ALBERTA SECURITIES COMMISSION

DECISION

Citation: Cheng, Re, 2007 ABASC 834 **Date: 20071113**

Wai-Leung Cheng (aka Danny Cheng), Lisa Wong and Carling Development Inc.

Panel:	Stephen R. Murison Roderick J. McKay, CA
Appearing:	Matthew Epp for Commission Staff
	Jari Sokkanen for the Respondent(s)
Date of Hearing:	26 October 2007
Date of Decision:	13 November 2007

#2694079 v1

I. INTRODUCTION

[1] In an amended notice of hearing issued on 8 March 2007, staff ("Staff") of the Alberta Securities Commission (the "Commission") alleged that a number of individuals and corporations – Carling Development Inc. ("Carling"), Carling Development (B.C.) Inc. ("Carling BC"), Integra Investment Services Ltd. ("Integra"), Rundle Development Cooperative, Venture West Properties Ltd., 965081 Alberta Ltd. ("965081"), Wai-Leung Cheng, also known as Danny Cheng ("Cheng"), Lisa Wong ("Wong"), Roy Jennix, Maxine Cook, John Anderson and Mel Maschmeyer – had engaged in illegal trades and distributions of securities and acted contrary to the public interest.

[2] On 3 September 2007 three of those named – Carling, Cheng and Wong, who are the Respondents in this proceeding – executed a "Statement of Admissions" in which they admit certain facts, breaches of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") and conduct contrary to the public interest, and propose, jointly with Staff, certain consequences of that conduct. The Statement of Admissions includes the Respondents' acknowledgement that they had sought independent legal advice and that their admissions in that document were made voluntarily.

[3] This matter came to a hearing on 26 October 2007. We heard submissions from counsel for Staff and counsel for Cheng, Wong and Carling. The Statement of Admissions was entered into evidence. Its content was not disputed and no contrary evidence was tendered.

[4] Based on the evidence and submissions, we are ordering sanctions against each Respondent consistent with the joint submission of the parties. We are also ordering that Cheng and Wong make payments towards the cost of the investigation. Our decision and reasons follow.

II. FACTS AND FINDINGS

[5] The factual background to this matter is drawn from the Statement of Admissions.

A. Respondents Traded and Distributed Securities

[6] Cheng and Wong were directors and officers of Carling and of Carling BC, through which corporations Cheng and Wong carried on business as real estate developers.

[7] Carling BC was not a party to this proceeding. Counsel for the Respondents indicated that Cheng and Wong are not now in a position to make submissions on behalf of that corporation by reason of it having become subject to a receivership order.

[8] In approximately December 2000, Cheng and Wong caused Carling and Carling BC to retain Integra to market investments in three real estate projects in Alberta and British Columbia. None of those projects has been completed.

[9] From January 2001 to "at least" December 2003, Integra solicited a total of approximately $3.5 million from approximately 150 Alberta investors under agreements with Carling and Carling BC (the "Carling Agreements").

[10] The Respondents admit, and we find, that the Carling Agreements were "securities" as defined by the Act and that the sale of those securities to the Alberta investors constituted both "trades" and "distributions" under the Act.

B. Respondents Contravened Alberta Securities Laws

[11] None of the Respondents filed a preliminary or final prospectus (and, therefore, no receipt for such prospectus was issued) for the Carling Agreements. None of Cheng, Wong, Carling, Carling BC or Integra was registered with the Commission's executive director.

[12] It follows – as the Respondents admit, and we find – that their activity contravened section 75 of the Act, which requires that those trading in securities be registered to do so, and section 110 of the Act, which mandates the use of a prospectus for a distribution of securities.

C. Respondents Acted Contrary to the Public Interest

[13] The registration and prospectus requirements are core elements of Alberta securities laws. They are intended to provide Alberta investors with two essential protections: (i) information (contained in a prospectus) to assist them in making informed investment decisions; and (ii) the involvement of a registered intermediary who has appropriate knowledge of securities, the capital market, and the investment objectives and risk tolerances of their investor client.

[14] In contravening these requirements, the Respondents denied Alberta investors these statutory protections. As such – and as the Respondents admit – their contraventions of the Act were contrary to the public interest. We so find.

D. Other Facts

[15] The Respondents declare in their Statement of Admissions that, while they were not sufficiently diligent in ensuring compliance with Alberta securities laws, they had relied on legal counsel for Carling and on Integra and its principals.

[16] None of the Respondents has previously been sanctioned by the Commission. They contend that they have cooperated with Staff's investigation, and that their admissions have saved the Commission the time and expense associated with a contested hearing. Staff did not dispute these points.

[17] The Respondents indicate in their Statement of Admissions that "[t]he investors in Carling and Carling BC are expected to see a partial recovery of their investment".

III. SANCTION

A. Joint Proposals

[18] It was the joint position of the Respondents and Staff that the misconduct of the respondents warrants sanctions under the Act.

[19] Staff joined Cheng and Wong in proposing that those Respondents should each: pay a monetary amount "in settlement of the allegations" against them; cease trading in or purchasing any securities and not rely on any exemptions under Alberta securities laws (with exceptions for personal trading on specified conditions); and not act as a director or officer (with specified exceptions). The extent of these sanctions proposed for Cheng was considerably greater than those for Wong.

[20] Carling and Staff jointly proposed that Carling cease trading in or purchasing any securities and not rely on any exemptions for a period of 10 years.

B. Sanctioning Principles and Analysis

[21] This Commission has commented on numerous occasions on the purposes and principles of sanctions in an enforcement proceeding. See, for example, *Re Stewart*, 2007 ABASC 546 (at paras. 24-25):

> The purpose of sanctions in an enforcement proceeding such as this is not to punish misconduct but to protect investors and the Alberta capital market from a recurrence of misconduct – see, for example, *Re 526053 B.C. Ltd.*, 2006 ABASC 1795 at para. 17. Achieving that purpose can involve both specific deterrence of repeated misconduct by a particular respondent and general deterrence of future misconduct by others (see the decision of the Supreme Court of Canada in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 55, which overturned the appellate court decision cited by Stewart).
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> This Commission has in other proceedings considered a number of factors, enumerated in *Re Lamoureux*, [2001] A.S.C.D. No. 613 at para. 11 (appeal dismissed – *Lamoureux v. Alberta (Securities Commission)*, 2002 ABCA 253), in assessing whether or what sanctions are appropriate in the circumstances of a particular case. . . .

[22] We discuss briefly certain of the factors enumerated in *Lamoureux* that we consider particularly relevant here.

Seriousness of Misconduct and Harm to Investors

[23] It appears from the Statement of Admissions that, while investors might "see a partial recovery of their investment", some losses are to be expected. We therefore conclude that the Respondents exposed identifiable investors to both the risk and the reality of direct financial harm.

[24] As mentioned, the conduct of the Respondents deprived Alberta investors of core protections mandated by Alberta securities laws. The Respondents thereby helped undermine the integrity of our system for offering and distributing securities and, with it, the fair and efficient operation of the Alberta capital market.

[25] We conclude that the Respondents' misconduct was serious and deserving of commensurate sanction. The appropriate sanction must deter a recurrence of misconduct by the Respondents (specific deterrence) and also signal more widely (general deterrence) that similar misconduct by others will have serious consequences.

Recognition of Seriousness and Risk of Recurrence

[26] Both the existence and the content of the Statement of Admissions indicate to us that the Respondents appreciate the seriousness of their misconduct and accept the appropriateness of significant sanction for that misconduct.

[27] We believe that this recognition by the Respondents, coupled with appropriate sanctions, will go far to ensuring that the Respondents will not repeat their mistakes to the future detriment of Alberta investors.

C. Conclusion on Sanction

[28] We are satisfied that the nature and extent of the various sanctions jointly proposed in respect of each Respondent are consistent with the public interest and would provide an appropriate degree of protection and specific deterrence – as well as an important message of general deterrence to capital market participants generally as to the importance that must be given to compliance with Alberta securities laws.

IV. SANCTIONS ORDERED

[29] We therefore make the following orders in the public interest.

[30] In respect of Cheng:

- under sections 198(1)(b) and (c) of the Act, he must cease trading in or purchasing any securities and all of the exemptions contained in Alberta securities laws do not apply to him, in each case for a period of seven years, except that

these orders will not preclude him from trading or purchasing securities as principal in a personal account through a registrant who has first been given a copy of this decision;

- under sections 198(1)(d) and (e) of the Act, he must resign all positions that he holds as a director or officer of any issuer and he is prohibited from acting as a director or officer (or both) of any issuer for a period of seven years, except that Cheng may:

  (i) continue to act as a director and officer of Carling for the sole purpose of cooperating with Carling's court-appointed Receiver and Inspector; and

  (ii) act as a director or officer (or both) of any issuer all of the shares of which are owned by one or more of Cheng and members of his immediate family provided that such issuer does not offer shares to the public; and

- under section 199 of the Act, he must pay an administrative penalty of $50 000.

[31] In respect of Wong:

- under sections 198(1)(b) and (c) of the Act, she must cease trading in or purchasing any securities and all of the exemptions contained in Alberta securities laws do not apply to her, in each case for a period of three years, except that these orders will not preclude her from trading or purchasing securities as principal in a personal account through a registrant who has first been given a copy of this decision;

- under sections 198(1)(d) and (e) of the Act, she must resign all positions that she holds as a director or officer of any issuer and she is prohibited from acting as a director or officer (or both) of any issuer for a period of three years, except that she may act as a director or officer (or both) of any issuer all of the shares of which are owned by one or more of Wong and members of her immediate family provided that such issuer does not offer shares to the public; and

- under section 199 of the Act, she must pay an administrative penalty of $25 000.

[32] In respect of Carling, under sections 198(1)(b) and (c) of the Act, it must cease trading in or purchasing any securities and all of the exemptions contained in Alberta securities laws do not apply to it, in each case for a period of 10 years.

V. COSTS

[33] We were also presented with joint proposals that Cheng and Wong pay amounts toward the costs of the investigation.

[34] Notwithstanding that the Respondents' admissions and their joint submissions with Staff avoided the cost of a contested hearing and thereby contributed to the efficient resolution of this matter, it is obvious that costs were incurred in Staff's investigation. We agree with the parties that it is appropriate for Cheng and Wong to pay a portion of those costs. There being no dispute as to quantum, we accept the joint submissions on this point.

[35] Accordingly, we order under section 202 of the Act that:

- Cheng must pay to the Commission $20 000 toward the costs of the investigation; and

- Wong must pay to the Commission $15 000 toward the costs of the investigation.

[36] This proceeding is now concluded.

13 November 2007

For the Commission:

"original signed by"
Stephen R. Murison

"original signed by"
Roderick J. McKay, CA