the amount of time the proceeding has taken has had no impact on the fairness of the hearing.

[36] We direct the parties to make their submissions on sanction as follows:

By November 13, 2015 The executive director delivers submissions to the respondent and to the secretary to the Commission.

By November 27, 2015 The respondent delivers response submissions to each other, the executive director and to the secretary to the Commission.

Any 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 December 4, 2015 The executive director delivers reply submissions (if any) to the respondents.

October 22, 2015

For the Commission

Nigel P. Cave
Vice Chair

Don Rowlatt
Commissioner

Suzanne K. Wiltshire
Commissioner