

2009 BCSECCOM 516

Settlement Agreement

Kerry John O'Neill

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Kerry John O'Neill (O'Neill) agree as follows:

Agreed Statement of Facts

1. O'Neill is a resident of Richmond, British Columbia.
2. O'Neill was the principal of an unincorporated investment scheme called the Pay It Forward Program (the PIF Program), which ran from approximately November 2005 to April 2007.
3. Between November 2005 and December 2006, O'Neill solicited investors to join the PIF Program and enter into investment contracts (the PIF Securities) with him.
4. In the PIF Program, O'Neill was to use investors' money to buy and sell distressed merchandise. Investors were to receive back their principal plus a portion of the profits that O'Neill would earn buying and selling distressed merchandise.
5. No prospectus was ever filed for the PIF Securities and none of the exemptions under the *Securities Act, RSBC 1996, c. 418* (the Act) applied to their distribution. O'Neill was not registered under the Act when he distributed the PIF Securities.
6. As a result of O'Neill's conduct, 943 investors invested approximately \$9,630,000 with O'Neill. Of these investors, 590 are British Columbia residents who gave O'Neill a total of approximately \$4,317,752.
7. O'Neill made the following representations to investors and potential investors to convince them to invest with him:
 - (a) O'Neill would use the principal amount of each investment for the sole purpose of buying and selling new and used merchandise;
 - (b) investors would earn returns of 100% to 300% on their investments every 90 days; and

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- (c) payments to investors would be comprised of their original investment capital plus a portion of the profits that O'Neill earned from buying and selling distressed merchandise.
8. The above representations were false or misleading because:
- (a) O'Neill used only about \$1.08 million of investors' money to purchase merchandise. O'Neill used approximately \$6,447,534 to pay amounts due to other investors, \$56,000 for his personal expenses, and \$213,000 for other investment opportunities. The remainder of the investors' funds were used for business related expenses;
 - (b) most investors did not earn any return on their investments, but rather lost some or all of their investment capital; and
 - (c) the payments O'Neill made to investors did not come from profits he made from buying and selling distressed merchandise. Instead, O'Neill paid investors with other investors' funds.

Misconduct

9. In soliciting investors to invest in the Securities, O'Neill:
- (a) traded in securities without being registered under the Act, contrary to section 34(1) of the Act;
 - (b) distributed securities without having filed a prospectus, contrary to section 61 of the Act; and
 - (c) made statements that he ought to have known were misrepresentations, contrary to section 50(1)(d) of the Act.
10. By misdirecting investors' funds, paying investors with other investors' funds, and making misrepresentations to investors, O'Neill perpetrated a fraud against investors, contrary to section 57(b) of the Act.

Public Interest

11. O'Neill acted contrary to the public interest by engaging in the conduct set out above.

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Inability to Pay

12. O'Neill has been unemployed since the PIF Program ended. He lives in subsidized housing and his only income is a monthly disability benefit, which merely covers the cost of basic living expenses. O'Neill has provided the Executive Director with sufficient proof that his liabilities exceed his assets.
13. There is no reasonable prospect of O'Neill paying a fine of \$500,000 that would otherwise be assessed in the public interest for the misconduct described in this Settlement Agreement.

Order

- ¶ 2 The Executive Director will issue an order (the Order) that:
1. under section 161(1)(a) of the Act, O'Neill comply fully with the Act, the Securities Rules, and any applicable regulations;
 2. under section 161(1)(b) of the Act, O'Neill will cease trading in and be permanently prohibited from purchasing any securities or exchange contracts, except that he may trade in one account in his own name through a registered representative if he provides a copy of this Order to the registered representative before any trade;
 3. under section 161(1)(d)(i) and (ii) of the Act, O'Neill resign any position he may hold as a director or officer of an issuer, registrant or investment fund manager and be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
 4. under section 161(1)(d)(iv) of the Act, O'Neill be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 5. under section 161(1)(d)(v) of the Act, O'Neill be permanently prohibited from engaging in investor relations activities.

Consent to Reciprocal Orders

- ¶ 3 Any securities regulator in Canada may rely on the facts admitted in this Settlement Agreement solely for the purpose of making an order similar to the one contemplated above.

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Waiver

- ¶ 4 O'Neill 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.

Counterpart

- ¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.
- ¶ 6 September 08 , 2009

“K.J. O’Neill”

- ¶ 7

Kerry John O’Neill

“S. McColm”)
Witness Signature)
Shawn McColm)
Witness Name (please print))
701 West Georgia Street)
Vancouver, BC V7Y 1L2)
Address)
Lawyer)
Occupation)

- ¶ 8 September 9, 2009

“Brenda M. Leong”

- ¶ 9

Brenda M. Leong
Executive Director