

2003 BCSECCOM 631

Schedule "A"

Settlement Agreement

James Clark Macdonald

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between James Clark Macdonald (Macdonald) and the Executive Director.

Agreed Statement of Facts

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

The Parties

1. Macdonald is a resident of North Vancouver, British Columbia. He was at all relevant times a registered investment advisor with Raymond James Ltd. under the *Securities Act*, RSBC 1996, c. 418.
2. Velvet Exploration Ltd. (Velvet) was an Alberta company registered extra-provincially in British Columbia and a reporting issuer under the Act trading on the Toronto Stock Exchange during the relevant period.
3. Alwyn Christopher Dales Wright (Wright) resides in British Columbia and was at all relevant times a director of Velvet.
4. Catharine Bruce Wright (Catharine Wright) resides in British Columbia and was the spouse of Wright during the relevant period.
5. Macdonald is the brother of Catharine Wright.
6. Catharine Wright had trading accounts with Macdonald during the relevant period.

Facts

7. During the period from April 20, 2001, to June 14, 2001, which is the relevant period, a material fact existed with respect to the affairs of Velvet that was not generally disclosed (the Material Fact).

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8. The Material Fact was a negotiation between Velvet and El Paso Corporation (El Paso) leading to the eventual purchase of all of Velvet's shares by El Paso for \$8.15 per common share, which was announced by Velvet in a press release dated June 14, 2001.
9. As a director of Velvet, Wright learned during the course of a board meeting of an expression of interest from Coastal Oil & Gas Canada Ltd., a subsidiary of El Paso, in acquiring Velvet. Subsequently, Velvet and El Paso entered into an agreement allowing El Paso access to information about Velvet's business and operations on a confidential basis.
10. On Thursday, May 24, 2001, El Paso presented a non-binding indication of interest to acquire all the common shares of Velvet for an amount between \$7.50 and \$8.75 per share. The same day, after the close of the markets, the indication of interest was discussed at a board meeting in Calgary attended by Wright by telephone. A decision was made at that meeting to explore an agreement with El Paso and to consider an auction of Velvet if no agreement could be reached with El Paso. Velvet shares closed on May 24, 2001 at \$6.05.
11. On Friday morning, May 25, 2001, Catharine Wright when she knew or ought to have known of the Material Fact, telephoned Macdonald and purchased through Macdonald, at the direction of Wright, a total of 25,000 shares at \$6.05 per share for a total acquisition cost of \$152,000.50.
12. On Thursday, June 14, 2001, the sale of Velvet was approved by the board at \$8.15 per share. The same day, the shares of Velvet was halted and the sale was announced.

Breaches of the Act and the Securities Rules

13. Macdonald breached section 48 of the *Securities Rules*, BC Reg. 194/97 in that when Catharine Wright placed the order for the purchase of the shares he knew that she was in a special relationship with Velvet pursuant to section 86(2) of the Act and did not ensure that she was not trading in breach of the Act.

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Public Interest

14. In executing the order of Catharine Wright for the purchase of the shares, without properly considering the issue of a special relationship and ensuring that the purchase of the shares was suitable for Catharine Wright, Macdonald acted contrary to the public interest.

Undertaking

- ¶ 3 Macdonald undertakes to do the following:
 1. pay to the British Columbia Securities Commission the sum of \$18,000, of which \$3,000 represents a contribution to the costs of the investigation; and
 2. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 4 Macdonald consents to an order by the Executive Director that under section 161(1)(f) of the Act, he is reprimanded.

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Waiver

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

¶ 6 September 5, 2003

¶ 7 _____)
James Clark Macdonald)
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Witness Signature)
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Witness Name (please print))
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Occupation)

¶ 8 September 9, 2003

¶ 9 Stephen J. Wilson
Executive Director