BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Sungro, 2015 BCSECCOM 281 Date: 20150708

Mark Aaron McLeary, Timothy John McLeary,
Robert Hainey, Jerry Williams, and Erik John Benson

Panel	Suzanne K. Wiltshire	Commissioner
	Don Rowlatt	Commissioner

Hearing date	June 8, 2015
Submissions Completed	June 8, 2015
Decision date	July 8, 2015

Appearances

Derek J. Chapman	For the Executive Director
H. Roderick Anderson	For Mark Aaron McLeary
M. Bell, Articled Student	

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. The Findings of this panel on liability made on December 16, 2014 (2014 BCSECCOM 505) are part of this decision.

[2] The panel found that:

a) Mark Aaron McLeary, Robert Hainey and Jerry Williams directly or indirectly, engaged in or participated in conduct relating to Sungro Mineral Inc.'s shares that they knew, or reasonably ought to have known, resulted in or contributed to an artificial price for Sungro shares, contrary to section 57(a) of the Act; and

b) McLeary made false or misleading statements to Commission investigators respecting the purpose of his receipt of Narvinder Singh Patric Virk's trading proceeds, contrary to section 168.1(1)(a) of the Act.

[3] The panel dismissed the allegations against Erik John Benson and Timothy McLeary.

II Position of the Parties

Executive Director

[4] With respect to each of McLeary, Hainey and Williams the executive director seeks orders:

a) under section 161(1)(b)(ii), permanently prohibiting each of them from trading or purchasing securities or exchange contracts,

b) under section 161(1)(c), that any or all of the exemptions set out in the Act and regulations do not apply to any of them, and

c) under section 161(1)(d), permanently prohibiting each of them from being or acting as a director or officer of any issuer, becoming or 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.

[5] Under section 161(1)(g), the executive director seeks an order that McLeary pay to the Commission the amount of $91,308.56.

[6] Under section 162, the executive director seeks the following administrative penalties:

a) McLeary - $1.2 million to $1.5 million
b) Hainey - $400,000
c) Williams - $600,000

McLeary

[7] McLeary submits that the prohibitions from engaging in the activities set out in sections 161(1)(b), (c) and (d) of the Act should not exceed six years. He also seeks exceptions to the prohibitions:

a) entitling him to be the director and officer of one issuer in which he owns all the shares; and

b) permitting him to purchase and sell securities in one RRSP and one cash account at a registered dealer provided that he first provides that dealer with a copy of the order made by the panel.

[8] McLeary submits that the appropriate amount to be paid under section 161(1)(g) of the Act is $68,580.

[9] McLeary submits that the appropriate administrative penalty is $88,580.

Hainey and Williams

[10] Hainey and Williams did not attend the sanctions hearing, in person or through counsel. Hainey did not provide any written submissions. Williams provided a written submission in connection with the liability hearing that we reviewed again for the purposes of the sanctions hearing.

III Analysis

A. Factors

[11] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified certain 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,
> - 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.

B. Application of the Factors

Seriousness of the conduct, harm to investors and damage to integrity of capital markets

[12] In our view market manipulation, like fraud, is one of the most serious types of misconduct under the Act. It both harms investors and damages the integrity of British Columbia's capital markets.

[13] In *Siddiqi (Re)*, 2005 BCSECCOM 575, the Commission at paragraph 12 said that section 57(a) of the Act is "fundamental to investor protection because [it] prohibit[s] conduct that strikes at the heart of market integrity - a market untainted by misleading prices or volumes".

[14] In *De Gouveia, Re*, 2013 ABASC 249 the Alberta Securities Commission concluded that manipulative trading "undermines the integrity of the capital market. It is unfair to investors, and jeopardizes the confidence in the capital market on which legitimate investor interest and capital formation depend".

[15] McLeary concedes that his conduct is serious and that manipulative trading goes to the very heart of the capital markets in British Columbia.

[16] But he argues there is no evidence any harm was suffered by investors in British Columbia as a result of his conduct since virtually all of the buying occurred in the United States and was dominated by Williams' group. Further since the halt trade order on July 7, 2009 did not affect trading in the United States, he submits there is no evidence any investors in the United States suffered loss as a result of his conduct.

[17] Sungro was a Nevada company, extra-provincially registered in British Columbia and with its head office in Surrey, British Columbia. We are of course concerned about harm to investors in British Columbia, but it is not only harm to British Columbia investors that is our concern when the stock of a company registered and having its head office in British Columbia is manipulated.

[18] While trading in Sungro shares may have occurred primarily on the OTCBB, this did not preclude BC investor participation in such trading, nor did the participation of Williams' Monk's Den group preclude other investors from trading in Sungro shares during the trading period.

[19] As noted by the panel in *Siddiqi*, investors reading reports of stock transactions assume that the reports reflect legitimate transactions. If instead, as in the case of Sungro shares, the transactions reflect artificial prices investors are deceived as to the market in the security and may be induced by the volume or price changes to purchase or sell securities.

[20] The reasoning in *Siddiqi*, that persons trading in the company's shares while its price was being manipulated traded at prices different than they would have been absent the manipulation, applies even more so in the present case.

[21] Absent the manipulative activities of McLeary, Hainey and Williams, it is unlikely there would have been any trading activity in Sungro's shares. There was no trading activity between Virk's first trade on February 19, 2009 and his next order on June 12, 2009. Sungro had only $299 in assets and no business at the start of the trading period on June 15 and there was no material change in Sungro's prospects during the trading period. Yet, its share price increased to a high of $4.95 on relatively heavy volume during the trading

period, closing at the end of the period on July 6, 2009 at $4.75 giving Sungro a market capitalization of over US$46 million.

[22] We conclude McLeary's, Hainey's and Williams' breaches of section 57(a) harmed investors and damaged the integrity of our capital markets.

[23] McLeary also concedes that his contravention of section 168.1 was serious, but submits there is a lack of evidence with respect to whether his answers, concerning a portion of the Virk proceeds, hindered or frustrated the progress of the investigation.

[24] As recognized in *Nuttall (Re)*, 2012 BCSECCOM 97 at paragraph 8:

> The Commission's investigative powers under the Act are one of the most powerful tools at the Commission's disposal to protect the public interest. A witness who fails to tell the truth puts at risk the effective exercise of those powers.

[25] We found McLeary gave false or misleading statements to Commission investigators during a compelled interview while under oath. This is serious misconduct whether or not it hindered or frustrated the progress of the investigation. Indeed, it seems that an individual who lies under oath always hinders the investigation to some extent since the investigation will be delayed or must be pursued through other means.

Mitigating and aggravating factors

[26] There are no mitigating factors relating to the conduct of McLeary, Hainey or Williams.

[27] The panel in *McCabe (Re)*, 2014 BCSECCOM 505 at paragraph 130, found it was an aggravating factor that McCabe's conduct related to companies in the junior markets, stating: "These markets, by the nature of their companies' early-stage challenges, are particularly vulnerable to reputational damage."

[28] For the reasons stated in *McCabe*, we find the fact that the Sungro manipulation took place when Sungro was a Vancouver-based junior market company to be an aggravating factor.

[29] We agree with the executive director's submission that it is also an aggravating factor in McLeary's case that he carried out his misconduct despite having previously been a founder, president and CEO of several companies whose shares were quoted on the OTCBB or traded on the TSX_V and that much more is to be expected of directors and officers of public companies.

Past conduct

[30] McLeary has no prior history of regulatory misconduct.

[31] The executive director did not advance any prior history of regulatory misconduct by Hainey.

[32] In February 2014, judgments were entered against Williams and two companies he controlled, one of which was the Monk's Den, LLC., in a U.S Securities and Exchange Commission enforcement action. The allegations were that they operated a fraudulent internet-based stock touting and scalping scheme with respect to two stocks, Cascadia Investments, Inc. and Green Oasis, Inc.

[33] The SEC enforcement action alleged that from 2009 to 2010, Williams recommended the two stocks to Monk's Den followers and encouraged them to buy, hold and accumulate the stock while he secretly sold millions of shares that he had received from the companies for promoting their stock, making a profit of over US$2.3 million for himself and his companies. While neither admitting nor denying the allegations in the SEC action, Williams and his companies consented to final judgments enjoining them from violating various sections of US securities laws. The judgments found them:

- jointly and severally liable for disgorgement of over $US2.3 million
- jointly and severally liable for prejudgment interest of US$ 188,766
- severally liable to pay a civil penalty of over US$2.3 million
- imposed a penny stock bar on Williams
- imposed a bar on Williams from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized rating association.

Enrichment

[34] The executive director submits that McLeary was enriched in two ways:

- by the US$79,885.16 (CAD$91,308.56) illegally obtained from the manipulative trading of Virk's shares, which was deposited into the account of McLeary's company (Kramcorp) at Custom House. After being converted to Canadian currency, CAD$68,580 of that deposit was then transferred to McLeary's company's bank account and the remainder paid to Bains; and

- by the transfer of 475,000 Sungro shares to him from four seed shareholders without payment. The shares had a value of more than $2 million on July 6, 2009, the day prior to the first halt trade order. McLeary stood to make a multi-million dollar profit but for the Commission's halt trade orders and temporary orders beginning on July 7, 2009.

[35] McLeary takes no issue with the fact that he indirectly received the amount of $68,580 as part of the proceeds of the sale of Sungro shares, but disputes that he was enriched by the amount paid to Bains. He submits that the amount of $125,000 that Bains agreed to pay as an administrative penalty as part of Bains' settlement with the executive director should account for the amount received from Virk and paid to Bains.

[36] We disagree. McLeary's company received the full proceeds of Virk's trading, which was $91,308.56 after conversion to Canadian dollars. He was enriched by this amount. Whatever the purpose of the subsequent payment to Bains, that payment like any other payment by Kramcorp does not lessen the amount received by Kramcorp and therefore indirectly by McLeary. As for Bains' agreement to pay an administrative penalty to settle the allegations against him, that is simply not relevant to the determination of McLeary's enrichment.

[37] McLeary was also enriched by the receipt of the 475,000 free Sungro shares that he continued to hold and that were worth more than $2 million by the end of the trading period.

[38] With respect to Hainey and Williams:

- 475,000 Sungro shares were also transferred to Hainey's company Internet Marketing from four seed shareholders without payment.
- Hainey did not sell any of the shares during the trading period.
- like McLeary's shares, Hainey's shares were worth more than $2 million on July 6, 2009, prior to the first halt trade order the following day.
- after the trading period, Williams arranged for the sale of 297,500 of the shares in private sales to 16 of the Monk's Den core group, at $2 per share, for proceeds of $595,000.
- Williams received commissions for these sales, in some cases as much as half the purchase price.

[39] Hainey was enriched by the receipt of the 475,000 free Sungro shares and their subsequent partial sale.

[40] Williams was enriched by the receipt of commissions for the subsequent partial sale of the free Sungro shares transferred to Hainey.

Risk to investors and capital markets posed by the respondents' continued participation in the capital markets of British Columbia

[41] Market manipulation by its very nature involves deceit. Because of this, we consider McLeary's, Hainey's or Williams' continued participation in British Columbia's capital markets would pose a significant ongoing risk to both investors and capital markets.

[42] This risk is compounded in McLeary's case by his giving false or misleading statements to Commission investigators.

Respondents' fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers

[43] Again, by its very nature the perpetration of the manipulation shows that McLeary, Hainey and Williams are clearly unfit to be registrants or to bear the responsibilities associated with being directors, officers or advisers to issuers. This is particularly so in McLeary's case who, as a former registrant under the Act and a director and officer of public companies, should have been acutely aware of his responsibility to investors and to the capital markets.

Specific and general deterrence

[44] As the executive director notes, but for the Commission's halt trade and temporary orders, the misconduct of McLeary, Hainey and Williams stood to be very lucrative after McLeary and Hainey each obtained 475,000 free Sungro shares from the seed shareholders, together having a total value at the end of the trading period of more than $4 million.

[45] The sanctions we impose must be sufficient to ensure that McLeary, Hainey, Williams and others will be deterred from engaging in similar misconduct in the future.

Previous orders

[46] The executive director submits that the misconduct is comparable to that in *Hu (Re)*, 2011 BCSECCOM 514, because Hu's misconduct was part of a plan to manipulate the share price of a company and because he also gave false and misleading information to Commission staff.

[47] *Hu* is an insider trading case. The trading was substantial (847,000 shares in 101 trades over a three-week period) and was carried out through someone else's online account as part of a plan to manipulate the company's share price to move it to $2. There was no allegation and no finding of manipulation. Hu intentionally misled Commission staff to hide his illegal insider trading activities with the intention of frustrating the investigation. Investors lost substantial sums from Hu's trades, although there was no evidence that Hu himself had been enriched.

[48] The panel in *Hu* made permanent orders under section 161(1)(b) and (d). The panel made no order under section 161(1)(g) stating there was no evidence Hu was personally enriched.

[49] In making an order under section 162, the panel in Hu concluded that a multiplier of 2.5 to 3 times the calculation of the enrichment created by Hu's illegal trading was appropriate. In coming to that conclusion, the panel noted that section 155(5) of the Act recognizes that in insider trading cases a penalty based on the total profit made by all persons is appropriate regardless of the degree to which any one respondent profits. Section 155(5) also includes, as one of the criteria in determining the fine, an amount up to triple any profit made by all persons because of the contravention of the Act. The panel in *Hu* ordered $1 million for Hu's insider trading contravention and $500,000 for his false or misleading statements to Commission staff and his conduct as a whole.

[50] *Hu* is not a manipulation case. However, both insider trading and manipulation are inherently serious trading-related offences. The provisions of section 155(5) referenced by the panel in *Hu* can also guide an order under section 162 following a finding of manipulation under section 57 of the Act. As such, *Hu* provides guidance for assessing administrative penalties within a range of 1 to 3 times the profit made by all persons because of the contravention of section 57, regardless of the profit made by any one respondent.

[51] McLeary submits that the only case referred to by the executive director that is at all similar to the present case is that of *De Gouveia*, a manipulation case where the panel ordered that De Gouveia cease trading or purchasing securities for 10 years and pay an administrative penalty of $75,000. McLeary described that case as having somewhat similar facts.

[52] We disagree. De Gouveia was an oilrig worker who began trading online and commenting on stocks and trading in an internet bulletin board website. He traded, as the panel put it, somewhat furiously in shares of a publicly traded junior gold mining company after agreeing to spread the company's story in return for options for the company's shares. The company had a real business and real prospects and the market was at the time recovering from the global financial crisis of 2008.

[53] The panel was unable to quantify the extent to which De Gouveia's trading actually altered the price of the company's shares, but based on expert testimony, concluded his misconduct was a factor. The panel noted his improper trading was not itself directly profitable. In our view, these are not similar facts to the orchestrated manipulation of Sungro shares, from $0.35 to a high of $4.95, for a company with only $299 in assets, no business, and no material change in its prospects.

[54] With respect to the finding of manipulation under section 57(a) of the Act, McLeary submits that *Siddiqi* is most analogous to the present case. He argues that while there is no finding of insider trading in his case, the contravention of section 168.1(1)(a) of the Act is a serious but not more serious contravention than the finding of insider trading against Siddiqi.

[55] Siddiqi had engaged in insider trading and manipulation of the shares of a company – for a total of 90,000 shares in 17 trades. The market manipulation was short-lived, taking place over a one-month period, and Siddiqi's actual enrichment was found to be approximately $33,000. The panel noted that persons other than Siddiqi trading in shares of the company at the same time he was trading were likely trading at prices different than they would have been without Siddiqi's activity and would have suffered damages, although there was no way to know the quantum.

[56] The panel imposed an administrative penalty of $60,000 (approximately twice the amount of Siddiqi's likely actual enrichment) and prohibited Siddiqi from trading, acting as a director or officer of an issuer and engaging in investor relations for a period of six years. There was at the time no provision for an order for payment to the Commission of

the amount obtained as a result of the contravention as there is now under section 161(1)(g).

[57] With respect to his breach of section 168.1(1)(a), McLeary submits that the following cases are to be considered.

[58] *Johnson (Re)*, 2007 BCSECCOM 437, involved a registered representative who was found to have acted on unauthorized trading instructions from a third party. The panel also found Johnson contravened section 168.1(1)(a). While under oath, he intentionally misled Commission investigators on two occasions. His misleading statements went to the heart of the matter under investigation.

[59] As well, the panel noted that the expectation of registrants is much higher than that of the general public and the effective implementation of securities legislation depends on the willingness of those who choose to engage in the securities industry to comply with defined standards of conduct.

[60] The panel concluded that in misleading Commission staff, Johnson failed to meet that standard of integrity. The panel suspended Johnson's registration for two months, imposed a period of strict supervision for six months, and ordered him to pay an administrative penalty of $68,000. McLeary submits that the administrative penalty appears to be double the $24,000 in commission Johnson was paid plus a further $20,000 with respect to the contravention of section 168.1(1)(a).

[61] In *Nuttall (Re)*, 2012 BCSECCOM 97, the panel found that Nuttall made false and misleading statements to Commission staff, contrary to section 168.1(1)(a) during a compelled interview. There were no other allegations or findings of misconduct and the panel found no evidence that Nuttall's false statements hindered or frustrated the investigation. The panel ordered an administrative penalty of $15,000 and a reprimand and imposed a trading ban of six months.

[62] McLeary concedes given his experience as an officer and director he should be held to a higher standard than Nuttall. He also argues that he should not be held to the level of a registrant, but does acknowledge he was formerly a registered adviser under the Act.

[63] In *Re Hagerty*, 2014 ABASC 348, the panel found that Hagerty had given a materially untrue statement to commission investigators during a compelled interview (which she then repeated at the merits hearing). The untrue statement allegation related to whether Hagerty, an employee of Pembina Pipeline Corporation, after being told by general counsel that Pembina would be entering into a business combination with Provident Energy Ltd. then told the general counsel that the Hagerty's were going to buy Pembina shares that morning. The panel found that she had not. Allegations of insider trading were not proven. The panel ordered an administrative penalty of $20,000.

[64] In *Independence Energy Corp. (Re)*, 2014 BCSECCOM 209, a panel considered the appropriate sanction for Thomson, a director of an OTCBB company, who contravened

section 168.1(1)(a). The panel found that the statement that Independence had recently located its head office to Calgary was false and that the statement that Thomson was a resident of Calgary was misleading. Mr. Thomson had 30 years of experience as a director and officer of public companies. The panel concluded that the appropriate order was a reprimand and an administrative penalty of $1,000.

[65] The above section 168.1(1)(a) penalty assessments are each particular to the facts of the individual cases. In McLeary's case, the false or misleading statements he gave to Commission investigators were directed to the purpose of his receipt of Virk's trading proceeds. McLeary deliberately told Commission investigators that Virk paid him an amount equal to Virk's trading proceeds as Virk's investment in a deal that McLeary was going to be doing. McLeary's statements were made at a compelled interview, under oath, were deliberate and designed to distance himself from the manipulation. They were an attempt on his part to misdirect the investigation. In this sense, McLeary's actions are most like those of Hu.

C. Appropriate Orders

Market and Trading Bans

[66] It is a privilege, not a right, to participate in the capital markets.

[67] The activities of each of McLeary, Hainey and Williams were key to carrying out the Sungro manipulation. All three of them were active capital market participants at the time of the manipulation. McLeary's contravention of section 168.1(1)(a) is also a serious contravention and demonstrates his lack of integrity.

[68] The continued participation of any of McLeary, Hainey and Williams in our capital markets presents a significant ongoing risk to investors and those markets. For this reason we have ordered permanent prohibitions against each of them under sections 161(1)(b)(ii), (c) and (d).

Section 161(1)(g) order

[69] Under section 161(1)(g) of the Act, the Commission may order a person who has not complied with the Act to pay to the Commission any amount obtained, directly or indirectly, as a result of the failure to comply or the contravention.

[70] The executive director submits that the amount obtained, directly or indirectly, from the manipulative trading of Virk's shares is the $91,308.56 paid into the Custom House account of McLeary's company, Kramcorp,

[71] McLeary argues the amount of $22,278.56, subsequently paid from Kramcorp's Custom House account to Bains, should be deducted from this amount. We disagree.

[72] In *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM, the Commission discussed the principles relevant to section 161(1)(g) orders at paragraphs 42 and 43:

¶42 To summarize, these are the principles that are relevant under section 161(1)(g):

a) the focus of the sanction should be on compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;

b) the sanction does not focus on compensation or restitution or act as a punitive or deterrent measure over and above compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;

c) the section should be read broadly to achieve the purposes set out above and should not be read narrowly to either limit orders:

(i) to amounts obtained, directly or indirectly, by that respondent; or

(ii) to a narrower concept of "benefits" or "profits", although that may be the nature of the order in individual circumstances.

¶43 Principles that apply to all sanction orders would also be applicable to section 161(1)(g) orders, including:

a) a sanction is discretionary and may be applied where the panel determines it to be in the public interest; and

b) a sanction is an equitable remedy and must be applied in the individual circumstances of each case.

[73] The above principles were applied in *Streamline Properties Inc.*, 2015 BCSECCOM 66. In that case, the majority concluded that it is appropriate to begin with the general principle that the full amount raised in an illegal distribution should be paid to the Commission under section 161(1)(g) and to then consider if it is equitable, in the public interest and not punitive to order payment of the full amount obtained, as opposed to a lesser amount or no payment at all.

[74] Applying the principles in *Michaels* and *Streamline*, we find the amount obtained, directly or indirectly, as a result of the contravention of section 57(a) of the Act to be equal to the sum of Virk's and Bahd's trading proceeds during the trading period. Because the executive director seeks only payment of an amount equal to Virk's proceeds of $91,308.56, we have ordered McLeary to pay that amount. We see no reason to order a lesser amount.

Administrative penalty

[75] The executive director submits that: McLeary's misconduct was the most serious of any of the parties, and requires an administrative penalty in the order of $1.2 million to $1.5

million; Williams' misconduct was the second most serious and requires an administrative penalty of $600,000; and, Hainey's misconduct while serious was less so and requires an administrative penalty of $400,000.

[76] We do not agree with the executive director's assessment of the relative culpability of McLeary, Hainey and Williams for the manipulation. While different, the activities of all three were necessary contributions to the success of the manipulation.

[77] McLeary initiated the contact with Hainey and told him about Sungro and its tightly controlled float. He controlled the sell side. He directed Virk's and Bahd's trading and was enriched by the receipt of Virk's trading proceeds and the free Sungro shares transferred to him from seed shareholders that had a value by the end of the trading period of more than $2 million.

[78] Hainey was the conduit who passed on the information about Sungro to Williams telling him it was a "potential float lock-down". He also posted messages on chat boards encouraging others to purchase Sungro shares. Like McLeary, he obtained a large number of free Sungro shares from seed shareholders and, working with Williams, sold some of those Sungro shares to the Monk's Den core group for approximately $600,000.

[79] Williams orchestrated the buy side of the manipulation through his Monk's Den core group. He made Sungro the next pick for the core group with the knowledge passed on to him from Hainey that Sungro had a constrained float and the buying would drive up the price of Sungro's shares. He benefitted from the proceeds from the sale of Hainey's free Sungro shares through commissions received from those sales.

[80] We conclude McLeary, Hainey and Williams were equally culpable with respect to the contravention of section 57(a) and for this reason have assessed the same penalty amount against each of them for their respective contraventions of section 57(a).

[81] We have assessed an additional penalty amount against McLeary for his contravention of section 168.1(1)(a).

[82] McLeary submits that the penalties in *Siddiqi* are significant enough to satisfy all of the factors in *Eron Mortgage* and the public interest. This fails to recognize that the misconduct in *Siddiqi* occurred in 2000 when the maximum administrative penalty was $100,000 per hearing and had been increased to $250,000 by the time of the hearing. In keeping with the $250,000 maximum penalty per hearing, the executive director sought an administrative penalty of $150,000 against Siddiqi.

[83] Section 162 now provides for an administrative penalty of $1,000,000 per contravention. Shortly after the Legislature quadrupled the penalty to $1,000,000 and authorized it to be applied "per contravention", the panel in *Thow (Re)*, 2007 BCSECCOM 758 commented: "It seems clear that the Legislature's intent was that the commission have the power to impose significant penalties where appropriate in the circumstances."

[84] We conclude the more recent case of *Hu* provides better current guidance for the determination of the administrative penalty within a range of one to three times the total profit because of the manipulation, regardless of the profit of any one individual respondent.

[85] Virk and Bahd's trading proceeds during the course of the manipulation were $91,308.56 in Canadian dollars and USD$29,543.12, respectively. In addition, Hainey and Williams realized proceeds of $595,000 through the sale of some of the free Sungro shares acquired by Hainey in connection with the manipulation. We find these proceeds, totaling more than $700,000, are the total profits realized because of the manipulation.

[86] The orchestrated nature of the Sungro manipulation resulted in the rapid increase of the share price of a virtually worthless company and the opportunity for McLeary, Hainey and Williams to make further profit from the sale of McLeary's and Hainey's remaining free Sungro shares. Given these circumstances, it is appropriate for reasons of both specific and general deterrence to assess a significant administrative penalty against each of McLeary, Hainey and Williams. Given their equal culpability and considering it to be in the public interest, we order each of McLeary, Hainey and Williams to pay an administrative penalty of $700,000 for their respective contraventions of section 57(a).

[87] With respect to McLeary's contravention of section 168.1(1)(a), we have concluded his false and misleading statements were deliberate, designed to distance himself from the manipulation and an attempt to misdirect the investigation. We consider it in the public interest to assess a penalty of $100,000. This is in keeping with the recent and more comparable case of *Hu* where a more significant penalty was awarded for a contravention of section 168.1(1)(a) in the course of the investigation of a serious trading contravention causing harm to investors and damage to the integrity of our markets.

Orders

[88] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order:

McLeary

1. under section 161(1)(b)(ii), that McLeary is permanently prohibited from trading or purchasing securities or exchange contracts, except that he may trade or purchase securities for his own account through one RRSP and one cash account at a registered dealer provided he first provides that dealer with a copy of this decision;

2. under section 161(1)(c), that any or all of the exemptions set out in the Act, regulations or a decision do not apply to McLeary;

3. under section 161(1)(d)(i) and (ii), that McLeary resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant, other than one issuer all the securities of which are owned by him;

4. under section 161(1)(d)(iii), McLeary is permanently prohibited from becoming or acting as a registrant or promoter;

5. under section 161(1)(d)(iv), that McLeary is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

6. under section 161(1)(d)(v), that McLeary is permanently prohibited from engaging in investor relations activities;

7. under section 161(1)(g), that McLeary pay to the Commission any amount obtained, or payment or loss avoided, directly or indirectly as a result of the contravention of section 57(a) of the Act, which amount we find to be $91,308.56;

8. under section 162, that McLeary pay to the Commission an administrative penalty of $800,000;

Hainey and Williams

9. under section 161(1)(b)(ii), that Hainey and Williams are permanently prohibited from trading or purchasing securities or exchange contracts;

10. under section 161(1)(c), that any or all of the exemptions set out in the Act, regulations or a decision do not apply to Hainey or Williams;

11. under section 161(1)(d)(i) and (ii), that each of Hainey and Williams resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;

12. under section 161(1)(d)(iii), Hainey and Williams are permanently prohibited from becoming or acting as a registrant or promoter;

13. under section 161(1)(d)(iv), that Hainey and Williams are permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

14. under section 161(1)(d)(v), that Hainey and Williams are permanently prohibited from engaging in investor relations activities; and

15. under section 162, that:
    - Hainey pay to the Commission an administrative penalty of $700,000; and
    - Williams pay to the Commission an administrative penalty of $700,000.

July 8, 2015

For the Commission

Suzanne K. Wiltshire
Commissioner

Don Rowlatt
Commissioner