

Citation: 2014 BCSECCOM 305

**Cinnabar Explorations Inc., Christopher James G. Bass,
Daniel Grant McGee and Dale Zucchet**

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Audrey T. Ho Don Rowlatt	Commissioner Commissioner
Submissions completed	July 8, 2014	
Date of Decision	July 23, 2014	
Submissions filed by	Veda Kenda	For the Executive Director

Decision

I Introduction

- ¶ 1 This is the sanctions portion of a hearing pertaining to Daniel Grant McGee under sections 161(1), 162 and 174 of the *Securities Act*, RSBC 1996, c. 418. Our Findings on liability made on June 3, 2014 (2014 BCSECCOM 207) are part of this decision.
- ¶ 2 We have found, under section 168.2(1) of the Act, that McGee contravened section 61(1) when he, as a director of Cinnabar Explorations Inc., authorized, permitted or acquiesced in Cinnabar's illegal distributions of its shares to seven investors for proceeds of \$21,500.
- ¶ 3 The Commission already made findings and imposed sanctions against the other respondents in this matter. See 2013 BCSECCOM 361(Findings) and 2014 BCSECCOM 26 (Decision).

II Positions of the Parties

- ¶ 4 The executive director seeks orders:
1. prohibiting McGee, for a period of five years, from trading securities, acting in a management or consultative capacity in connection with activities in the securities market, engaging in investor relations activities and acting as a director or officer of any issuer,

2. requiring McGee to successfully complete a course concerning the duties and responsibilities of directors and officers, and
3. requiring McGee to disgorge \$21,500 and pay an administrative penalty of \$10,000.

¶ 5 McGee did not make any submissions.

III Analysis

A. Factors

¶ 6 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,
- 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; damage to markets

- ¶ 7 The Commission has consistently held that any contravention of section 61(1) is inherently serious, because that section is a part of the foundation requirements designed to protect investors and the integrity of capital markets. It is intended to ensure that investors get the information they need to make an informed investment decision. See *Corporate Express Inc.* 2006 BCSECCOM 153, *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 357.
- ¶ 8 As a director of Cinnabar, McGee was responsible for ensuring that the claimed exemptions from prospectus requirements were in fact available. But he made no effort to do so. He admitted to signing the exempt distribution reports filed by Cinnabar without looking into whether the exemptions were available. He relied on Christopher James G. Bass and Dale Zucchet, and accepted without question the representations on availability of exemptions as stated in the investors’ subscription agreements.
- ¶ 9 As a result, seven investors were deprived of the protection intended by section 61(1). McGee’s misconduct is inherently serious and damages the integrity of the capital markets in British Columbia.

Enrichment

- ¶ 10 We have no evidence that McGee was personally enriched. The executive director analyzed the cheques drawn on and cash withdrawn from Cinnabar’s bank account in an attempt to trace how the money raised by Cinnabar through the share distributions was spent. There is no evidence on how the cash withdrawn from the account was spent. Of the cheques drawn on Cinnabar’s bank account, the evidence suggests that McGee received only \$1,000 for expenses.

Harm to investors

- ¶ 11 There is harm to the investors. Cinnabar shares have been permanently cease traded. There is no evidence that Cinnabar shares have any present or future value or that the investors could recover their funds.

Mitigating or aggravating factors

- ¶ 12 There are no mitigating or aggravating factors beyond McGee’s past regulatory history.

Past conduct

- ¶ 13 McGee was a director, officer and promoter of two companies that had irregularities in share distributions arising from the role of a nominee director (not McGee). McGee signed a statutory declaration on August 3, 1990, whereby he:
1. confirmed that all directors of an issuer should understand their responsibilities, fiduciary duties and liabilities,
 2. undertook to comply with requirements of the *Securities Act* for any issuer for which he acts as a director, and
 3. undertook to participate fully in the management and supervision of the affairs and business of any issuer for which he acts as a promoter.
- ¶ 14 McGee's conduct as a director of Cinnabar fell far short of that undertaking.

Risk to investors and markets; fitness as director, officer, advisor

- ¶ 15 It is quite clear that McGee still does not grasp the requirements of the Act and his responsibilities as the director of an issuer raising capital. His carelessness in ensuring regulatory compliance, despite what he should have learned from past experience, indicates that he presents a risk to our capital market if he were allowed to continue in that market without restrictions. Further education and a market ban are warranted to protect the public.

Specific and general deterrence

- ¶ 16 The sanctions we impose must be sufficiently severe to ensure that McGee and others will be deterred from engaging in similar conduct.
- ¶ 17 McGee had been a director of issuers with distribution irregularities and had undertaken to comply with the Act and fully participate in the management and supervision of any issuer he became involved with as a director. He should have been aware of, and complied with, his regulatory obligations as a Cinnabar director. That he did not do so indicates that an administrative penalty is warranted.

Previous orders

- ¶ 18 We considered past decisions of the Commission cited by the executive director.
- ¶ 19 We find particularly relevant the Commission's sanction decision with respect to the other respondents in this matter (*Cinnabar Explorations Inc. et al* 2014 BCSECCOM 26). We find McGee's and Bass' circumstances and misconduct to be comparable.

- ¶ 20 The panel in *Cinnabar* permanently cease traded Cinnabar, imposed a market ban of five years against Bass, ordered Cinnabar and Bass to disgorge \$21,500, and imposed an administrative penalty of \$10,000 against Bass.
- ¶ 21 A market ban of the same scope and duration is equally appropriate for McGee, even though the executive director has not asked to ban him from acting as a promoter or as a director or officer of a registrant. Both restrictions are appropriate in light of the nature of the misconduct and McGee's lack of understanding of the duties and responsibilities of a director and officer.
- ¶ 22 Although there was no evidence of personal enrichment, it is appropriate to order McGee to disgorge the entire \$21,500. He and Bass ran Cinnabar; he was a director of Cinnabar at the relevant times. He should be held responsible for Cinnabar.
- ¶ 23 Like Bass, McGee had prior regulatory experience and should know better. Like Bass, McGee was careless in performing his duties as a director. Although McGee did not personally solicit any of the illegally raised funds, he signed the exempt distribution reports pertaining to them. We find it appropriate to impose on McGee the same financial penalty imposed on Bass.

III Orders

- ¶ 24 Considering it to be in the public interest, we order that:
1. under section 161(1)(d)(i) of the Act, McGee resign any position he holds as a director or officer of an issuer or registrant, and
 2. until the latest of:
 - (a) July 23, 2019,
 - (b) the date on which the payment ordered in paragraph 24(3) is made,
 - (c) the date on which the payment ordered in paragraph 24(4) is made, and
 - (d) the date on which he successfully completes a course concerning the duties and responsibilities of directors and officers,
- McGee is prohibited:
- (e) under section 161(1)(b), from trading in securities, except that he may trade and purchase securities through accounts in his own name at a registered dealer;

- (f) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
 - (g) under section 161(1)(d)(iii), from becoming or acting as a promoter;
 - (h) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and
 - (i) under section 161(1)(d)(v), from engaging in investor relations activities;
3. under section 161(1)(g), McGee pay to the Commission \$21,500, being the outstanding amount obtained, directly or indirectly, by Cinnabar as a result of contraventions of the Act, provided that the aggregate amount paid by McGee, and by Cinnabar and Bass under paragraphs 40(2) and 40(5) in Commission decision 2014 BCSECCOM 26, shall not exceed \$21,500; and
 4. under section 162, McGee pay an administrative penalty of \$10,000.

¶ 25 July 23, 2014

¶ 26 **For the Commission**

Audrey T. Ho
Commissioner

Don Rowlatt
Commissioner