

Citation: 2016 BCSECCOM 65

Settlement Agreement

Gordon Eberwein

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Gordon Eberwein (Eberwein) agree as follows:

Agreed Statement of Facts

1. Eberwein resides in Vancouver, British Columbia. He is an officer and director of his private construction company, W.E. Industries Ltd. (WE Industries).
2. Eberwein is a shareholder of a company named Ackroo Inc. (Ackroo). Ackroo is a reporting issuer under the *Securities Act*, RSBC 1996, c.418 (the Act) and its shares are traded on the TSX Venture Exchange (TSX-V).
3. From February to May 2013, Eberwein traded in Ackroo shares through four brokerage accounts at BMO Investorline Inc. (BMO). Three of the accounts were in his name and one account was in the name of WE Industries. Eberwein had sole trading authority over these four accounts.
4. In May 2013, BMO restricted Eberwein's accounts. Later that same month he opened four accounts at RBC Direct Investing Inc. (RBC) and from September 2013 to December 2013, Eberwein traded in Ackroo shares at RBC. Eberwein maintained sole trading authority over these four accounts.

Misconduct

5. From February 7, 2013 to May 8, 2013 (the BMO Period), Eberwein participated in 37 trades in Ackroo shares in which he was, at the same time, both the buyer and seller (the BMO Wash Trades). The BMO Wash Trades accounted for 2,024,000 of the 4,675,412 Ackroo shares that traded on the TSX-V during the BMO Period, and represented 43% of the total trading volume.
6. From September 5, 2013 to December 13, 2013 (the RBC Period), Eberwein participated in 53 trades in Ackroo shares in which he was, at the same time, both the buyer and seller (the RBC Wash Trades). The RBC Wash Trades accounted for 4,105,500 of the 6,528,727 Ackroo shares that traded on the

TSX-V during the RBC Period, and represented 63% of the total trading volume.

7. The BMO Wash Trades and the RBC Wash Trades had the effect of re-aging debits that had accumulated in the accounts.
8. By engaging in the BMO Wash Trades and the RBC Wash Trades, Eberwein acted contrary to section 57(a) of the Act by creating a misleading appearance of trading activity.

Mitigating Factors

9. Eberwein cooperated with the investigation and admitted that he conducted the BMO Wash Trades and the RBC Wash Trades.
10. Eberwein did not profit from his trading.
11. There is no evidence that the value of Ackroo securities was significantly affected by Eberwein's trading.

Public Interest

12. Eberwein's conduct described in this Settlement Agreement is contrary to the public interest.
13. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

Undertaking

13. Eberwein undertakes to pay \$15,000 to the British Columbia Securities Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.

Order

¶ 2 The Executive Director will issue an order (the Order) that:

1. under section 161(1)(a) of the Act, Eberwein will comply fully with the Act, the Securities Rules, and any applicable regulations; and
2. under section 161(1)(b) of the Act, Eberwein cease trading in and be prohibited from purchasing any securities or exchange contracts for a period of four years, except that he may trade and purchase securities in one account in his own name held through a registered dealer.

Consent to Regulatory Orders

- ¶ 3 Eberwein consents to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out above.

Waiver

- ¶ 4 Eberwein 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 March 10, 2016

Gordon Eberwein

- ¶ 7 _____
Gordon Eberwein

Lisa Ridgedale

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Witness Signature)
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Lisa Ridgedale)
Witness Name (please print))

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1500 – 888 Dunsmuir)
Address)

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Vancouver, BC)
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Lawyer)
Occupation)

- ¶ 8 March 10, 2016

Paul Bourque

- ¶ 9 Paul C. Bourque Q.C.
Executive Director