

2012 BCSECCOM 86

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
Date of hearing	November 16, 2011	
Date of Decision	March 13, 2012	
Appearing		
Jeremy Gellis	For the Executive Director	
Michael Robert Shantz	For himself and Canada Pacific Consulting Inc.	

Findings

I Introduction

- ¶ 1 This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 In a Notice of Hearing issued July 26, 2011 the executive director alleges that Canada Pacific Consulting Inc. and Michael Robert Shantz traded securities without being registered contrary to section 34 of the Act and committed fraud contrary to section 57 of the Act.
- ¶ 3 Shantz appeared on his own behalf and on behalf of Canada Pacific but did not cross-examine the executive director's witness, enter any evidence, or make any submissions.

II Background

A Shantz and CPC

- ¶ 4 Shantz is a resident of British Columbia and is the sole director and officer of Canada Pacific. Neither Shantz nor Canada Pacific has ever been registered under the Act.

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B Trading without registration

- ¶ 5 The executive director alleges that Canada Pacific and Shantz traded without being registered when they solicited persons residing in Germany and Switzerland to open trading accounts with Canada Pacific for trading gold futures and foreign exchange.
- ¶ 6 A person or persons purporting to represent Canada Pacific initiated contact with German-speaking investors through German-language cold calls, emails, and postal communications. The person or persons used various names when contacting investors.
- ¶ 7 The Canada Pacific representatives referred investors to the Canada Pacific website, and provided them with these documents in the German language:
- a Canada Pacific profile sheet describing its purported investment business
 - showing an address for Canada Pacific in Vancouver
 - correspondence account opening documentation and an authorization for Canada Pacific to trade their accounts
 - instructions to wire investment funds to Canada Pacific's account at a Canadian chartered bank
- ¶ 8 Investors invested in Canada Pacific by completing and account opening document and wiring funds to Canada Pacific's bank account. Between June 2009 and September 2010, 11 investors opened accounts with Canada Pacific and deposited \$1,530,004.24 in Canada Pacific's bank account for investment by Canada Pacific.
- ¶ 9 Canada Pacific told investors that it would invest their funds in gold futures or foreign exchange contracts. It said it would make four or five trades on their behalf each month. It said some of these trades would lose money but the successful trades would ensure a profit overall. It said it would keep 15% of the profits as its fee.

C Fraud

- ¶ 10 The executive director alleges that Canada Pacific and Shantz committed fraud when they made false statements to investors, took their money, and used it for purposes other than investment.
- ¶ 11 Canada Pacific told investors that their investment was low-risk and that they could withdraw their funds on demand.
- ¶ 12 Canada Pacific's website presented itself as being in the business of providing capital and providing investment opportunities to investors. It said:

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“Since 2002 the CPC has been striving to stimulate capital formation and business development by providing networking in a business-friendly environment and the chance to meet with prominent capital providers.

The scope of CPC’s broad selection of investment solutions enables investors to build a tailor-made allocation according to their performance objectives, risk tolerance and investment horizon.”

- ¶ 13 The website stated that Canada Pacific
- was “on the way to get one of the largest financial investment firm [*sic*]” and that it offered “a broad array of Investment products to meet the needs of a diverse range of clients”
 - had portfolio managers who “collaborate with teams of quantitative and fundamental research analysts to examine research decisions from every angle”
 - offered, “For investors with over \$100,000 in investable assets . . . the CPC Investment Strategy Advisor to meet your unique challenges by selecting an appropriate combination of investments to help you achieve your financial goals”
 - offered “capital market services and advisory services, wealth management, investment management and related products and services on a global basis, including Securities origination [*sic*], brokerage, dealer and related services” for a list of financial instruments, including equities, futures, commodities, and currencies
 - had a head office in downtown Vancouver and an administrative office in Richmond and that 120 employees worked at the two offices
- ¶ 14 Canada Pacific disbursed investors’ funds as follows:
- \$1.2 million was wire transferred to bank accounts in Spain in the name of Tional Cars SL, Sergio Cardona, Jose Samuel Roja Rivas, and Romano Joldas, none of whom were registered to trade in futures as required under Spanish law; Tional Cars SL is not a registered company in Spain
 - \$13,000 was used to fund payments to four Canada Pacific investors
 - \$210,000 was used for personal purposes by Shantz, as detailed below
- ¶ 15 None of the investors’ funds was used to invest in gold futures or foreign exchange.
- ¶ 16 Canada Pacific had no office in Richmond. The Richmond address shown on the website is the office of the lawyer who incorporated the company.

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- ¶ 17 Canada Pacific had no office in downtown Vancouver. It had contracted with a company called Regus to create a “virtual office”. Regus is in the business of offering packaged and virtual offices. Canada Pacific used Regus’ services to maintain the appearance of an operating office where none existed. Canada Pacific instructed Regus:
- to list Canada Pacific as a tenant in the building directory
 - to tell telephone callers that the person asked for was in a meeting or was out of town and to invite the caller to leave a message
 - to tell persons who appeared at the office in person that the person they wished to see was out of town
- ¶ 18 Regus’ sole contact for Canada Pacific was Shantz. Shantz communicated with Regus exclusively by email and telephone. No one at Regus ever met Shantz or any other person purporting to be a representative or employee of Canada Pacific.
- ¶ 19 Canada Pacific prepared false account statements and mailed them and other documents from Europe to Vancouver and then remailed them back to Europe to make it appear that they originated from Vancouver. It instructed Regus to open the packages received from Europe (containing envelopes addressed to German and Swiss residents) and to mail the envelopes to the addressees.
- ¶ 20 All of the \$1.5 million invested is gone (but for \$18,000 returned to investors).
- ¶ 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.

D Role of Shantz

- ¶ 22 The only evidence of direct contact between Shantz and any of the investors is an investor questionnaire from one of the investors. This investor says he was led to believe that “Mr. Shantz” and “Mr. Burg” conducted trading in his account. He also received an account statement from “Michael Shantz”.
- ¶ 23 The Canada Pacific website to which investors were referred was registered by “Michael Shantz o/a Canada Pacific Consulting”.
- ¶ 24 Canada Pacific’s agreement with Regus for a virtual office was entered into by Shantz on April 6, 2009.

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- ¶ 25 Shantz instructed Regus to list Canada Pacific as a tenant in the building directory and provided Regus with scripts to follow in case anyone attempted to make contact with Canada Pacific at its virtual office.
- ¶ 26 Shantz instructed Regus to mail the envelopes received from Europe to the German and Swiss addresses.
- ¶ 27 Shantz opened the two bank accounts in Canada Pacific's name described above. He was the sole signatory on both accounts.
- ¶ 28 It was Shantz who wired \$1.2 million from these accounts to the bank accounts in Spain.
- ¶ 29 Shantz withdrew about \$210,000 from these bank accounts for his own purposes, as follows:
- cash totalling \$172,000 through withdrawals via automatic bank machines, branch visits, and debit memos
 - a cash withdrawal of \$35,000 routed through his lawyer's trust account
 - debit card payments totalling \$2,600

III Findings

A Trading without registration

- ¶ 30 Section 34(1) of the Act says a person "must not trade in a security . . . unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity."
- ¶ 31 National Instrument 31-103 *Registration Requirements and Related Matters* came into force on September 28, 2009. Section 8.4 of NI 31-103 says:
- "8.4 (1) . . . a person is exempt from the dealer registration requirement if the person or company
- (a) is not engaged in the business of trading in securities or exchange contracts as a principal or agent, and
- (b) does not hold himself, herself, or itself out as engaging in the business of trading in securities or exchange contracts as a principal or agent."
- ¶ 32 Section 1(1) of the Act defines "trade" to include "a disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of" a disposition of a security for valuable consideration.

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- ¶ 33 Section 1(1) defines “security” to include “an investment contract”.
- ¶ 34 We find that the arrangement under which the investors deposited their funds with Canada Pacific was an investment contract. An investment contract is an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glen W. Turner Enterprises, Inc.* 474 F. 2d 476 (1973), *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.)
- ¶ 35 The arrangement required an investment of money. The investors’ profits were to come from the efforts of persons other than themselves. The evidence is clear that once they deposited their funds, the investors’ role was passive – any profits were to come from Canada Pacific’s trading activity. The commonality that is required by the cases cited above existed between Canada Pacific and the investors.
- ¶ 36 We find that Canada Pacific traded securities because it entered into the arrangements for valuable consideration and solicited the investors’ investments.
- ¶ 37 We find that Canada Pacific traded securities without being registered contrary to section 34(1). The exemption in NI 31-103 is not available to Canada Pacific because it held itself out on its website as being in the business of trading in securities and exchange contracts.
- ¶ 38 Shantz was the sole director and officer of Canada Pacific. Section 168.2(1) says:
- “If a person, other than an individual, contravenes a provision of this Act or of the regulations . . . an employee, officer, director or agent of the person who authorizes, permits, or acquiesces in the contravention . . . also contravenes the provision”
- ¶ 39 By the operation of section 168.2(1), we find that Shantz contravened section 34(1). He opened Canada Pacific’s bank accounts and was the sole signatory on them. He made all of the arrangements for Canada Pacific’s virtual office. He disbursed Canada Pacific’s funds.

B Fraud

- ¶ 40 Section 57 of the Act says:

“A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct . . .

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(b) perpetrates a fraud on any person.”

¶ 41 The British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 stated the following regarding fraud in the context of the *Securities Act*:

“29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.”

¶ 42 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

“... the actus reus of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim’s pecuniary interests at risk.

Correspondingly, the mens rea of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim’s pecuniary interests are put at risk).”

¶ 43 The evidence provides clear and convincing proof that Canada Pacific and Shantz committed what *Théroux* describes as prohibited acts and that those acts caused deprivation.

¶ 44 Canada Pacific:

- lied to investors about its business
- lied when it told investors that their money would be invested
- lied to investors about its offices in Vancouver and Richmond
- sent investors falsified account statements to create the impression that its business was legitimate

¶ 45 All of these were deceitful acts.

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- ¶ 46 Canada Pacific and Shantz deprived the investors of their money. They did not invest investors' funds as Canada Pacific had promised – instead, they sent investors' funds to Spain for some unknown purpose and took investors' funds to make payments to other investors and for Shantz's personal use.
- ¶ 47 The executive director proved that all except about \$53,000 of the money Canada Pacific took from investors it used fraudulently. We have found that Canada Pacific was not a legitimate business. Its purpose was to defraud investors. We find that Canada Pacific deprived investors of \$1,530,004.24.
- ¶ 48 The evidence provides clear and convincing proof that Shantz, and through him Canada Pacific, had subjective knowledge of the deceit, and that it could have as a consequence the deprivation of others. It could not be otherwise. At a minimum, Shantz knew that he was using investor funds for his own enrichment.
- ¶ 49 We find that Canada Pacific and Shantz perpetrated a fraud on the investors, contrary to section 57 of the Act.

IV Sanctions

- ¶ 50 We direct the parties to make their submissions on sanctions as follows:

- | | |
|-------------|---|
| By April 4 | The executive director delivers submissions to the respondents and to the secretary to the Commission |
| By April 18 | The respondents deliver response submissions to the executive director and to the secretary to the Commission. A party wishing an oral hearing on the issue of sanctions so advises the secretary to the Commission |

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By April 25 The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission

¶ 51 March 13, 2012

¶ 52 **For the Commission**

Brent W. Aitken
Vice Chair

Kenneth G. Hanna
Commissioner

David J. Smith
Commissioner