

Vancouver, B.C.

Called to the Bar July 10, 1980

Discipline Hearing Committee: November 5, 1991

K.F. Nordlinger, Q.C., Chair, J.M. MacIntyre, Q.C., and S. Hansen

Summary

The member, while a director, shareholder and solicitor of a VSE-listed company, failed to exercise sufficient care in preparing, and in avoiding inaccuracies in, a Statement of Material Facts relating to a securities offering by the company. There was no dishonesty involved. After admitting he had professionally misconducted himself, the member was reprimanded and ordered to undergo a practice review and pay the costs of that review.

Facts

The member was an outside director of B.R. Ltd., a company with headquarters in Tennessee, which was listed on the Vancouver Stock Exchange. He was also a shareholder of B.R. Ltd. and a solicitor for that company. He drafted a Statement of Material Facts dated August 20, 1986 and signed it as a director. The securities offering related to a gas pipeline in Tennessee.

The member failed to take sufficient care in preparation of the Statement of Material Facts (SMF) and in particular failed to:

1. take reasonable steps to avoid the following inaccuracies in the SMF:
 - (a) the SMF stated that B.R. Ltd. had acquired "all of the issued and outstanding shares of TEC and TPI" and the SMF failed to disclose an unresolved Tennessee lawsuit against a shareholder alleging default in payments for TEC and TPI shares and a court order in that proceeding entitling the sellers to apply for a writ of possession on all assets and shares of the sellers' company;
 - (b) the SMF failed to disclose that a wholly-owned subsidiary of B.R. Ltd. had title to the pipeline and that title holder had mortgaged the pipeline to a shareholder;
 - (c) the SMF failed to disclose that the contractor for the pipeline sued B.R. Ltd. for the contract price and B.R. Ltd. counter-sued claiming the pipeline was substandard and that the contractor was not properly licensed;
 - (d) the SMF financial statements failed to account for a debt allegedly owed to a shareholder which was referred to at page 4 of the SMF;
2. ask the Tennessee counsel of a shareholder to disclose what, if any, litigation was pending or ongoing against B.R. Ltd. or the shareholder;
3. retain counsel to provide an opinion about the ownership of TPI and TEC shares;
4. require an audit to verify indebtedness to a shareholder before authorizing a transaction which allowed the shareholder to acquire 600,000 shares of B.R. Ltd. at a price of \$9.00 per share in exchange for the retirement of debt;
5. amend the SMF despite the above transaction constituting a material change.

Admission and Disciplinary Action

On September 5, 1991, pursuant to Rule 469, DC tendered to the Standing Discipline Committee his conditional admission that the conduct described above constituted professional misconduct. The Hearing

Committee resolved to accept the member's admission and proposed disciplinary action pursuant to Rule 469 and accordingly ordered that the member:

1. be reprimanded;
2. undergo a practice review by a member of the Law Society;
3. pay the cost of the practice review to a maximum of \$10,000;
4. waive costs of the hearing before the Honourable Mr. Justice Finch in Action No. A892060.

J. Whittow, for the Law Society

G. Nelson, for the member

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