3.1.4 Daniel Duic

Headnote

Settlement Agreement – Insider Trading – Sanctions – Public Interest

Respondent admitted to breaching s. 76(1) of the Act. Undisclosed confidential information regarding companies involved in pending transactions was conveyed to the respondent and respondent then traded on that information and reaped profits. The settlement agreement was approved and contained the following sanctions with a reprimand:

- permanent cease-trade order;
- permanent prohibition from all exemptions offered by Ontario securities law;
- permanent prohibition from becoming or acting as a director or officer of a public company;
- voluntary order to pay profits of illegal trades in the amount of CDN $1.9 million;
- payment of costs in the matter in the amount of CDN $25 million;
- continued co-operation with pending investigation and trial;

The respondent co-operated fully with the investigation. The settlement agreement is in the public interest to provide protection to investors from unfair, improper and fraudulent practices and to foster fair and efficient capital markets.

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DANIEL DUIC

REASONS FOR DECISION OF THE
ONTARIO SECURITIES COMMISSION

HEARING: Wednesday, March 3, 2004

PANEL:	Paul M. Moore, Q.C.	- Vice-Chair
	Robert W. Davis	- Commissioner
	Suresh Thakrar	Commissioner
COUNSEL:	Kelley McKinnon Gregory MacKenzie Yvonne Lo	- On behalf of Staff of the Ontario Securities Commission
	Chris Kostopoulos	On behalf of Daniel Duic

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the transcript of the hearing in the matter of Daniel Duic. The transcript has been edited, supplemented and approved by the chair of the panel for the purpose of providing a public record of the panel's decision in the matter. This statement should be read together with the settlement agreement and the order signed by the panel.

The purpose of the hearing was to consider a settlement agreement between staff of the Commission and the respondent, Daniel Duic, in a matter pursuant to sections 127 and 127.1 of the *Securities Act* (the Act).

Vice-Chair Moore:

[1] We are prepared to approve the settlement agreement as being in the public interest. Accordingly, the hearing is no longer in camera and members of the public are admitted. The following are the oral reasons for our decision.

[2] This hearing was held under section 127 of the Act for us to consider whether it is in the public interest to make an order approving the sanctions agreed to by staff of the commission and Daniel Duic in relation to Duic's illegal insider trading.

[3] In these oral reasons, the facts that I will recite are those that have been agreed. I want to stress that they are only for the purpose of this settlement hearing and that the facts agreed to here are important to us to base our decision on whether to approve the settlement agreement as being or not as being in the public interest, but do not go to prove any other matter not relevant to this particular hearing.

[4] By way of background, in April 2001, staff commenced an investigation into certain unusual trading activity. It quickly became clear that suspicious trading had occurred in international accounts and involved trades of the securities of reporting issuers in which RBC Dominion Securities was acting as an advisor.

[5] As a result of steps taken by staff, two accounts were frozen and prohibited from further trading or release of funds. An RBC DS account in the Bahamas was frozen by commission direction on April 6th, 2001, pursuant to section 126 of the Act. This direction was continued by Justice Farley on April 12, 2001 until further order.

[6] A second account was "arrested" in Luxembourg effective June 21, 2001 by direction of the public prosecutor's office. Both accounts were controlled by Duic.

[7] In April of 2002, Duic agreed to provide staff with his knowledge, including relevant documents, related to his own insider trading and the manner in which he obtained information or tips in order to conduct that trading. In accordance with the settlement agreement executed on November 20, 2002, Duic has provided evidence

to staff since that time and we have taken into consideration the co-operation that has been shown by Duic since that date.

[8] In addition to these proceedings against Duic, staff has also commenced proceedings against Andrew Rankin under section 122 of the Act. It is alleged that Rankin breached section 76 of the Act by insider trading and by tipping information to Duic.

[9] We determined that the sanctions proposed in the settlement agreement are in the public interest. Duic has admitted that he breached section 76(1) of the Act. He accepts sanctions which includes a permanent cease trade order and a permanent prohibition from becoming or acting as a director or officer of any public company, as well as a voluntary payment by him which equals the profits made on the trades in the shares of the two companies alleged by staff to have been the subject-matter of the insider trading, namely Canadian Pacific Limited and Moffat Communications Limited.

[10] The agreed sanctions against Duic must be assessed in light of the fact that Duic has agreed to co-operate with staff, not only during the investigation, but since the time of the settlement agreement. This will be helpful to staff in gathering evidence concerning the whole matter, including the alleged illegal insider trading by Rankin.

[11] Duic began investing in equities in 1996 at 32 years of age. He had neither experience nor training in the investment industry. Between October, 1999 and March, 2001, Duic received undisclosed confidential information concerning material facts and material changes of a number of Ontario reporting issuers from Rankin. The material fact or change related to a pending merger or acquisition or other corporate transaction about certain reporting issuers.

[12] At the time, Rankin was managing director of the mergers and acquisitions department of RBC DS. As RBC DS was acting as an advisor to one of the parties in each of the merger, acquisition or corporate transaction, Rankin had knowledge of these transactions in advance of public disclosure, according to the agreed facts.

[13] Duic and Rankin had been close friends for some 20 years, including having attended high school together. Duic and Rankin spoke to each other frequently and socialized together. Undisclosed confidential information about companies involved in pending transactions was conveyed by Rankin to Duic at private meetings between them or by phone. Rankin and Duic were careful to ensure that there was no record of, nor witnesses to, the tips provided by Rankin.

[14] Duic's trading in securities of reporting issuers in Ontario was conducted through various accounts in the Bahamas, Luxembourg, Switzerland and Liechtenstein. Duic typically conveyed trading instructions in person, by calls made in phone booths using disposable calling cards or by encrypted e-mails involving code names.

[15] Based upon the confidential information divulged to him by Rankin, Duic bought securities of a number of reporting issuers in advance of the public announcement of the pending transaction. For the purposes of this hearing, staff proceeded upon and Duic admitted to trading in the securities of the two securities I referred to; namely, Canadian Pacific and Moffat.

[16] At the time that Duic purchased securities in Canadian Pacific and Moffat, the confidential information concerning the material fact or material change for each of those companies had not been generally disclosed to the public. Duic made a net trading profit estimated at $1,688,000 with respect to Canadian Pacific. Duic made an approximate net profit of $205,000 with respect to Moffat.

[17] At the time that Rankin told Duic of the confidential material information, he was the managing director of the mergers and acquisitions department of RBC DS. RBC DS had been retained by Canadian Pacific and by Shaw for professional services in relation to the corporate transactions. As such, Rankin was a person in a special relationship with Canadian Pacific and with Shaw and Moffat, all of whom were reporting issuers as defined in section 76(5) of the Act.

[18] In that Duic then had knowledge of the material facts or material change not generally disclosed to the public, Duic was also thereby in a special relationship with the companies at the material time as defined in section 76(5)(e) of the Act. While a person in a special relationship with each of the companies, Duic purchased securities of Canadian Pacific and Moffat with knowledge of a material fact that had not been generally disclosed.

[19] Putting all this together, Duic breached section 76(1) of the Act.

[20] The sanctions agreed to in the settlement agreement, with some modifications that were agreed to this morning which are not substantially different from what was agreed to in the settlement agreement, are as follows:

(a) Duic will co-operate with staff in its insider trading investigation, including testifying as a witness for staff at any proceedings which may be commenced by staff before the commission, the Ontario Court of Justice, or the Ontario Superior Court.

(b) Duic has agreed to make a voluntary settlement payment of $1,900,000, which will be paid to the commission and made available to such third parties who may be investors or others in Ontario as approved by the Minister under the Act.

(c) Duic will pay $25,000 for costs pursuant to section 127.1 of the Act.

(d) Trading in securities by Duic will cease permanently.

(e) Exemptions in Ontario securities law will not apply to Duic permanently.

(f) Duic shall resign any positions that he holds as a director or officer of a reporting issuer.

(g) Duic shall be permanently prohibited from becoming or acting as a director or officer of a reporting issuer.

(h) In addition, we will be reprimanding Duic at the end of this hearing.

[21] I want to refer to the reasons why these sanctions are appropriate.

[22] First, the commission's mandate is to uphold the Act. As set out in the Act, our mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in those markets.

[23] The means for fulfilling that mandate relevant to this case include enforcing requirements to ensure, in the words of section 2.1(2) and (3) of the Act, the "...maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants".

[24] In addition, section 2.1 of the Act provides that the commission shall have regard to the fundamental principle that, "effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission".

[25] To protect investors and ensure public confidence in the capital markets, the legislature has prohibited illegal insider trading. Illegal insider trading involves the purchase or sale of a security with knowledge of undisclosed material information about the issuer of the security. The purpose of this prohibition is to maintain a level playing field of available information for all investors in Ontario, and we refer to section 76 of the Act.

[26] We regard at this commission illegal insider trading one of the most serious problems that is faced by Canadian investors, and we believe that vigorous enforcement is important, and that settlement agreements reflect the seriousness of the matter.

[27] And so we turn to the proposed sanctions and we find that the proposed sanctions are in the public interest. Imposing appropriate sanctions in this case will reflect what this commission said in *M.C.J.C. Holdings and Michael Cowpland* (2002), O.S.C.B. 1133 at 1134 ("the first *Cowpland* case"):

> We have a duty to consider what is in the public interest. To do that, we have to take into account what sanctions are appropriate to protect the integrity of the marketplace where illegal insider trading has been admitted. In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents. We should not just look at absolute values, e.g., what has been paid voluntarily in other settlements, or what has been found to be appropriate sanctions by way of cease trade order in other cases.

[28] In determining the nature and duration of the sanctions, the commission has set out a number of factors it takes into consideration. We took these following factors into consideration in measuring the sufficiency of the sanctions agreed in the settlement agreement:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of the respondent's activity in the marketplace;

(d) whether or not there has been recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital market; and

(f) any mitigating factors.

[29] These factors were set out in re: *Belteco Holdings Inc*. (1998), 21 O.S.C.B. 7743 at 7746, and in the first *Cowpland* case at page 1136.

[30] The first *Cowpland* case also listed other factors that the commission may consider and we took these into account in determining the sufficiency of the sanctions. They include:

(a) the size of any profit or loss avoided from the illegal conduct;

(b) the size of any financial sanction or voluntary payment when considered with other factors;

(c) the effect any sanction might have on the livelihood of the respondent;

(d) the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets;

(e) the reputation and prestige of the respondent;

(f) the shame or financial pain that any sanction would reasonably cost the respondent, and the remorse of the respondent.

[31] Finally, we took into account what the commission observed in *Re: Donnini* (2002), 25 O.S.C.B. 6225 at 6255:

> Where a registrant, who after all is a part of the market system, trades illegally while in possession of confidential material information obtained through his employment, the potential harm to investor confidence in a fair marketplace is all the more serious.

[32] Duic was not a registrant. However, Duic's illegal insider trading was clearly serious and of a significant magnitude. He made a profit of approximately $1.9 million on his trading in Canadian Pacific and Moffat, which are the transactions at issue in this commission proceeding.

[33] Sanctions imposed by the commission in illegal insider trading proceedings under section 127 of the Act vary substantially according to the circumstances of each case.

[34] I want to emphasize that we do not have jurisdiction and we do not have a mandate, and our purpose in enforcing the Act is not, to punish.

[35] The legislature has made it quite clear that we are a regulator, we are not a court. Therefore, it is not within our contemplation to consider criminal type sanctions such as imprisonment. We do not have the authority or the mandate to slap people into jail or to even handcuff them and march them up the stairs into a hearing room.

[36] There may be a public interest in having that happen, but if so, that is for the courts and the police authorities to deal with. That is not the purpose of sections 127 or 127.1.

[37] The sanctions focus in section 127 of the Act is forward-looking and is exercised for the purposes of protecting the public from similar harm in the future. Cases have referred to our authority as prophylactic or protective and future-looking. We looked at the sanctions agreed to in this matter and the sanctions that we have authority to impose under subsection 127 in that light.

[38] Some of the considerations we consider to be relevant are:

(a) Duic admits that he breached Ontario securities law and that his conduct was contrary to the public interest;

(b) Duic's admissions eliminate the need for a full hearing, and therefore, conserve resources of the commission and save the public considerable expense;

(c) Duic came forward to co-operate in the investigation of this case. He provided banking and trading information, including information from international sources. This information, in addition to detailed evidence regarding his private communication with Rankin, will be used to support the allegations against Rankin;

(d) Duic has agreed to be permanently prohibited from trading in securities and from being an officer or director of a reporting issuer. He is accepting the maximum sanctions available to the commission relevant to a non-registrant to safeguard against other illegal activity which might harm investors;

(e) Duic recognizes the seriousness of his illegal insider trading and accepts the consequences;

(f) Duic has no public company experience and is not a market participant. He is not a registrant. His opportunity to trade illegally arose because of his relationship with Rankin who was a registrant and who had access to information;

(g) Duic has agreed to make a voluntary payment to the commission and the amount that he has agreed to approximates the profit made by him in relation to Canadian Pacific and Moffat, which are the trades about which most information was known at the time of the settlement agreement in November 2002;

(h) Finally, Duic has agreed to make a contribution of $25,000 to the investigation and legal costs incurred by the commission in connection with this case.

[39] In the circumstances of this important illegal insider trading case, we find these sanctions to be in the public interest. The proposed sanctions restrict Duic from any involvement in the capital markets, including personal trading.

[40] We have agreed to carve-outs in the order to permit Duic 30 days to dispose of securities that he holds at the date hereof, and also to allow an exception for trading through his Registered Retirement Savings Plan in mutual fund securities.

[41] In the past, this commission has been somewhat reluctant to allow carve-outs where there has been deliberate illegal activity. However, we have allowed carve-outs in the past, and we certainly take everything into

account, including all the factors that we've mentioned, especially that Duic is not a registrant and has not had a lot of market experience and has co-operated fully. We think the carve-outs are appropriate in this case.

[42] Accordingly, we have approved this order.

[43] Mr. Duic, I would ask you to stand.

[44] Mr. Duic, you have heard my reasons for our decision. You have heard how serious this commission considers these accusations against you, which you have admitted to, and I take it that you are contrite. You are hereby reprimanded. Please be seated.

March 9, 2004.

“Paul M. Moore”