

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: KEARL, Richard, 2006 ABASC 1755

Date: 20061026

Docket: E03174

Securities Act, R.S.A. 2000, c. S-4 (Act)

Richard George Kearl

Agreed Facts

Introduction

1 The staff (Staff) of the Alberta Securities Commission (Commission) conducted an investigation into allegations that Richard George Kearl (Kearl) breached the Alberta securities laws regarding unregistered trading, illegal distribution of securities, misrepresentations and prohibited representations, and that Kearl acted contrary to the public interest.

2 The investigation confirmed, and Kearl acknowledges, that he breached those sections of the Alberta securities laws referenced herein, and that he acted contrary to the public interest.

3 Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertaking referred to in paragraph 27, Kearl agrees to the facts and consequences set out in this Settlement Agreement and Undertaking (Agreement).

4 Terms used in this Agreement have the same meaning as provided in the Alberta securities laws.

Circumstances

5 Kearl is a 53 year-old businessman resident in Edmonton, Alberta. Kearl has never been registered with the Executive Director of the Commission (the Executive Director) in any capacity.

Investment Agreement

6 Between October and December 2004, Kearl solicited four Alberta residents (the Investors) to invest in NCC Inc. (NCC).

7 The transactions between Kearl and the Investors were reduced to writing (the

Investment Agreement), and contained, *inter alia*, the following provisions:

7.1 The investors agreed to loan Kearn monies, which were due to be repaid on a certain date;

7.2 Kearn would in turn advance the entire amount to NCC, which would agree to repay Kearn on the same terms;

7.3 Kearn would immediately repay the Investors upon receiving funds from NCC;

7.4 NCC would be merging with a publicly traded company;

7.5 Every dollar advanced by the Investors to Kearn would be paid back, and the Investors would also receive two shares of the publicly traded company for each dollar advanced to Kearn;

7.6 For each dollar invested, Kearn would transfer one share of GeNOsys Biotechnologies Inc. (GeNOsys) to the Investors if Kearn was unable to repay the loan, and that such transfer would be considered full repayment of the loan; and

7.7 NCC would begin a public offering within 60 days of their investment, and the proceeds of the public offering would be used by NCC to repay the Investors.

8 Each of the Investors entered into an Investment Agreement with Kearn on the terms set out in paragraph 7. None of the Investors received any repayment of their funds, nor did they receive any shares of GeNOsys. Kearn received a total of \$105,500 from the Investors.

9 All of the Investors received shares of Canglobe International Inc. (Canglobe).

10 NCC and Canglobe are U.S.-based corporations. NCC was incorporated in Colorado and Canglobe was incorporated in Nevada. GeNOsys is a Korean company with an office in Texas.

Unregistered Trades and Distributions

11 Kearn admits that the shares of NCC, GeNOsys and Canglobe were securities, as defined in the *Act*, and that his activities constituted trades of securities, as defined in the *Act*.

12 Kearn admits that there were no exemptions from the registration requirements for the trades of NCC, GeNOsys or Canglobe.

13 Kearn admits that the trades in Canglobe securities to the Investors constituted distributions of securities as defined in the *Act*.

14 Kearn admits that neither Canglobe nor Kearn ever filed a preliminary or final prospectus for the distribution of Canglobe securities, and that the Executive Director

never issued a receipt for either, as required by section 110 of the *Act*. Further, Kearn admits that there were no exemptions from the prospectus requirement available for the distributions to the Investors.

Misrepresentations and Prohibited Representations

15 Kearn admits that he made various statements to the Investors:

15.1 The Investors were being offered a “once in a lifetime” opportunity to invest in a company that owned voice recognition technology patents;

15.2 NCC held intellectual property patents;

15.3 NCC’s intellectual property patents had been reviewed by lawyers;

15.4 Bert Lavalley had purchased NCC and a shell corporation, he was planning to amalgamate the two entities and sell the intellectual property to Microsoft Corporation (Microsoft), and that negotiations with Microsoft were underway;

15.5 Kearn and four other individuals who were putting the deal together had invested “heavily” in NCC;

15.6 Microsoft was an interested party in the technology;

15.7 The deal with Microsoft was “99% secured”;

15.8 An investment banker had committed to buy and place 3 million shares of NCC at prices between \$3.50 per share and \$6.50 per share;

15.9 A U.S. stock promoter had been retained to set up the promotion of NCC and would only be compensated with warrants priced at \$10.00 per share; and

15.10 NCC would be making a public offering to sell shares at \$1 per share, and that there were enough investors lined up from previous successful deals to raise enough money to pay back all those individuals who were advancing money to put the deal together.

16 Kearn admits that the statements set out in paragraph 15 were made for the purpose of effecting trades in securities, and that at the time he made the statements he knew or ought to have known they were misrepresentations or prohibited representations.

17 Kearn admits that he made the representation in the Investment Agreement to the effect that he would refund the purchase price of the NCC or Canglobe securities without the permission of the Executive Director.

Other Conduct Contrary to the Public Interest

18 Kearn represented to one of the Investors after the Investor had entered into the Investment Agreement that:

18.1 NCC had raised \$1,800,000 and that NCC did not require further investment funds; and

18.2 The monies that had been raised for NCC were all gone, but that Kearnl could not account for them.

19 Kearnl admits that the statements in paragraph 18 were misleading.

20 As a result of the above facts, Kearnl admits that he breached:

20.1 section 75(1)(a) of the *Act* by trading in securities without being registered with the Executive Director to do so, and without any appropriate exemptions from the registration requirement;

20.2 section 92(1)(b) of the *Act* by making a representation that he would refund the purchase price of a security without the permission of the Executive Director;

20.3 section 92(3)(c) of the *Act* (as it then read) by making statements, with the intention of effecting trades in securities, that he knew or ought to have known were misrepresentations; and

20.4 section 110 of the *Act* by distributing securities of Canglobe without having filed and received a receipt for a prospectus and without any appropriate exemptions from the prospectus requirement.

21 Kearnl admits that his failure to comply with the registration and prospectus requirements in the *Act*, along with his unauthorized, false or misleading statements to Investors, constituted conduct that was contrary to the public interest.

Other Relevant Circumstances

22 Kearnl was previously sanctioned by the Commission in 1982 for illegal distribution of securities.

23 This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement Payments and Undertakings

24 Based on these facts and admissions, Kearnl undertakes to the Executive Director upon execution of this Agreement:

24.1 To pay to the Commission the amount of \$15,000 towards settlement;

24.2 To pay to the Commission the amount of \$3,000 towards investigation costs; and

24.3 To cease trading in and purchasing securities for a period of 5 years, except for trades made through a registered representative in an RRSP account.

Administration

25 Kearl waives any rights existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

26 Kearl acknowledges that this Agreement may be referred to in any other proceedings under the *Act*.

27 The Agreement resolves all issues involving Kearl as described above in respect of the Notice of Hearing dated April 18, 2006, and Staff will take no further steps against Kearl arising from these facts.

28 The Agreement may be executed in counterpart.

Signed by Richard George Kearl at)
Edmonton, Alberta this 24 day of)
October 2006, in the presence of:)

Theresa J. Kearn
PRINT NAME

“Original Signed By”
SIGNATURE

) “Original Signed By”
) Richard George Kearn

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 26th October, 2006)

) “Original Signed By”
) John P. Petch
) Director, Enforcement