



Citation: 2020 BCSECCOM 89

Notice of Hearing

**Arian Resources Corp., Zahir “Zip” Sadrudin Dhanani,
and Robert James Naso**

(collectively, the Respondents)

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

- ¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (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:

SUMMARY

1. Arian Resources Corp. (Arian) was a mineral exploration company with its shares traded on the TSX Venture Exchange.
2. Zahir “Zip” Dhanani (Dhanani) and Robert Naso (Naso) managed Arian. Between April 2014 and April 2017 (the Relevant Period), under Dhanani and Naso’s direction and control, Arian failed to comply with its continuous disclosure obligations under the Act by:
 - (a) failing to disclose, and concealing the true nature of, a material \$800,000 loss,
 - (b) failing to disclose, and concealing the true nature of, actions by a vendor to take back Arian’s only asset,
 - (c) failing to disclose, and concealing the true nature of, actions by Arian and government authorities that materially affected Arian’s only material asset,
 - (d) failing to disclose, and concealing the true nature of, a material \$285,000 payment to a related party, and
 - (e) understating the salary and stock compensation of executive officers by hundreds of thousands of dollars.



Background

3. Arian was a company incorporated in British Columbia with its head office in Vancouver. During the Relevant Period, Arian was a reporting issuer under the Act. On March 8, 2017, the Executive Director ordered that all trading in Arian's securities cease due to Arian's failure to file required records under the Act. On July 19, 2018, the Registrar of Companies dissolved Arian for failure to file annual reports.
4. Dhanani is a resident of West Vancouver, British Columbia. Naso is a resident of Lantzville, British Columbia.
5. Dhanani and Naso were directors and officers of Arian from November 2012 until it was dissolved on July 19, 2018.
6. In March 2014, Arian entered into an agreement (the Agreement) with a Canadian company (the Vendor) to acquire rights to an inactive copper mine in Albania (the Perlat Project).
7. During the Relevant Period, the Perlat Project was Arian's only material asset.

Misconduct

Failing to Disclose and Concealing a Material Financial Loss

8. In February 2014, Arian paid \$800,000 to a promoter to provide investor relations services.
9. The promoter never provided the services, and despite Arian's demands beginning in May 2014, he refused to return Arian's money.
10. Losing \$800,000 to the promoter (the Promoter Loss) was a material change for Arian.
11. On September 29, 2014, Arian filed financial statements that falsely described \$500,000 of the \$800,000 Promoter Loss as "property investigation" expenses (the Loss Misstatement).
12. Arian contravened the Act by failing to provide timely and accurate disclosure about the Promoter Loss and Loss Misstatement. In particular, Arian contravened:
 - (a) section 168.1(1)(b) of the Act, by making the Loss Misstatement and omitting facts about the Promoter Loss that were necessary to prevent Arian's required records from being false or misleading,
 - (b) section 85(a) of the Act, by failing to disclose the Promoter Loss in its financial statements and Management's Discussion & Analyses



(MD&As) as required by National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107). and,

- (c) section 85(b) of the Act and Part 7, Section 7.1(1) NI 51-102, by failing to issue and file a news release disclosing the nature and substance of the Promoter Loss, and failing to file a Material Change Report for the Promoter Loss.

Failing to Disclose and Concealing the Vendor's Actions to Recover the Perlat Project

13. Under its Agreement with the Vendor:

- (a) Arian acquired all the shares of an Albanian company (the Albanian Licencee) that held both an exploration licence and a mining licence for the Perlat Project, and
- (b) Arian was required to pay \$2 million to the Vendor by June 30, 2015, failing which Arian was required to return the shares of the Albanian Licencee.

14. Arian sought an extension of the payment deadline but:

- (a) on June 29, 2015, the Vendor stated that it had not agreed to any extension and would “rely on all [its] rights if [the] payment was not made by” the following day (the Refusal),
- (b) on August 24, 2015, after Arian missed its payment, the Vendor initiated arbitration (the Arbitration), and
- (c) on November 12, 2015, the Vendor sued for the return of the shares of the Albanian Licencee (the Lawsuit). On July 4, 2017, an Albanian court ordered Arian to return the shares of the Albanian Licencee to the Vendor.

15. The Refusal, Arbitration, and Lawsuit (together, the Vendor's Actions) were each a material change for Arian. Alternatively, the Vendor's Actions to recover its shares were cumulatively a material change for Arian.

16. Between September 28, 2015 and September 29, 2016, Arian filed financial statements and MD&As stating that Arian was “currently negotiating with [the Vendor] to extend the payment deadline,” without disclosing the arbitration or civil lawsuit (the Negotiation Misstatements).



17. Arian contravened the Act by failing to provide timely and accurate disclosure about the Vendor's Action and Negotiation Misstatements. In particular, Arian contravened:
- (a) section 168.1(1)(b) of the Act, by making the Negotiation Misstatements and omitting facts about the Vendor's Actions that were necessary to prevent Arian's required records from being false or misleading,
 - (b) section 85(a) of the Act, by failing to disclose the Vendor's Actions in its financial statements and MD&As as required by NI 51-102 and NI 52-107, and
 - (c) section 85(b) of the Act and part 7 of NI 51-102, by failing to:
 - (i) issue and file news releases disclosing the nature and substance of each of the Vendor's Actions or, alternatively, the Vendor's Actions cumulatively, and
 - (ii) failing to file Material Change Report(s) for each of the Vendor's Actions or, alternatively, the Vendor's Actions cumulatively.

Failing to Disclose and Concealing a Stop Work Order and License Revocation on the Perlat Project

18. Under the exploration and mining licences, the Albanian Licencee was required to perform a certain amount of work each year on the Perlat Project.
19. Arian was unable to fund the work on the Perlat Project. On August 28, 2015, Arian requested a stop work order from the Albanian authorities that would suspend the work requirement for the mining licence. On September 16, 2015, the Albanian authorities issued a stop work order (the Stop Work Order).
20. On December 15, 2015, Albanian authorities sent the Albanian Licencee notice that they were commencing revocation of the exploration licence, and that the revocation would take effect in 30 days (the Notice). On February 4, 2016, Albanian authorities sent notice confirming that the exploration licence was revoked (the Licence Revocation).
21. Arian sought a judicial review of the Licence Revocation. On June 16, 2016, an Albanian court upheld the Licence Revocation.
22. Between September 28, 2015 and September 29, 2016, Arian filed financial statements and MD&As without disclosing the Stop Work Order or the Licence Revocation.



23. The Stop Work Order and Licence Revocation were material changes for Arian.
24. Arian contravened the Act by failing to provide timely and accurate disclosure about the Stop Work Order and the Licence Revocation. In particular, Arian contravened:
 - (a) section 168.1(1)(b) of the Act, by omitting facts about the Stop Work Order and Licence Revocation that were necessary to prevent Arian's required records from being false or misleading,
 - (b) section 85(a) of the Act, by failing to disclose the Stop Work Order and Licence Revocation in its financial statements and MD&As as required by NI 51-102 and NI 52-107, and
 - (c) section 85(b) of the Act and part 7 of NI 51-102, by failing to issue and file news releases disclosing the nature and substance of the Stop Work Order and the Licence Revocation, and failing to file Material Change Reports for the Stop Work Order or the Licence Revocation.

Failing to Disclose and Concealing a Related Party Payment

25. In the year ended May 31, 2014, Arian paid \$285,714 to Dhanani's mother (the Related Party Payment).
26. On April 29, 2014 and September 29, 2014 Arian filed financial statements and MD&As, none of which disclosed the payment to Dhanani's mother as a related party transaction.
27. Arian contravened the Act by failing to provide timely and accurate disclosure about the Related Party Payment. In particular, Arian contravened:
 - (a) section 168.1(1)(b) of the Act, by making false or misleading statements or omitting facts about the Related Party Payment that were necessary to prevent Arian's required records from being false or misleading, and
 - (b) section 85(a) of the Act, by failing to disclose the Related Party Payment in its financial statements as required by NI 52-107 and in its MD&A under NI51-102.

Understating Executive Compensation

28. On November 24, 2015 and April 11, 2017, Arian filed information circulars stating that, in the year ended May 31, 2015:



- (a) Arian compensated Dhanani \$162,500, instead of the actual compensation of \$514,742, and
- (b) Arian compensated the other named executive officers \$224,244.01, instead of the actual compensation of \$83,940.

(together, the Compensation Misstatements).

29. Arian contravened section 168.1(1)(b) of the Act, by making the Compensation Misstatements or omitting facts about executive compensation that were necessary to prevent Arian's required records from being false or misleading.

Director Liability

30. Dhanani and Naso contravened the same provisions as Arian under section 168.2 of the Act, by authorizing, permitting, or acquiescing in Arian's contraventions.

Hearing Process

- ¶ 2 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Wednesday, June 24, 2020, at 9:00 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 3 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 Hearing Office at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 4 If the Respondents or their counsel do not appear at the Hearing, the Executive Director may apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

Peter J Brady

Apr 3 2020 11:48 AM -07:00

- ¶ 5 Peter J. Brady
Executive Director