

2004 BCSECCOM 198

Order

Richard Albert James Smith

Securities Act, RSBC 1996, c. 418

Background

¶ 1 The Executive Director has entered into a Settlement Agreement with Richard Albert James Smith, a copy of which is attached as Schedule A.

¶ 2 The Order

The Executive Director, considering it to be in the public interest to do so, orders (the Order) by consent that:

1. under sections 161(1)(b) and (c) of the *Securities Act, RSBC 1996, c. 418* Smith cease trading in securities for three years from the date of the Order except that Smith may rely on the exemption in section 45(2)(7) of the Act to trade in one registered retirement savings plan (RRSP) and one non-RRSP account in his own name, through a registered dealer, as long as Smith provides the registered dealer with a copy of the Order before any trade takes place;
2. under section 161(1)(d) of the Act, Smith must resign any position he holds as a director or officer of any issuer;
3. under section 161(1)(d) of the Act, Smith is prohibited from becoming or acting as a director or officer of any issuer for the later of:
 - (a) three years from the date of the Order, and
 - (b) the date Smith successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers; and
4. under section 161(1)(d) Smith is prohibited from engaging in investor relations activities for three years from the date of the Order.

¶ 3 March 29, 2004

“Stephen J. Wilson”

¶ 4 Stephen J. Wilson
Executive Director

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Settlement Agreement

Richard Albert James Smith

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between Richard Albert James Smith and the Executive Director.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Smith acknowledges the following facts as correct:

Background

1. Smith was registered as a mutual fund salesperson under the *Securities Act*, RSBC 1996, c. 418 from August 1999 until March 2002. From October 29, 1999 until September 18, 2000 he was registered with Aspen Capital Management Inc. (Aspen Capital).
2. Aspen Capital, located in Vancouver, was registered as a securities dealer at the material time.
3. 3644871 Canada Inc. (Aspen Group) was federally incorporated on July 29, 1999 and became registered as an extra-provincial company in British Columbia on May 5, 2000.
4. Aspen Group was not a reporting issuer, and its shares were not listed and posted for trading on any exchange. Aspen Group has not filed a prospectus, preliminary prospectus or offering memorandum with the British Columbia Securities Commission.
5. In December 1999, Smith sold 96,000 shares of Aspen Group to 12 investors for proceeds of \$48,000. Investments by Smith's spouse, mother, brother-in-law and cousin represent \$22,500 of the proceeds.
6. The shares of Aspen Group were from Aspen Group's treasury and had not been previously issued. The sale was therefore a distribution under the Act, for which a prospectus and registration were required. No exemptions from these requirements under the Act were available.

Breaches of the Act and Actions Contrary to the Public Interest

7. Smith distributed the Aspen Group shares without a prospectus, contrary to section 61 of the Act.

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8. Smith sold Aspen Group shares without the appropriate registration under the Act, contrary to section 34 of the Act.

Mitigating Factors

- ¶ 3 Although Smith agrees the monetary portion of the sanction that otherwise would have applied in this case is \$5,000, the Executive Director has taken into account the mitigating fact that Smith, together with his spouse, invested, and has now lost, \$25,000 in shares of Aspen Group.

Undertaking

- ¶ 4 Smith undertakes to:
1. comply with the Act and the *Securities Rules*, B.C. Reg. 194/97;
 2. not to apply for registration under the Act for three years from the date of the Executive Director's order consented to in this settlement (the Order); and
 3. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 5 Smith consents to an Order that:
1. under sections 161(1)(b) and (c) of the Act, Smith cease trading in securities for three years from the date of the Order except that Smith may rely on the exemption in section 45(2)(7) of the Act to trade in one registered retirement savings plan (RRSP) and one non-RRSP account in his own name, through a registered dealer, as long as Smith provides the registered dealer with a copy of the Order before any trade takes place;
 2. under section 161(1)(d) of the Act, Smith resign any position he holds as a director or officer of any issuer;
 3. under section 161(1)(d) of the Act, Smith be prohibited from becoming or acting as a director or officer of any issuer for the later of:
 - (a) three years from the date of the Order, and
 - (b) the date Smith successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers; and

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4. under section 161(1)(d) Smith be prohibited from engaging in investor relations activities for three years from the date of the Order.

Waiver

¶ 6 Smith 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.

¶ 7 March 26, 2004

“Richard Smith”

¶ 8 _____
Richard Albert James Smith

“Richard Boyce” _____)
Witness Signature _____)
Richard Boyce _____)
Witness Name (please print) _____)
250 – 13020 No. 2 Rd _____)
Richmond, BC V7E 6S3 _____)
Address _____)
Service Manager _____)
Occupation _____)

¶ 9 March 29, 2004

“Stephen J. Wilson”

¶ 10 Stephen J. Wilson
Executive Director