

2003 BCSECCOM 279

Settlement Agreement

Michael Conn Enns

Securities Act, RSBC 1996, c. 418

¶ 1 The following settlement of issues has been reached between Michael Conn Enns (Enns) and the Executive Director.

Agreed Statement of Facts

¶ 2 As the basis for the orders and undertaking referred to in this settlement, Enns acknowledges the following facts as correct:

1. Enns is a resident of Kelowna, British Columbia.
2. Enns has never been registered in any capacity under the *Securities Act*, RSBC 1996, c. 418 or in any other jurisdiction.
3. Enns has no experience or training of any kind in investment advising or planning.
4. In or about July 2001, and after completing a short course on day trading, Enns began day trading through a discount on-line investment dealer (the On-Line Brokerage).
5. After some initial success, Enns commenced day trading on behalf of his father, who provided Enns with funds for this purpose.
6. After some further success, Enns started day trading on behalf of certain other individuals (the Investors), who also provided funds to Enns to invest on their behalf.
7. Enns engaged in day trading for the Investors under the following circumstances:
 - (a) Enns knew all of the Investors personally or as close friends of his father.
 - (b) Enns initially opened separate accounts with the On-Line Brokerage for Investors. When he found this difficult to administer, he pooled Investor funds and investments into a single account that he administered and traded on a discretionary basis.

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- (c) Enns entered into written agreements with each Investor, under which it was agreed that the net profits and losses derived from day trading were to be divided equally between Enns and the Investor.
 - (d) Enns represented to some Investors that he was an independent securities trader with a history of proven results.
 - (e) Enns represented to some Investors that his trading strategy was “to exploit the intraday volatility of the stock market by buying and selling stocks for quick profits”.
8. By October 2002, Enns had:
- a) received a total of approximately \$650,000 from a total of 16 Investors;
 - b) engaged in discretionary day trading for 13 Investors through a joint trading account and for 3 Investors through individual accounts;
 - c) lost approximately \$550,000 of the Investors’ money by day trading;
 - d) used approximately \$170,000 of his own money in an attempt to make up for Investor losses by engaging in further day trading; and
 - e) lost all of his own money.
9. By engaging in day trading for the Investors Enns acted as an unregistered portfolio manager, contrary to section 34 of the Act.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following facts as factors mitigating the sanctions which would otherwise have applied in the public interest:
- 1. Enns co-operated fully after the Commission staff contacted him, acknowledging all relevant facts and admitting culpability at the earliest opportunity. He voluntarily disclosed inculpatory information that was previously unknown to Commission staff, including the names of certain Investors and the amounts invested by them.
 - 2. Enns did not profit from day trading for the Investors.
 - 3. Enns has provided satisfactory evidence to the Commission staff that he is insolvent.

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Undertaking

- ¶ 4 Enns undertakes not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 5 Enns consents to an order by the Executive Director (the Order):
1. under section 161(1)(b)(ii) of the Act that Enns cease trading in and be prohibited from purchasing any securities for five years from the date of the Order;
 2. under section 161(1)(d)(i) of the Act that Enns resign from any position that he may hold as a director or officer of any issuer;
 3. under section 161(1)(d)(ii) of the Act that Enns be prohibited from becoming or acting as a director or officer of any issuer for five years from the date of the Order; and
 4. under section 161(1)(d)(iii) of the Act that Enns be prohibited from engaging in investor relations activities for five years from the date of the Order.

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Waiver

¶ 6 Enns waives any right he may have, under the Act or otherwise, to a hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 7 April 15, 2003

“Michael Conn Enns”

¶ 8 _____
Michael Conn Enns

_____)
Witness Signature)
”)
_____)
Witness Name (please print))
_____)
_____)
_____)
Address)
_____)
Occupation)

¶ 9 April 22, 2003

“Stephen J. Wilson”

¶ 10 _____
Stephen J. Wilson
Executive Director