



British Columbia Securities Commission

Citation: 2015 BCSECCOM 406

## Notice of Hearing

**Brendan James Schouw and Hornby Residences Ltd.**

**(collectively, the Respondents)**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

- ¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against Brendan James Schouw (Schouw) and Hornby Residences Ltd. (Hornby Ltd.) under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

### **Background**

1. Hornby Ltd. is British Columbia company incorporated in 2007.
2. Schouw is BC resident, a property developer and the sole director and officer of Hornby Ltd. He is not registered under the Act.
3. Schouw incorporated Hornby Ltd. to develop a condominium project called the “Artemisia” on Hornby Street in Vancouver.
4. In 2009, Schouw solicited investments on behalf of Hornby Ltd., purportedly to fund his development plans for the Artemisia.

### **Misconduct**

#### ***Fraud***

5. On November 18, 2009, a BC investor (the Investor) invested \$1,000,000 CAD in Hornby Ltd.
6. Schouw gave personal assurances to the Investor that his money would be used for building permits, demolition and construction costs of the Artemisia. He advised that once the project was complete, the Investor could have his investment and interest paid out, or he could choose to use it as a credit towards the purchase of a suite in the Artemisia, or another of Schouw’s developments.
7. Schouw provided the Investor with an investment certificate, signed by Schouw as President and Director of Hornby Ltd. Among other things, the certificate stated that:



- (a) the investment would garner an 18% per year return; and
  - (b) Hornby Ltd. guaranteed repayment of both the principal investment and the interest.
8. On November 19, 2009, Schouw deposited the Investor's funds into an account set up for Hornby Ltd. at a local bank.
9. Upon receiving the Investor's funds, Schouw transferred approximately 75% of the money to other accounts under his control, namely:
  - (a) an account relating to a previous development project; and
  - (b) Schouw's personal bank account.
10. Between November 19, 2009 and December 31, 2009, Schouw spent approximately \$453,155.00 of the Investor's funds on expenses unrelated to the development of the Artemisia.
11. This money was spent on:
  - (a) A large payment to a law firm to satisfy a personal legal judgment against Schouw;
  - (b) Payments directly to investors in a previous project, or to earlier investors in Hornby Ltd.; and
  - (c) Mortgage payments for Schouw's personal residences, as well as rent payments for unknown persons.
12. By December 31, 2009, only \$20,221.48 remained of the Investor's funds in any of the accounts.
13. Schouw did not develop the Artemisia. In 2011, the vacant lots owned by Hornby Ltd. were in foreclosure. Another property development company purchased the land from Schouw, and completed the project in 2014.
14. A bankruptcy order was made against Hornby Ltd. on April 17, 2015.
15. The Investor has not received any interest or principle repayments from Schouw or Hornby Ltd. The Investor's funds are gone.



16. By engaging in the conduct described in this Notice of Hearing, the Respondents perpetrated a fraud on the Investor contrary to section 57(b) of the Act.

***Section 168.2***

17. Schouw, as director of Hornby Ltd., authorized, permitted, and acquiesced in its contraventions of the Act, and therefore contravened those same provisions by operation of section 168.2 of the Act.

**Hearing Process**

- ¶ 2 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Tuesday, December 8, 2015, at 9:00 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 3 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 4 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

Paul C. Bourque  
Nov 6 2015 12:13 PM

- ¶ 5 Paul C. Bourque, Q.C.  
Executive Director