

May 9, 2016

TO: Brenda Leong - Chair
British Columbia Securities Commission
PO Box 10142 (Pacific Centre)
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2

FROM: Rod Wharram / West Karma Ltd., Deercrest Construction Fund Inc., Falls Capital Corp.



(the "Respondents in BCSC Action")

SENT VIA EMAIL TO: bleong@bcsc.bc.ca

RE: SIMPLE REQUEST IGNORED BY PANEL

Dear Ms. Leong,

I write to you today in frustration with respect to a recent email exchange I have had with the Commission Secretary ("COMMSEC") at the *British Columbia Securities Commission* ("BCSC").

OVERVIEW

1. On June 14, 2013, the Respondents were issued a *Notice of Hearing* by the Executive Director of the BCSC, along with an *Asset Freeze Order* signed by you.
2. The allegations were the Respondents committed fraud under section 58 (b), and Making a Statement to an Investigator under section 168.1 of the *British Columbia Securities Act*. The hearing took place from April 7 – 15, 2014 at the Commission's office in Vancouver.
3. On February 11, 2015, the Panel (consisting of Vice Chair Nigel Cave; and Commissionaires Don Rowlatt, Judith Downes, and George C. Glover) issued its **Findings (2015 BCSECCOM 59)** on the matter; and on November 25, 2015 they issued the **Decision (2015 BCSECCOM 422)**.
4. In their Decision, the Panel concluded that the Respondents breached portions of the *Act* including both the Fraud and Making a False Statement to an Investigator as noted above. As part of their Decision, they went on to order disgorgement in the amount of \$517,500 and issued a fine totalling \$500,000.

Was the allegation of Making a False Statement Proven in the Hearing?

5. In the Findings document, the Panel had the following to say with respect to the allegation the Respondents made a False Statement to an Investigator:

¶ 147 Wharram says that the statements are not false in that in the spring of 2013 he was attempting to obtain bridge loans to purchase the Deercrest project for a company that is not one of the respondents. He says that getting loans is not the same as raising funds from investors and that the questions were not specific as to which respondent they were referring to.

¶ 148 Implicit in Wharram's submission is a distinction that he appears to make between a loan and an investment. Under the Act there is no such distinction. In plain parlance, we do not see that distinction either. He was asked if he had raised funds from investors in 2013 and if he was intending to raise funds from investors. The truthful answer to both those questions was yes. Wharram said no.

2015 BCSECCOM 59, para 147-148

6. On April 22, 2016, the Respondents wrote an email to the Commission Secretary ("COMMSEC") with questions regarding some of the decisions the Panel made during the hearing and subsequent release of the Decision. Specifically, the Respondents questioned the portion of their wording that states, *"Implicit in Wharram's submission is a distinction that he appears to make between a loan and an investment. Under the Act there is no such distinction. In plain parlance, we do not see that distinction either..."*. We feel an explanation on this ruling is needed to explain their thoughts on why this allegation was proven in the eyes of the members of the Panel.
7. The COMMSEC replied back and said the Panel provided reasons for their decision in the Decision document. I sent an email back and insured her there was nothing in the document that relates to reasons for their decision – and ended my email by again asking her to get the Panel to respond. There has been no reply to this email.
8. If there is nothing in the *Act* that would distinguish a loan from an investment then that would mean all loans are considered a security under the Act. This is absurd considering people borrow money from others on a regular basis.
9. Gerry Schacher ("Schacher"), a personal friend of Wharram's, invested in the Corporate Respondents businesses in 2006. Over the years Mr. Schacher became a very close friend and visited Wharram's home on many instances. He and Wharram spent many days golfing and enjoyed dinners with our family members. Schacher's friendship will always be treasured by Wharram.

10. During the hearing, Staff for the Executive Director, called Schacher as a witness. A segment of his cross examination is as follows:

Q Did you loan me \$50,000 in 2013?

A I did

Q Was it a loan or an investment?

A As far as I know, it was just a loan. It was initially for one week until everything got straightened and it was going to be paid back.

...

Q Has anyone contacted you from the Commission recently and asked you whether it was a loan or an investment?

A Yeah. Yes.

Q And who was that?

A I think it was [Bode] that asked if it was a loan or investment.

Q And what did you tell him?

A As far as I know it's just a loan. **It was never classified as an investment.**

...

Q This is the supporting document related to the wire transfer of the loan for \$50,000 is this correct?

A Yes.

Q Do you have any idea why it would say investment on there? Is that something you would have told the teller to do or is this something that - -

A It probably was what I mentioned to the teller.

Q Is that - -

A She probably asked what this was for and I guess I just put down investment.

Q Okay. And in hindsight would that be a mistake?

A Yes it would.

11. This testimony says it all – even Staff’s own witness agrees that he lent me money for a short term loan. The money was used for personal expenses as well as putting a deposit down on a real estate project. Schacher was paid back in full plus interest approximately 45 days later.
12. To top it all off, during the cross-examination of Lead Investigator Elizabeth Chan, she had the following to say:

Q Is it possible the information you gave the executive director that caused him to make a notice of hearing **was based on an assumption** that I was trying to raise capital from Gerry Schacher?

A **Yes.**

Hearing Transcripts, April 9, 2014, p. 60 Lines 1-5 [*Emphasis Added*]

13. The Respondents find it most unfortunate that the allegation was proven by the investigator ASSUMING things to be true despite the Executive Director having the onus to prove his allegations.
14. This assumption has led to many negative items being written in the public domain regarding my character. I take pride in that I do not lie to anyone but here I am being branded a liar by both the Panel and others who relied upon a very slanderous press release sent out by your office.

Please find out the reasoning behind this Decision of the Panel

15. The Respondents feel we have a right to know how the Panel found this allegation to be true when the following occurred:

- Investigator Chan admits to assuming;
- Staff’s witness agreed with Wharram;
- There is no distinction in the Act between a loan and an investment.

16. Because the Respondents have been ignored by the COMMSEC, I would ask you (as Chair of the Commission) to obtain the answer to my questions, specifically:

Why did the Panel rule that the Respondents breached section 168.2 when the Panel unequivocally state there is no distinction under the Act. If there was no distinction under the Act, then how would ANY Respondent understand they were in breach of the Act and /or have Subjective Knowledge they were in breach of the Act?

17. Additionally, we will submit that the Respondents were in a full 2 days compelled interview and the very last questions at the end of Day 2 are the questions the Executive Director alleged the Respondent did not answer truthfully. The Respondents maintain they did lie to the investigator as they were not raising capital – I was borrowing funds for various reasons including paying my personal bills. This was all disclosed during the hearing.

18. It makes no sense the Respondents would make a False Statement to an Investigator at that point in the compelled interview. In addition, Wharram had no reason to make the false comments as they had no bearing on the matter.

Ms. Leong, I understand you are a very busy person; but I feel that I am entitled to an explanation by 'someone' at the Commission. The consequences of this finding are real as I look for employment in the Province of British Columbia. As Chair of the BCSC, I certainly think you should be able to get answers to this question.

I would appreciate a reply back within 10 business days at the email I have sent you this email.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rodney J. Wharram', written in a cursive style.

Rodney J. Wharram