

2004 BCSECCOM 79

Schedule A Settlement Agreement

Jacob Jackie Alter

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

¶ 1 The following settlement of issues has been reached between Jacob Jackie Alter (Alter) and the Executive Director.

Agreed Statement of Facts

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

1. Alter is currently a resident of Vancouver, British Columbia. He was registered as an investment adviser in British Columbia from on or about November 1982 until January 2000. Alter is not currently registered under the *Securities Act*, RSBC 1996, c. 418.
2. In or about January of 1997, Michael Lee Mitton (Mitton), either directly or indirectly, acquired most of the issued and outstanding shares of H&R Enterprises, Inc. (H&R), a company that traded on the OTC Bulletin Board in the United States.
3. At the time Mitton was, and continues to be, subject to an order issued by the Superintendent of Brokers that prohibits him from acting as a director or officer of any issuer and from trading in British Columbia until 2008 (Mitton's Cease Trade Order).
4. Between January, 1997 and September 1997 (the Material Time), Mitton manipulated the price of the shares of H&R by, among other things:
 - (a) distributing the shares of H&R to nominees and promoters;
 - (b) causing H&R to issue a substantial number of shares from treasury to nominees, without H&R receiving payment therefore;
 - (c) instructing the nominees to open brokerage accounts at various brokerage houses in British Columbia and elsewhere; and
 - (d) directing the trading of the shares of H&R in the accounts of the nominees such that the shares were traded in a circular fashion at ever increasing prices.

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5. As a result of the activities described above, among other things, the price of the shares of H&R rose from approximately \$2.00 US in August 1997 to a peak of \$6.75 US on September 25, 1997.
6. During the Material Time Alter was registered as an investment adviser with Wolverton Securities Ltd. (Wolverton).
7. During the material time, Leslie Gmur (Gmur), Nicole Burden (Burden) and Charles Wiebe (Wiebe) acted as nominees for Mitton. As nominees of Mitton, Gmur and Burden opened accounts with Alter at Wolverton. As a nominee, Wiebe opened, and had trading authority over, accounts in the name of Key West Realty Ltd. (Key West) with Alter at Wolverton.
8. During August and September 1997, Gmur, Burden and Wiebe deposited share certificates issued from treasury representing 1,355,000 shares of H & R Enterprises into their accounts with Alter. At the time, the issued and outstanding shares of H&R, as a result of these private placements, was 6,975,000 shares. This constituted 19% of the issued and outstanding and outstanding shares of H&R.
9. During August and September 1997, Alter took instructions for trading in the accounts of Gmur and Burden directly from Wiebe, who did not have written trading authorization over the accounts. As a result, Alter knew that the accounts of Gmur, Burden and Key West were related accounts.

Breaches of the Act and the Securities Rules

10. Alter breached:

- (a) section 61 of the Act by allowing Gmur, Burden and Key West to sell shares of H&R they received from treasury without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to section 140 of the *Securities Rules*, B.C. Reg. 194/97; and
- (b) section 48 of the *Securities Rules*, B.C. Reg. 194/97 by failing to learn the essential facts about his clients and, in particular, that they were acting as nominees and that, in concert with others, they held a control position in H&R.

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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. Alter returned all commissions he received as a result of the activity in the accounts of Gmur, Burden and Key West at Wolverton.
 2. Altar's involvement in the trading of shares of H&R was for a short period of time only.
 3. Alter is no longer employed in the securities industry.
 4. Although Alter agrees that the monetary portion of the sanction that otherwise would have applied in this case would have been \$5,000, the Executive Director has taken into account that Alter is impecunious.

Undertaking

- ¶ 4 Alter agrees and undertakes as follows:
1. to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines, from the date of this agreement; and
 2. to not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 5 Alter consents to an order by the Executive Director (the Order) that for a period ending six years from the date of the Order:
1. under section 161(1)(c) of the Act the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to him, except that he may trade in securities for his own registered retirement savings plan through a single account with a person registered to trade in securities under the Act;
 2. under section 161(1)(d) of the Act he be prohibited from becoming or acting as a director or an officer of an issuer, except that he may act as a director or an officer of a company that he is the sole shareholder of; and
 3. under section 161(1)(d)(iii) of the Act, he be prohibited from engaging in investor relations activities.

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Waiver

¶ 6 Alter 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.

¶ 7 January 23, 2004

¶ 8 “J. Alter”
Jacob Jackie Alter

“N. Hanna”)
Witness Signature)
N. Hanna)
Witness Name (please print))
PO Box 10142-701 W. Georgia St.)
Vancouver, BC V7Y 1L2)
Address)
Legal Secretary)
Occupation

¶ 9 January 23, 2004

¶ 10 Stephen J. Wilson
Executive Director