

2012 BCSECCOM 195

Canada Pacific Consulting Inc. and Michael Robert Shantz

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Kenneth G. Hanna David J. Smith	Vice Chair Commissioner Commissioner
Submissions completed	April 3, 2012	
Date of Decision	May 22, 2012	
Submissions filed by Jeremy Gellis	For the Executive Director	

Decision

I Introduction

- ¶ 1 This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act, RSBC 1996, c. 418*. Our Findings on liability made on March 13, 2012 (2012 BCSECCOM 86) are part of this decision.
- ¶ 2 We found that Canada Pacific Consulting Inc. and Michael Robert Shantz contravened section 34 of the Act when they traded securities without being registered to do so and contravened section 57 of the Act when they perpetrated a fraud on investors.
- ¶ 3 Canada Pacific and Shantz defrauded 11 European investors of \$1.5 million.

II Analysis

- ¶ 4 The executive director seeks permanent orders:
1. under section 161(1)(b), prohibiting Canada Pacific and Shantz from trading or purchasing securities and exchange contracts;
 2. under section 161(1)(d) prohibiting Shantz from:

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- acting as a director or officer of any issuer or registrant,
 - acting as a registrant or promoter,
 - acting in a management or consultative capacity in connection with activities in the securities market, and
 - engaging in investor relations activities; and
3. under section 161(1)(d)(v), prohibiting Canada Pacific from engaging in investor relations activities.

¶ 5 The executive director also seeks an order

1. under section 161(1)(g), requiring Canada Pacific and Shantz to pay to the Commission the amount obtained as a result of their contraventions of the Act, and
2. an order under section 162, requiring Shantz to pay an administrative penalty of \$3 million.

¶ 6 Shantz filed no submissions.

¶ 7 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified the factors relevant to sanction as follows (at page 24):

“In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent’s conduct,
- the harm suffered by investors as a result of the respondent’s conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent’s conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent’s conduct,
- the respondent’s past conduct,
- the risk to investors and the capital markets posed by the respondent’s continued participation in the capital markets of British Columbia,

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- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.”

Seriousness of the conduct; damage to markets

¶ 8 In *Manna Trading Corp Ltd.* 2009 BCSECCOM 595 the Commission said (at para. 18), “Nothing strikes more viciously at the integrity of our capital markets than fraud.” It is the most serious misconduct prohibited by the Act.

¶ 9 This was a blatant fraud. As we noted in our Findings:

“21 There is no evidence that Canada Pacific was engaged in any legitimate business. Indeed the evidence is to the contrary. Canada Pacific lied to investors, stole their money, and took elaborate steps to make the whole scam appear legitimate.”

¶ 10 We found that Shantz knew he was deceiving investors and that his deceit deprived investors of their funds. He knew he was using investor funds for his own purposes.

¶ 11 In this case, the investors were residents of Germany and Switzerland. This egregious fraud has damaged the reputation of our markets internationally in the eyes of some who may well have had no other experience in trading securities in British Columbia.

Enrichment

¶ 12 Canada Pacific and Shantz were enriched by their fraud. The executive director proved that all except about \$53,000 of the \$1.5 million Canada Pacific took from investors it used fraudulently. Shantz took \$210,000 for his own use.

Harm to investors

¶ 13 The 11 investors put \$1,530,004 into Canada Pacific. Of that amount, only \$18,000 was returned to investors. The rest is gone, and there is no evidence that the investors' loss is other than permanent.

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Mitigating or aggravating factors

- ¶ 14 There are no mitigating factors. A consideration of aggravating factors is not relevant when the misconduct is already at the more serious end of the range.

Past conduct

- ¶ 15 There is no evidence that any of the respondents has any regulatory history. Given the seriousness of the misconduct, this is not relevant.

Risk to investors and markets

- ¶ 16 The respondents' misconduct demonstrates clearly that they are a serious risk to investors and to our markets.

Specific and general deterrence

- ¶ 17 The sanctions we impose must be sufficiently severe to ensure that the respondents and others will be deterred from engaging in similarly reprehensible conduct.

Previous orders

- ¶ 18 In previous decisions in fraud cases, the Commission has made permanent orders and imposed significant financial sanctions. We have followed these precedents.

III Orders

- ¶ 19 The executive director applied for an order under section 161(1)(d)(v) that Canada Pacific be prohibited from engaging in investor relations activities. In our opinion, it is more appropriate to cease-trade Canada Pacific. Because we are making that order, it is not necessary to make an order against Canada Pacific under section 161(1)(d)(v).
- ¶ 20 We have ordered an administrative penalty under section 162 against Shantz based on three times his personal enrichment from the fraud.

- ¶ 21 Considering it to be in the public interest, we order:

Canada Pacific

1. under section 161(1)(b) of the Act, that all persons permanently cease trading in, and are prohibited from purchasing, securities of Canada Pacific;
2. under section 161(1)(b), that Canada Pacific cease trading in, and is prohibited from purchasing, securities and exchange contracts, permanently;
3. under section 161(1)(g), that Canada Pacific pay to the Commission any amount obtained, or payment or loss avoided, directly or indirectly as a result

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of the respondents' contraventions of the Act, which we find to be not less than \$1,530,004;

Shantz

4. under section 161(1)(b), that Shantz cease trading in, and is prohibited from purchasing, securities and exchange contracts, permanently;
 5. under sections 161(1)(d)(i) and (ii), that Shantz resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;
 6. under section 161(1)(d)(iii), that Shantz is permanently prohibited from becoming or acting as a registrant or promoter;
 7. under section 161(1)(d)(iv), that Shantz is permanently prohibited from acting in management or consultative capacity in connection with activities in the securities market;
 8. under section 161(1)(d)(v), that Shantz is permanently prohibited from engaging in investor relations activities;
 9. under section 161(1)(g), that Shantz pay to the Commission any amount obtained, or payment or loss avoided, directly or indirectly as a result of the respondents' contraventions of the Act, which we find to be not less than \$1,530,004;
10. under section 162, that Shantz pay an administrative penalty of \$630,000; and

Maximum disgorgement

11. that the aggregate amount paid to the Commission under paragraphs 2 and 9 not exceed the greater of \$1,530,004 and the actual amount obtained, or payment or loss avoided, directly or indirectly as a result of the respondents' contraventions of the Act.

¶ 22 May 22, 2012

¶ 23 **For the Commission**

Brent W. Aitken
Vice Chair

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Kenneth G. Hanna
Commissioner

David J. Smith
Commissioner