

2012 BCSECCOM 199

Further Amended Notice of Hearing

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

Section 161 of the *Securities Act*, RSBC 1996, c. 418

- ¶ 1 The Commission will hold a hearing at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents under sections 161, 162, and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

Background

1. Sungro Minerals Inc. (Sungro) is a Nevada corporation that originally had its head office in Surrey, British Columbia. Its shares have been quoted on the OTC Bulletin Board since September 2008. It is an OTC reporting issuer under BC Instrument 51-509, *Issuers Quoted on the U.S. Over the Counter Markets*.
2. Malkeet Singh Bains (Bains) was the sole director and officer of Sungro. He is a financial advisor and resides in Delta, British Columbia.
3. Mark Aaron McLeary (M. McLeary) is a close friend of Bains and resides in North Vancouver, British Columbia. M. McLeary advised Bains on all aspects of Sungro and performed functions similar to an officer and director of the company.
4. Timothy John McLeary (T. McLeary) is M. McLeary's brother and resides in North Vancouver, British Columbia.
5. Narvinder Singh Patric Virk (Virk) is a close friend of Bains and resides in Abbotsford, British Columbia.
6. Karnjit Singh Bahd (Bahd) is a close friend of Bains and resides in Richmond, British Columbia.
7. Robert Hainey (Hainey) is a resident of the United States.
8. Jerry Williams (Williams) is a stock promoter and was the moderator of the "Monk's Den" discussion board on an investor website. He is a resident of the United States.

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9. Erik John Benson (Benson) is an investment advisor with Canaccord Genuity Corporation (Canaccord). He resides in Vancouver, British Columbia.

Misconduct

Bains controlled the public float

10. On August 15, 2007, Bains caused Sungro to issue 5,000,000 restricted shares to himself at \$0.001 USD per share for proceeds of \$5,000 USD.
11. On September 18, 2007, Bains caused Sungro to issue 4,750,000 shares to 40 individuals (Seed Shareholders), all residents of British Columbia, at \$0.02 USD per share for proceeds of \$95,000 USD.
12. At all material times, the Seed Shareholders' share certificates, representing all freely trading Sungro shares, were in the possession or control of Bains.
13. Virk and Bahd were Seed Shareholders. The remaining Seed Shareholders were close family or friends of Bains, Bahd, or Virk, and were unsophisticated investors.
14. On February 22, 2008, Bains caused Sungro to register the Seed Shareholders' shares for resale with the US Securities and Exchange Commission, which allowed them to trade in the United States. In its registration statement, Sungro disclosed that it was a shell company with nominal assets and operations.
15. At Bains' direction, Virk deposited his Sungro share certificate representing 118,750 shares in his Canaccord account in February 2009.
16. On February 19, 2009, Virk sold 30,000 Sungro shares at \$0.35 USD per share. This was the first public trade of Sungro shares.
17. In late June 2009, Bains directed Sungro's transfer agent to transfer the shares of the 18 Seed Shareholders among Virk, Bahd, M. McLeary, a company beneficially owned by Hainey, and Bains' brother.
18. Each share certificate was purportedly endorsed for transfer by the named shareholder under a power of attorney. T. McLeary forged the guarantee of each shareholder's signature by purporting to execute it in his capacity as an authorized guarantor of a branch of a Canadian Chartered bank. This was false. The share certificates were issued over 2 years after T. McLeary had ceased working as the manager at that branch and over 16 months after he had ceased working for the bank altogether.

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The Respondents created the demand

19. The Monk's Den discussion board was open to the public. Williams used his position as moderator to promote securities by publicly identifying various stocks as his "picks" that he had previously told a core group of followers (Core Group) that he would be promoting.
20. M. McLeary informed Hainey that Sungro:
 - Had a public float of only 118,750 shares;
 - Was considering acquiring the rights to a mining property in California connected to Hainey; and
 - Was planning a 5-for-1 forward stock split.

This information was confidential and had not been generally disclosed.

21. Hainey forwarded the Sungro confidential information to Williams.
22. In June 2009 and in order to create an artificial demand for Sungro shares, Williams provided the Sungro confidential information to the Core Group. Williams also told the Core Group:
 - Sungro would be his next public stock pick;
 - They should each purchase 5,000 Sungro shares; and
 - Sungro's share price would rise to at least \$5.00 USD.

Bains directed the sell orders

23. As of May 31, 2009, Sungro had no revenues. Its sole current assets were \$299 USD in cash and it had current liabilities of \$18,864 USD, for a working capital deficiency of \$18,565 USD.
24. After Virk's first public trade in February 2009, there were no further public trades in Sungro shares until June 2009.
25. Between June 12 and June 22, 2009, Bains directed Virk to sell his remaining 88,750 Sungro shares, in a particular sequence, and at certain specified prices, all of which Virk did.
26. Benson was Virk's investment advisor and facilitated the orchestrated trading in Sungro shares by carrying out all of Virk's sell orders.
27. On or about June 17, 2009, the Core Group began to buy Sungro shares. Their buy orders began filling Virk's sell orders. Williams and the Core Group also

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began to promote Sungro shares on the Monk's Den and on another discussion board.

28. Between June 15 and June 22, 2009, Virk sold his remaining Sungro shares into the artificial demand created by Williams and the Core Group at escalating prices, ranging from \$0.45 USD to \$2.50 USD per share.
29. After Virk sold all of his remaining Sungro shares, Williams and the Core Group continued to buy Sungro shares and promote Sungro shares on the Monk's Den and on another discussion board.
30. On June 19, 2009, Bains attended a meeting with Virk and Benson. At the meeting, Bains gave Bahd's Sungro share certificate to Benson, who was also Bahd's investment advisor.
31. Between June 23 and July 6, 2009, Bains directed Bahd to sell his Sungro shares over a number of days, in a particular sequence, and at certain specified prices, all of which Bahd did.
32. Benson facilitated the orchestrated trading in Sungro shares by carrying out all of Bahd's sell orders.
33. M. McLeary determined the quantity, timing, and price of each of Virk's and Bahd's sell orders.
34. Between June 23 and July 6, 2009, Bahd sold his Sungro shares at escalating prices ranging from \$3.75 USD to \$4.95 USD per share.
35. The net trading proceeds from Virk's and Bahd's sale of Sungro shares, \$79,885.16 USD and \$29,543.12 USD respectively, were paid out to M. McLeary and Bains.

Commission intervened

36. Virk and Bahd's trades between June 15 and July 6, 2009, represented approximately 45% of the trading volume in Sungro shares, and the change in price from \$0.45 USD to \$4.75 USD per share represented an increase of roughly 955%.
37. On July 6, 2009, with a closing share price of \$4.75 USD, Sungro's market capitalization was \$46,312,500 USD, while its assets remained negligible or non-existent.

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38. On July 7, 2009, the Commission's Director of Corporate Finance issued a Halt Trade Order under section 89 of the Act and issued a second one on July 10, 2009.
39. On July 29, 2009, the Executive Director issued a Temporary Order and Notice of Hearing, which the Commission extended on September 28, 2009 until a hearing is held and a decision is rendered.
40. The Executive Director entered into a Settlement Agreement with five of the Seed Shareholders on November 12, 2010, 2010 BCSECCOM 621.
41. The Executive Director entered into a Settlement Agreement with Bahd on May 26, 2011, 2011 BCSECCOM 243.

Market manipulation

42. By engaging in the above conduct, the Respondents, directly or indirectly, engaged in or participated in conduct relating to Sungro's shares that they knew, or reasonably should have known, resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Sungro shares, contrary to section 57(a) of the Act (the Manipulation).

False or misleading statements

43. Commission investigators summonsed each of M. McLeary, and T. McLeary to interviews on September 21, 2009, and April 9, 2010, respectively, during which they each made false or misleading statements by denying their involvement in, and knowledge of, particulars of the Manipulation and the powers of attorney, contrary to section 168.1(1)(a) of the Act.

Public Interest

- ¶ 2 It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.

Hearing Process

- ¶ 3 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Monday, September 26, 2011, at 8:30 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Staff in the investigation of this matter will be disclosed to the Respondents upon request to the Executive Director.
- ¶ 4 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to

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the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street,
Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcs.bc.ca.

¶ 5 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

¶ 6 May 24, 2012

Paul C. Bourque

¶ 7 Paul C. Bourque, Q.C.
Executive Director