Citation: 2014 BCSECCOM 424

Weiqing Jane Jin

***Securities Act*, RSBC 1996, c. 418**

Hearing

Panel	Judith Downes	Commissioner
	George C. Glover, Jr.	Commissioner
Hearing Date	October 1, 2014	
Submissions completed	September 25, 2014	
Date of Decision	October 27, 2014	

Appearing

Jennifer Whately	For the Executive Director
Thomas Manson, Q.C Patricia Taylor	For Weiqing Jane Jin

Decision

I Introduction

¶ 1 This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. Our Findings on liability made on July 22, 2014 (2014 BCSECCOM 194) are part of this decision.

¶ 2 We found that Weiqing Jane Jin contravened section 57.2(2) of the Act when on August 22, 2011 she purchased 3,000 shares of Hathor Exploration Limited while in a special relationship with Hathor and with knowledge of an undisclosed material fact about Hathor.

¶ 3 The material fact was a written proposal made on August 19, 2011 by Cameco Corporation to Hathor setting out the basis of an offer to acquire all of Hathor's shares.

II Positions of the Parties

¶ 4 The executive director seeks orders that:

- Jin cease trading in, and be prohibited from purchasing, any securities or exchange contracts of any issuer with which she is in a special relationship for a period of five years, and
- Jin disgorge $4,280 and pay an administrative penalty of $28,000.

¶ 5 Jin submits that no orders should be issued against her or, in the alternative, that:

- her ability to trade in securities of an issuer with which she is in a special relationship be limited for one to two years, and
- she disgorge $4,280 and pay an administrative penalty of $7,500.

III Analysis

A. Factors

¶ 6 Orders under section 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.

¶ 7 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified 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:
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> - 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 integrity of capital markets

¶ 8 In *David Charles Greenway and Kjeld Werbes,* 2012 BCSECCOM 59 (*Greenway*), the

Commission said:

> "22 Illegal insider trading is serious, even when small amounts are involved, and the conduct is not intentional or done in ignorance of the rules. Market participants expect that all those trading in a market with integrity have available to them the same material information about the securities traded in that market. When people in a special relationship with an issuer trade while in possession of material information about the issuer that has not been generally disclosed, the public's perception of the fairness of our markets is damaged."

¶ 9 A related decision, *David Charles Greenway and Kjeld Werbes*, 2012 BCSECCOM 69 (*Werbes)*, involved allegations of insider trading against Kjeld Werbes, a British Columbia securities lawyer with 35 years of experience. In commenting on the above quote, the Commission said:

> "26 The same can be said with even greater emphasis about the conduct of securities lawyers who act for public companies and in so doing become privy to undisclosed material information. Market participants depend on these professionals to ensure that transactions are done properly and to act with the highest integrity. When one of them engages in illegal insider trading, the reputation of the market suffers. Werbes is a senior and experienced securities lawyer."

¶ 10 The executive director submitted that the case before us is directly comparable to *Werbes* on the basis that Jin was a senior and experienced corporate counsel and both her Vancouver law firm and Hathor relied on her skill and expertise. He said that she should be held to the same expectations we have of all lawyers acting for public companies dealing in the capital markets in British Columbia.

¶ 11 Jin argued that at the relevant time although she was licensed as a foreign law practitioner in British Columbia and was consultant at her firm she was not a practicing lawyer in British Columbia, much less a practicing securities lawyer. She said that her role with respect to Hathor was as an adviser on Chinese business practices and a translator.

¶ 12 Jin also argued that when determining the seriousness of her misconduct we should take into consideration that:

- she was not provided with a copy of her law firm's securities trading policy at the time she signed her employment agreement,
- Hathor was not placed on the firm's list of securities in which trading was restricted, and
- she did not participate in any discussions or meetings regarding the Cameco offer after August 21, 2011 until August 25.

¶ 13 We assume that in making these submissions, Jin was arguing that her illegal insider trading was inadvertent and, thus, the seriousness of her misconduct was diminished.

¶ 14 We agree that Jin was not an experienced securities lawyer and she should not be held to the same expectations as Werbes. Nonetheless, Jin was a Chinese lawyer and, by her own description, a legal professional. She was a key member of the Hathor legal team and privy to material undisclosed facts relating to Hathor as a result of her intimate involvement in negotiations on Hathor's behalf. In her testimony, Jin agreed that as a legal professional she was expected to exercise a certain level of judgment and risk assessment.

¶ 15 Jin cannot rely on her failure to inform herself of restrictions on her ability to trade in Hathor shares to diminish the seriousness of her misconduct. As a legal professional, there was an expectation she would exercise judgment and conduct risk assessment regarding the propriety of trading in Hathor shares.

¶ 16 Jin failed to undertake any due diligence regarding trading restrictions despite the resources readily available to her. She was aware that her law firm had a policy on trading in securities as it was specifically referenced in her employment contract. However, she did not make any inquiries regarding its terms of her supervising partner or any other lawyer at the firm or consult the securities trading policy posted on the firm's website. She concurred with the partner's assessment that the Cameco offer was potentially a precursor to a hostile bid but made no inquiries regarding its status prior to her trade on August 22. We find that in failing to take any steps to determine the propriety of trading in Hathor shares, Jin displayed a serious lack of judgment.

¶ 17 The markets expect that persons who have special access to material facts as a result of their position will act with integrity and exercise good judgment. When they fail to do so and engage in illegal insider trading, the reputation of the market suffers. While Jin was not an experienced senior securities lawyer like Werbes, as a legal professional there was an expectation that she would exercise judgment with respect to her trades in Hathor shares. When she failed to do so and engaged in illegal insider trading, she damaged the public's perception of the fairness of the markets.

¶ 18 Jin also submitted that her motives in making her trades in Hathor shares should be considered in determining the seriousness of her misconduct. She said that the fact she first traded in Hathor shares on August 17 and 18 before the Cameco offer was first delivered to Hathor is evidence that her August 22 trade was not made with the intent to benefit from an undisclosed material fact. She submits it was simply the third in a series of trades that commenced before the material fact arose. She said that her trades were motivated by her initial research of the uranium sector and subsequent drops in Hathor's share price.

¶ 19 Consideration of this submission requires an examination of the circumstances surrounding the trades. Jin transferred money to fund her trades on August 15, the date of resolution of a dispute between China Guangdong Nuclear Power Group and Hathor over who would pay the cost of a due diligence visit to be made by CGNPC. CGNPC had stated that if Hathor did not share those costs, it would affect CGNPC's interest in doing due diligence and the commercial negotiations. Jin had a key role in the negotiations and resolution of the dispute. Her first trades followed on August 17 and 18.

¶ 20 We made no finding as to whether the negotiations between Hathor and CGNPC constituted a material fact as that was not alleged. However, it is clear that there were events unfolding at the time of Jin's initial trades that could have influenced those trades. In these circumstances, we cannot conclude that the mere fact Jin made two trades in Hathor shares preceding her illegal insider trade is evidence that she did not intend to benefit from undisclosed material fact.

¶ 21 Jin also said that after her share purchase on August 22, she had additional funds to invest. She submitted that had she intended to benefit from the undisclosed material fact, she would have bought more shares and her failure to do so was further evidence that she did not intend to so benefit. There was no evidence introduced as to the amount of funds available to Jin and, in any event, we do not find this argument compelling.

Harm to investors; enrichment

¶ 22 In *Kegam Kevin Torudag and Lai Lai Chan*, 2009 BCSECCOM 339, the Commission found that investors are harmed by illegal insider trading in direct proportion to the degree to which the traders were enriched. The Commission stated the measurement of enrichment as follows:

> "21 In our opinion, the benefit a trader has derived from illegal insider trading is measured by the difference between the price at which the illegal trade takes place and the price of the securities after the material information has been generally disclosed. This compares the price at which the trader bought or sold to the price at which the trader could have bought or sold after general disclosure of the material information. The result is the trader's profit earned or loss avoided through the illegal trading."

¶ 23 Jin purchased the 3,000 Hathor shares that were the subject of her illegal insider trade at a price of $2.76 per share for a total acquisition cost of $8,290. She sold those shares after Cameco's subsequent bid for Hathor shares was made public at a price of $4.19 per share for total sale proceeds of $12,570. The difference was $4,280 which is the amount of her enrichment.

Specific and general deterrence

¶ 24 As noted in *Werbes*, illegal insider trading is serious even when small amounts are involved. Sanctions must serve as a deterrent both to Jin and to others against future misconduct.

Past misconduct; mitigating factors

¶ 25 Jin submits the fact that she admitted to her trades in Hathor shares and her special relationship with Hathor is a mitigating factor. These admissions shortened the time required at the hearing to establish the evidentiary basis for certain elements of the allegations. However, they are not a mitigating factor in considering the sanctions for Jin's illegal insider trading when balanced against the seriousness of her misconduct.

¶ 26 Jin also submitted that her motives in making her trades in Hathor shares should be considered as a mitigating factor. We have already dealt with this submission in considering their impact on the seriousness of Jin's misconduct.

¶ 27 Jin also argued that her illegal insider trading was inadvertent and that inadvertence should be considered as a mitigating factor. As stated by the Commission in *VerifySmart Corp. et al* 2012 BCSECCOM 176, the fact that a respondent did not intentionally contravene the Act is not a mitigating factor.

¶ 28 Jin has no history of regulatory misconduct.

Risk to investors and markets

¶ 29 Jin made a serious error in judgment in failing to undertake any due diligence regarding the propriety of trading in Hathor shares**.** However, we made no finding that she intentionally contravened the Act. There is no reason to believe that Jin's participation in our capital markets in the future after the period of the ban we are ordering would pose any undue risk to investors or markets.

Previous orders

¶ 30 We considered past decisions of the Commission cited by the parties.

¶ 31 In *Greenway*, David Greenway made an illegal insider trade of 68,500 shares of Global Uranium Corp. He acted as a finder in connection with the acquisition by Global of a property known as the Anderson property. He admitted his illegal insider trading to both the Commission and the TSX-V and promptly removed himself from all of his relationships with TSX-V-listed companies. At the time of the decision, he had been bound for seven months by an undertaking to the TSX-V not to earn finder's or consultancy fees from TSX-V-listed issuers and not to act as a director or officer of those issuers. He also took steps to educate himself about the obligations of those who do business with public companies.

¶ 32 The Commission found that Greenway's trading was not intentional and he had traded in ignorance of the rules. There was third party evidence that his trading showed no pattern of intentionally seeking to profit from trading on insider information.

¶ 33 The Commission imposed a six-month ban against trading with anyone with whom Greenway was in a special relationship and an administrative penalty of $19,177. The administrative penalty was calculated by multiplying $12,785, which was the amount by which he was enriched, by 1.5. In applying this multiplier in this instance, the Commission stated that there is no formula for determining an administrative penalty.

¶ 34 In *Werbes*, Werbes made an illegal insider trade of 20,000 shares of Global. He had acted as Global's lawyer in connection with the preparation of an acquisition agreement for the Anderson property. He said that at the time he purchased his Global shares, he believed the information regarding the acquisition agreement had been released to the public. He admitted to his illegal insider trading, showed contrition and cooperated with

the Commission. Unlike Greenway, Werbes was fully aware of the prohibition against persons in a special relationship trading on undisclosed material facts.

¶ 35 The Commission found that while Werbes' trading may not have been intentional, it was careless. They stated that market participants have an expectation that securities lawyers who become privy to undisclosed material information in the course of acting for public companies will act with the highest integrity. The Commission found Werbes' failure to confirm that disclosure of the acquisition agreement had been made prior to his trade was an aggravating factor.

¶ 36 The Commission imposed a one-year ban against trading with anyone with whom Werbes was in a special relationship and an administrative penalty of $25,000. Werbes enrichment was $2,047.50. The Commission found that in the circumstances of that case, the multiplier approach would not yield the appropriate outcome. The Commission said that enrichment is only one factor in the determination of the administrative penalty. All of the applicable factors cited in *Eron* are relevant. The panel said (at paragraphs 49 and 52):

> "49 The impact of the enrichment factor on the administrative penalty depends on the degree of enrichment. If the enrichment is significant that factor alone may, after applying the appropriate multiplier, yield a penalty that is high enough to be appropriate in light of all the factors relevant to the penalty determination. Indeed, in those circumstances, the penalty could be higher than would be a penalty determined solely on the remaining factors."
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> "52 However, in cases where the enrichment is not significant, the relative importance of the enrichment factor to the overall administrative penalty will diminish. In such cases, the administrative penalty determined by the consideration of the other factors as well will be higher than the amount derived from the enrichment fact alone."

¶ 37 Jin cites *Greenway* and *Werbes* as authorities for her submission that the Commission has determined that an administrative penalty of 1.5 times the amount of enrichment is appropriate except in circumstances where the respondent is an integral part of the transaction. We assume this statement is to be read with her submissions outlined above regarding her limited role as a foreign law practitioner.

¶ 38 Although the Commission applied a 1.5 multiplier in *Greenway*, it clearly stated that there is no formula for calculating an administrative penalty. As noted above, the Commission expanded upon this in *Werbes* to say that enrichment is only one factor in the determination of an administrative penalty and the impact of enrichment on the penalty depends on the degree of enrichment.

¶ 39 Jin referred us to *Aviawest Resorts Inc., Rob DiCastri, Andrew Pearson, James Pearson, Lawrence Pearson, Susan Pearson, Zulak Financial Group Ltd., Melvin Zulak and Karla Ann Davis* 2013 BCSECCOM 319 as authority for her submission that no orders should

be made against her under section 161. We do not find this case helpful as it dealt with allegations and facts very different from the case before us. It involved an illegal distribution of promissory notes to at least 150 investors in a real estate timeshare development. There was no insider trading.

¶ 40 Jin also cited a settlement agreement, *Robert Launder*, 2014 BCSECCOM 245. We have not considered this settlement in our reasoning as settlements occur in a completely different context than that before us.

C. Appropriate Orders

¶ 41 Although the number of Hathor shares Jin purchased and the amount her enrichment was small, her misconduct is serious. She failed to meet the expectation that legal professionals who have special access by virtue of their role to undisclosed material facts will act with integrity and good judgment and not trade on that information before it has been properly disclosed.

Trading ban

¶ 42 Our order prohibits Jin from purchasing or trading in securities or exchange contracts of an issuer with which she is in a special relationship. Although we do not hold Jin to the same expectations as a senior securities lawyer in all respects, she was a legal professional who failed to undertake the most basic due diligence and to exercise good judgment regarding the propriety of trading in Hathor shares. In the circumstances of this case, we consider a one-year ban to be appropriate.

Administrative penalty

¶ 43 The difference between the penalty proposed by the executive director ($28,000) and that proposed by Jin ($7,500) is significant. In our view, neither proposal is appropriate.

¶ 44 In *Werbes*, the administrative penalty was more than 12 times the amount of Werbes' enrichment. The panel found that the seriousness of his misconduct was aggravated by his failure, as an experienced securities lawyer, to confirm that disclosure of the material fact had been made prior to his trade.

¶ 45 Jin's enrichment was $4,280. This amount is not significant. As noted in *Werbes*, where enrichment is not significant, the relative importance of the enrichment factor to the overall administrative penalty will diminish and the administrative penalty determined by consideration of the other factors will be higher than the amount derived from the enrichment factor alone.

¶ 46 Unlike *Werbes*, there are no aggravating factors. However, in our view, a penalty of $7,500 would be too low after giving consideration to all of the other factors relating to sanction including the damage to the integrity of the capital markets resulting from Jin's serious lack of judgment as a legal professional regarding the propriety of trading in Hathor shares.

¶ 47 In the circumstances of this case, an administrative penalty of $12,000 is warranted. It significantly exceeds Jin's enrichment and reflects the seriousness of her misconduct and the other factors relevant to sanctions, making it appropriate for Jin personally. Further,

it serves as a meaningful and substantial general deterrent to others from engaging in similar illegal insider trading

Disgorgement

¶ 48 The executive director proposes that we order Jin to pay to the Commission $4,280 being the amount obtained by her as a result of her contravention of the Act. Jin agrees that if such an order is made, the sum of $4,280 is consistent with prior Commission decisions.

¶ 49 We agree with the executive director's submission and have determined that it is appropriate that we order Jin to pay to the Commission the amount of $4,280.

IV Orders

¶ 50 Considering it to be in the public interest, we order that:

1. under section 161(1)(b), Jin cease trading in, and is prohibited from purchasing, any securities or exchange contracts of any issuer with which she is a person in a special relationship until the later of October 27, 2015 and the date Jin pays the amount described in subparagraphs 2 and 3,
2. under section 161(1)(g), Jin pay to the Commission $4,280 being the amount obtained, directly or indirectly, as a result of her contravention of the Act, and
3. under section 162, Jin pay an administrative penalty of $12,000.

¶ 51 October 27, 2014

¶ 52 For the Commission

Judith Downes
Commissioner

George C. Glover, Jr.
Commissioner