



IN THE MATTER OF THE SECURITIES ACT
S.B.C. 1985, c. 83

AND

IN THE MATTER OF ROBERT THEODORE SLAVIK

HEARING

BEFORE: DOUGLAS M. HYNDMAN CHAIRMAN
JEREMY P.H. MCCALL MEMBER

HEARING: JULY 5, 1990

APPEARING: CATHERINE SLOAN FOR THE SUPERINTENDENT OF
BROKERS
GREGORY WALSH FOR ROBERT THEODORE SLAVIK

DECISION AND REASONS OF THE COMMISSION

This hearing was initiated by a notice of hearing (the "Notice") issued by the Superintendent of Brokers on June 11, 1990. The Notice advised that the Commission would be asked to determine whether it is in the public interest to make orders under sections 144, 144.1 and 154.2 of the Securities Act, S.B.C. 1985, c. 83 (the "Act") against Robert Theodore Slavik.

The Notice was accompanied by temporary orders under section 144(2) of the Act removing Slavik's exemptions, ordering him to resign as a director or officer of any reporting issuer, and prohibiting him from becoming or acting as a director or officer of a reporting issuer. The temporary orders have been extended by the Commission until this decision is rendered.

The Notice and temporary orders were issued on the basis of a policy enunciated by the Superintendent. NIN 88/11, dated June 6, 1988, stated that the Superintendent would generally issue a temporary order removing the exemptions of a person charged with a criminal offence related to trading in securities. On May 8, 1990, Slavik was charged by a member of the Royal Canadian Mounted Police with six counts of failing to file insider reports under section 70 of the Act.

The evidence presented to the Commission consisted of a copy of the information containing the charges, a copy of a search warrant under the Criminal Code that was used by the RCMP in the investigation leading to the charges, and an agreed statement of facts (the "Statement"), which is attached to this decision as Appendix A.

We were also referred to NIN #89/13, dated March 2, 1989, in which the Superintendent gave notice of his intention to step up review and enforcement procedures for statutory filings, including insider reports, and established a grace period until April 28, 1989, during which late insider reports would be accepted "without further action or requirement for explanation".

Ms. Sloan noted that the Statement showed Slavik was aware of the insider reporting obligation and failed to file, until long after the reports were required, in respect of a six month period during which he traded heavily. She also noted that he had failed to avail himself of the grace period under NIN #89/13.

Ms. Sloan argued that insider reporting is a cornerstone of the disclosure system, which provides important information for investors and improves public confidence in the securities market by deterring improper trading by insiders. She argued that Slavik's conduct had caused prejudice to the public interest and reflected badly on his attitude to his duties as a director of a reporting issuer. Accordingly she asked that the Commission treat the contravention seriously and suggested that we make orders under section 144(1)(c) and (d) of the Act, removing Slavik's exemptions and prohibiting him from becoming or acting as a director or officer of a reporting issuer, for one to two years.

Mr. Walsh admitted that Slavik had violated section 70. He said that Slavik acknowledged the importance of insider reporting, but that he had not appreciated it at the time of the contravention. Mr. Walsh claimed that Slavik had intended to file insider reports but failed to do so because of other priorities to which he gave precedence in the mistaken belief that late filing would not be significant.

Mr. Walsh noted that Slavik had come forward to file his insider reports on his own, without being asked to do so by the Superintendent, albeit well over a year late and more than a year after the end of the grace period. He also noted that there was no allegation that Slavik had benefited from non-compliance or that the failure to file was part of a broader scheme. He described Slavik's high volume of trading during the relevant months as being the result of a role Slavik was performing as a market maker.

Mr. Walsh acknowledged the concerns of the Superintendent and the necessity for the Commission to make orders against Slavik in the public interest. However, he argued that the orders suggested by Ms. Sloan were too severe. He argued for more limited orders in light of Slavik's acknowledgements and voluntary filing of the late reports and the fact that this is the first case to come before the Commission based solely on contravention of section 70.

Mr. Walsh suggested that the Commission make an order:

- prohibiting Slavik from becoming a director, officer or insider of a reporting issuer, except with the approval of the Superintendent, for six months; and

- if Slavik becomes a director, officer or insider of a reporting issuer, prohibiting him from trading shares of that issuer during the six month period unless he gives ten days notice to, and obtains approval from, the Superintendent.

Mr. Walsh stated that Slavik continues to derive part of his income from investments in public companies. He argued that the order he suggested would still affect Slavik's livelihood and is appropriate in the circumstances. In support of his argument, Mr. Walsh pointed to the late filings of Slavik's fellow directors, described in the Statement, as well as a settlement entered into by the Superintendent with a Richard William Warke in November 1989.

He also made reference to the closing paragraph of this Commission's decision in the Matter of Capital Reserve Inc. et al, which stated that the penalties imposed had been "ameliorated from what would otherwise be appropriate", because that was the first case of its type to come before the Commission.

We do not consider Mr. Walsh's argument compelling. Although Mr. Walsh asserted that Slavik had filed his late reports "on his own", the Statement shows that they were filed two days after he was charged by the RCMP with late filing. We infer that the filing was prompted by the charges. The apparent late filing by Slavik's fellow directors has no relevance to this case. In any case, the delinquencies of the other directors described in the Statement appear far less serious than Slavik's failure to file. Similarly, the Warke settlement involves a far less serious contravention. Finally, the Capital Reserve reference is not applicable in this case because NIN #89/13 provided specific notice that the Superintendent intended to increase enforcement activity with respect to insider reporting and gave Slavik an opportunity to bring his filings up to date without consequences.

We find Slavik's conduct to have fallen below the standard expected of a director of a reporting issuer. Failure of an insider to file reports under section 70 of the Act suppresses the disclosure of important information about the trading activities of a person closely associated with the issuer. Disclosure of trading by insiders is a key element of the system of continuous disclosure concerning the affairs of reporting issuers. Contravention is particularly serious when, as in this case, the insider is trading significant volumes of shares.

We consider it to be in the public interest to remove Slavik from the market and from involvement with reporting issuers for a reasonable period.


We order:

1. under section 144(1)(c) of the Act, that the exemptions described in sections 30 to 32, 55, 58, 80 and 81 do not apply to Slavik for one year from the date of this decision; and

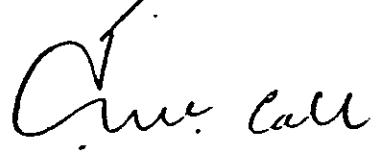
2. under section 144(1)(d) of the Act, that Slavik is prohibited from becoming or acting as a director or officer of any reporting issuer for one year from the date of this decision.

DATED at Vancouver, British Columbia this 17th day of July, 1990.

For the Commission



Douglas M. Hyndman
Chairman



Jeremy P.H. McCall
Member