BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: White, 2024 BCSECCOM 137 Date: 20240412

Cherie Evangeline White and KingdomInvestments2015 Inc.
(formerly KingdomRealty Inc. and Kingdom Investments Inc.)

Panel	James Kershaw	Commissioner
	Deborah Armour, KC	Commissioner
	Jason Milne	Commissioner
Submissions completed	February 7, 2024	
Decision date	April 12, 2024	
Appearing		
Deborah Flood Karin Blok Aneka Jiwaji	For the Executive Director	
Cherie Evangeline White	Cherie Evangeline White and KingdomInvestments2015 Inc. (formerly KingdomRealty Inc. and Kingdom Investments Inc.)	

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of this panel on liability made on January 15, 2024, reported at 2024 BCSECCOM 21, are part of this decision.

[2] We found that:

a) the Respondents breached section 61 of the Act each time they distributed securities to investors who did not qualify for exemptions;

b) the Respondents breached section 57(b) of the Act, as it was then, by distributing securities to two investors for proceeds of $100,000 while failing to disclose that, at the time of such distribution, Kingdom was unable to make and had defaulted on payments to other investors;

c) White breached section 57(b) of the Act, as it was then, by taking a portion of the proceeds of distribution from some investors, in the amount of $175,771.54, and using such funds to repay other investors and to repay a personal loan to White's step-father;

d) White breached section 57.5(1)(a) of the Act by failing to comply with demands made for information and documents that were reasonably required for the investigation of the matters that are the subject of this hearing; and

e) White authorized, permitted or acquiesced in Kingdom's contraventions of sections 57(b) and 61 of the Act, and therefore also contravened those sections pursuant to section 168.2 of the Act.

[3] The executive director made written submissions on the appropriate sanctions in this case.

[4] Neither Respondent made submissions or otherwise participated in the sanctions process.

[5] This is our decision with respect to sanctions.

II. Position of the parties on sanctions

[6] Given the Respondents made neither written nor oral submissions on sanctions, the following is the position of the executive director.

[7] The executive director submitted that it is in the public interest that we impose the following sanctions:

a) with respect to White:

i) permanent orders under sections 161(1)(b)(ii), 161(1)(c) and 161(1)(d)(i), (ii), (iii), (iv) and (v) of the Act; and

ii) an administrative penalty of $500,000 under section 162 of the Act;

b) with respect to Kingdom:

i) permanent orders under sections 161(1)(b)(ii) and 161(1)(d)(v) of the Act; and

c) with respect to Kingdom and White:

i) a disgorgement order of $275,771.54 joint and several, under section 161(1)(g) of the Act.

III. Relevant law

A. Introduction

[8] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to prevent future harm and protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

[9] The sanctions must be sufficiently severe to ensure that both the Respondents and others will be deterred from similar misconduct. They must also be proportionate to the misconduct (and the circumstances surrounding it) of the Respondents. See: *Re Braun,* 2019 BCSECCOM 65; *Davis v. British Columbia (Securities Commission),* 2018 BCCA 149.

[10] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of the respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

[11] We address the factors which are relevant below in Section IV.

B. Section 161(1) and 162 orders

[12] Sub-sections 161(1)(b), (c) and (d) of the Act provide:

> **161** (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:
>
> …
>
> (b) that
>
> (i) all persons,
> (ii) the person or persons named in the order, or
> (iii) one or more classes of persons
>
> cease trading in, or be prohibited from purchasing, any securities or derivatives, a specified security or derivative or a specified class of securities or class of derivatives;
>
> (c) that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person;
>
> (d) that a person
>
> (i) resign any position that the person holds as a director or officer of an issuer or registrant,
> (ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,

(iii) is prohibited from becoming or acting as a registrant or promoter,
(iv) is prohibited from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets,
(v) is prohibited from engaging in promotional activities by or on behalf of

(A) an issuer, security holder or party to a derivative, or
(B) another person that is reasonably expected to benefit from the promotional activity,

(vi) is prohibited from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person,
(vii) is prohibited from voting a security or exercising a right attaching to a security or a derivative, or

(viii) is prohibited from engaging in any activity in relation to the administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark…

[13] Section 161(1)(g) states that the Commission, after a hearing, may order:

> […] if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.

[14] Section 162 of the Act states:

> (1) If the commission, after a hearing,
>
> (a) determines that a person has contravened,
> (i) …a provision of this Act…
> (b) considers it to be in the public interest to make the order,
>
> the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention.

IV. Analysis

A. Application of the *Eron Mortgage* factors

Seriousness of the Respondents' conduct

Fraud

[15] The Commission has repeatedly found that fraud is the most serious misconduct prohibited by the Act. As the panel stated in its decision *Re Manna Trading Corp. Ltd*., 2009 BCSCCOM 595 at paragraph 18: "Nothing strikes more viciously at the integrity of our capital markets than fraud…".

[16] The quantum of dollars and number of investors involved in this fraud is less than some other fraud cases this Commission has seen. Even so, the fraud found by this panel to have been committed by the Respondents caused substantial harm to 11 investors.

[17] The Respondents deceived some investors about how their investment funds would be used. Investors were told their investments would help house people who faced barriers to housing, including those experiencing homelessness and addiction, through a scheme of purchasing, improving and then reselling residential properties at a profit. Instead, the Respondents used $275,771.54 of investors' funds in unauthorized ways:

a) White took a portion of the proceeds of distribution from some investors, in the amount of $175,771.54, and used such funds to repay other investors and to repay a personal loan to her stepfather; and

b) the Respondents distributed securities to two investors for proceeds of $100,000 while failing to disclose that, at the time of such distribution, Kingdom was unable to make and had defaulted on payments to other investors.

[18] The Respondents used the investment proceeds from some investors to pay investment returns or capital to other earlier investors consistent with a Ponzi scheme. As this Commission held in its findings in *Re Manna Trading Corp. Ltd.*, 2009 BCSECCOM 426 at paragraph 333: "Ponzi schemes are a particularly sinister form of fraud because those lucky enough to get in at the beginning do in fact earn the promised returns, and lend the credibility to the scheme that it needs in order to lure investors".

[19] There is evidence before us, that we accept, that:

a) The Respondents attracted investors through the use of an investor's testimonial statement and endorsement who did get in at the beginning and did, in fact, earn the promised returns. This same investor became a victim of this fraud when his later investment was diverted by the Respondents to repay three investors' returns.

b) White also attracted some investors by projecting shared spiritual values and by carefully building trust through representations about her family's alignment with the Salvation Army Church and common dreams and aspirations, and through her calculated use of faith-related institutional logos on investment-related materials. These were not acts of inadvertence.

c) White avoided accountability to investors by being difficult to locate and communicate with and, when reached, by continuing to promise repayments to those investors, in some such cases, for years.

d) The Respondents used pressure and aggressive tactics on investors by creating a false sense of urgency and going so far as to accompany one investor to their financial institution in order to facilitate payment to the Respondents despite attempts by staff at such institution to warn such investor.

Illegal Distribution

[20] The Respondents illegally distributed Kingdom securities. The Commission has consistently held that breaches of the prospectus requirements set forth in section 61 of the Act are inherently serious because the principles that underly section 61 are the foundation upon which modern securities regulation is framed. These disclosure-based tenets are anchored in investor protection and intended to promote public confidence in and preserve the integrity of our capital markets. Section 61 requires the filing of a

prospectus to ensure that investors and their advisors have the information they need to make informed investing decisions.

[21] In this case, the Respondents breached section 61 of the Act by illegally distributing securities to 24 investors for consideration of $1,186,860. The seriousness of this misconduct is exacerbated by the fact that investors were subjected to undisclosed risk and many suffered the total loss of their investments.

[22] In the course of the investigation conducted by Commission staff, White acknowledged that she was not aware of securities rules and laws when she was raising money.

Obstruction of Justice

[23] White obstructed justice by refusing to provide documents and information reasonably required for the Commission's investigation.

Summary

[24] The Respondents' conduct resulted in multiple serious contraventions of the Act.

Harm suffered by investors as a result of the Respondents' conduct

[25] Many of the investors who testified at the liability hearing in this matter showed compelling signs of significant stress and emotional harm as a result of their interactions with the Respondents. The damage done to the investors in this case cannot be overstated. The Respondents focused their investment solicitation efforts on honest and trusting individuals who made investments with funds they could not afford to lose. Investors were attracted by representations, made by White, that would allow them the prospect of a reasonable return on their investments while also being afforded an opportunity to make a real difference on social issues that mattered to them. In the result, $1,186,860 was raised by the Respondents through illegal distributions of securities and fraud, and $776,100 of that amount was lost. In many cases, these losses amounted to life savings. We heard raw testimony from investors about the financial, emotional, physical and mental impacts the losses have had on them and their families. Investors shared their anger, remorse for trust lost and shed tears while speaking of feelings of violation, disappointment, self-doubt, shame, regret, guilt and failure. The evidence suggests their investments are worthless and that they face virtually no hope of recovery in the future.

[26] Between August 2016 and October 2019, Kingdom distributed securities to 24 investors, most of them residents of British Columbia. Those investors made 27 investments totaling $1,186,860 dollars. The losses suffered by investors as a result of the Respondents' fraud and illegal distribution is $776,100.

[27] The evidence of the significant harm suffered by investors as a result of the Respondents' conduct was compelling. This factor was afforded a high weighting in our deliberations on sanctions.

Damage done to the integrity of the capital markets in British Columbia by the Respondents' conduct

[28] The Respondents' actions contribute to risk that breaches of this kind undermine British Columbia's reputation as a safe place to invest and conduct business and, in the result, damage the integrity of our capital markets.

[29] Fraud impacts our capital markets by negatively impacting the views of investors towards them. It causes immeasurable harm by deterring investors from relying on the honesty and integrity of BC's capital markets. Future investors risk being less confident when viewing our capital markets due to concerns about being unable to rely on the integrity of market participants. As such, fraud violates the fundamental investor protection objective of the Act and its impact extends beyond the investors in this matter to the investing public as a whole. This panel found that the Respondents committed fraud.

[30] The foundation of the public interest regulatory mandate of this Commission is the protection of investors while promoting and protecting public confidence in the integrity of our capital markets. The harm caused by the Respondents, and suffered by the investors and our capital markets, is an affront to and jeopardizes the public interest underlying securities regulation in this province.

[31] Damage done to the integrity of the capital markets in British Columbia by the Respondents' conduct was afforded a high weighting in our deliberations on sanctions.

Enrichment of the Respondents

[32] The Respondents were enriched by the amount of the fraud or $275,771.54. The Respondents received all the proceeds irrespective of whether the funds were deposited with White or Kingdom.

Past misconduct, mitigating or aggravating factors

[33] There is no history of prior securities related misconduct by either Respondent. This is a neutral factor, and there are no mitigating factors.

[34] There are aggravating factors. Notwithstanding representations made by White about her capabilities as a values driven small scale developer, there is no evidence she maintained formal business records with respect to her activities associated with the investments in question. The Commission investigator in the enforcement process was left to rebuild basic accounting records from bank statements. This naturally presented significant practical challenges as the investigator attempted to recreate records to properly track investment inflow and expenditure outflow. As stated by this panel in our liability decision, it cannot be the case that failure to maintain adequate business records, whether intentional or not, in any way mitigates responsibility for breaching this Act.

[35] As this Commission found in *Bridges* 2024 BCSECCOM 36 at paragraph 27: "…it is a material aggravating factor when those who raise substantial sums from the investing public are unable to account properly for the manner in which those funds are used." Being able to account for funds raised and expenditures made is but the minimum expectation for the keeping of books and records by those who choose to raise capital in our capital markets. This minimum expectation was not met by the Respondents in this matter.

[36] These aggravating factors were afforded a high weighting in our deliberations on sanctions.

Risks posed by the Respondents' continuing participation in the capital markets

[37] The Respondents did not cooperate fully in the enforcement process, have shown little to no remorse for their actions or the damages caused by them, and have failed to demonstrate any understanding of their misconduct or its impact.

[38] We agree with the executive director that there is risk that the Respondents will be involved in similar misconduct in the future and this risk must be afforded a high weighting in our deliberations on sanctions.

[39] The Respondents' continued participation in the capital markets of British Columbia would pose a significant risk to the investing public and would, in our view, run counter to the public interest mandate of the Act, and this Commission, which is to provide protection to investors and to preserve and promote public confidence in the fairness and integrity of our capital markets.

The need for specific and general deterrence

[40] Specific and general deterrence are factors for this panel to consider when determining the appropriate sanctions in this matter.

[41] As for the role of general deterrence in sanctioning, the Supreme Court of Canada said the following in *Re Cartaway Resources Corp*., 2004 SCC 26 (CanLII), with respect to the Ontario Securities Commission, at paragraphs 60 and 64:

> In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos*, supra, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative...
>
> The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission. Protecting the public interest will require a different remedial emphasis according to the circumstances. Courts should review the order globally to determine whether it is reasonable. No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable…

[42] The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual respondent. See: *Re QcX Gold Corp*., 2022 BCSECCOM 422 at paragraph 43, quoting the Alberta Court of Appeal in *Walton v. Alberta (Securities Commission),* 2014 ABCA 273*.*

[43] We are not to give unreasonable weight to general deterrence, and it is the responsibility of this panel to craft sanctions that, when taken globally, are reasonable and proportionate to the misconduct of the Respondents and the circumstances. In this case,

both general and specific deterrence are significant considerations though specific deterrence was given a higher weighting in our deliberations on sanctions given the singular roles played by the Respondents in the orchestration of illegal distributions, fraud, and, in the case of White, obstruction of justice.

Fitness to be a director/officer

[44] Persons who wish to serve as directors, officers or advisers of issuers in British Columbia must have high standards of honesty, integrity and diligence. Honesty is a critical part of being a director or officer of an issuer. In fact, it is one of the basic duties of those positions. See *Re SBC Financial Group Inc.,* 2018 BCSECCOM 267, para 34.

[45] We agree with the executive director that White has demonstrated deceit, lack of integrity, lack of due diligence, a disregard for compliance with applicable laws, and no concern for markets that are honest and fair.

[46] As Kingdom's sole director, White was in a position of trust. White owed fiduciary obligations to Kingdom, including the safeguarding of company funds and ensuring such funds were used for appropriate and authorized purposes. White did not meet such obligations as a direct result of her acts of deceit which included enriching herself by using investors' funds to repay a personal loan.

[47] White failed to build and maintain adequate business records while continuing numerous breaches of the Act. We agree with the executive director that this demonstrates a lack of respect for securities law and a complete failure to act honestly or in the best interests of investors.

[48] White was a director and CEO of a corporation and actively leveraged that position to raise investment capital from residents of British Columbia. She admitted no knowledge of even the basics of securities law including the regulatory requirements applicable to raising funds, distributing securities, disclosure, and using investors' funds. She is responsible for her failure to properly inform herself of her legal and regulatory obligations.

[49] This panel found that White was the sole director, CEO and the controlling mind of Kingdom and the person who signed agreements on Kingdom's behalf and controlled all of Kingdom's bank accounts. White's failure to ensure Kingdom complied with securities laws makes her unfit to be an officer or director of an issuer or registrant. She carried out her misconduct through the use of her connections in the community and through her role as director and officer of Kingdom. We agree with the executive director that White's actions fell short of the legal obligations incumbent on those who wish to act as an officer or director in our capital markets.

Summary on Eron factors

[50] We agree with the executive director that the fraudulent misconduct of the Respondents was serious and had a significant impact on investors. It was aided by the Respondents' failure to keep proper financial records. This case is about illegal distribution of securities, fraud and obstruction of justice, all serious instances of misconduct.

[51] Accordingly, we conclude that we can order the types of sanctions requested by the executive director, if we find they are warranted in this case.

[52] Any sanction or penalty which will effectively speak to all participants in our capital markets must be relatively severe to be meaningful. See: *Alexander, 2007 BCSECCOM 773* at paragraph 46.

B. Prior decisions

Fraud

[53] The executive director referred us to five prior decisions of the Commission: *Sand, Auchs, Gulston (Re),* 2022 BCSECCOM 473, *Re The Falls Capital Corp.,* 2015 BCSECCOM 422, *Bridges,* 2024 BCSECCOM 36, *Re Spangenberg,* 2016 BCSECCOM 180 and *Re Braun,* 2019 BCSECCOM 65.

[54] In *Sand,* the panel found that three respondents committed fraud by inducing two investors to invest $600,000 based on false statements and by diverting invested funds from their intended uses to other uses. The respondents in that case also failed to keep business records. The sanctions ordered were: permanent market bans, payments to the Commission under section 161(1)(g) of the Act in the aggregate amount of $500,000, and administrative penalties for each respondent in the amount of $380,000.

[55] In *The Falls*, the panel found fraud had been committed by multiple respondents, including Rodney Jack Wharram, who took $534,000 from multiple investors in three companies he controlled and used most of such funds for personal expenses. The panel also found that Wharram made false statements to Commission investigators. The sanctions ordered against Wharram were: a permanent market ban, payments to the Commission, under section 161(1)(g) of the Act, in the amount of $517,500, jointly and severally with the three companies of which he was President and CEO, and an administrative penalty of $500,000.

[56] In *Bridges,* the panel found that illegal distributions of securities to multiple investors had been orchestrated by FVHF, Bridges and Toews raising $931,000, and that Bridges and FVHF had committed fraud when they raised funds from investors and then used $498,273 of such funds for their own benefit instead of for the purposes represented to those investors. The sanctions ordered were: permanent market bans for Bridges and FVHF, a seven year market ban for Toews, payments by Bridges to the Commission, under section 161(1)(g) of the Act, in the amount of $498,273, jointly and severally with FVHF, and an administrative penalty in respect of Bridges of $550,000 and Toews of $50,000.

[57] In *Re Spangenberg*, the panel found that illegal distributions of securities had been orchestrated, by Spangenberg and Odyssey, with respect to one investor in the amount of $69,996 and, by Spangenberg and geoTreasuries, with respect to five investors in the amount of $91,450, and that fraud had been committed by the same respondents with one investor, in the amount of $69,996, and six investors in the amount of $101,450, respectively. The sanctions ordered were: permanent market bans for Spangenberg, Odyssey and geoTreasuries, payments to the Commission, under section 161(1)(g) of the Act, by Spangenberg in the amount of $171,446, Odyssey in the amount of $69,996 and geoTreasuries in the amount of $101,450, and an administrative penalty in respect of Spangenberg of $225,000.

[58] In *Braun*, the panel found that Alan, Jerry, Maxwell, Braun Developments, and 275 Inc. committed fraud with respect to three investments by two investors in the amount of

$450,000 while TerraCorp committed fraud with respect to two investments by one investor in the amount of $300,000. There was evidence led depicting the predatory nature of the respondents' interactions with one of the investors who was described as vulnerable. Two respondents were found to have preyed upon a shared spirituality with that same investor. The sanctions ordered were:

a) permanent market bans for Alan and Maxwell, and a 15 year ban for Jerry;

b) payments to the Commission, under section 161(1)(g) of the Act, in respect of:

   i) Alan in the amount of $323,500;

   ii) Jerry in the amount of $156,919;

   iii) Maxwell in the amount of $120,500; and

   iv) Braun Developments in the amount of $156,919; and

c) an administrative penalty in respect of:

   i) Alan in the amount of $450,000;

   ii) Jerry in the amount of $200,000; and

   iii) Maxwell in the amount of $300,000.

Illegal distribution

[59] The executive director referred us to five prior decisions of the Commission: *JV Raleigh Superior Holdings Inc. (Re),* 2012 BCSECCOM 492, *Re Bracetek,* 2023 BCSECCOM 118, *Re SBC Financial Group Inc.,* 2018 BCSECCOM 267, *Bridges,* 2024 BCSECCOM 36, and *Re Spangenberg,* 2016 BCSECCOM 180.

[60] In *JV Raleigh,* the panel found that JV Raleigh, Smith and Eshun illegally distributed securities of JVR for consideration of $5.7 million and produced no records of how it was spent leading the panel to conclude that the respondents were enriched to the extent of the entire amount raised from investors. The sanctions ordered were: permanent market bans for Smith and Eshun, payments to the Commission, under section 161(1)(g) of the Act, by Smith and Eshun in the amount of $5.7 million, and an administrative penalty in respect of Smith in the amount of $500,000 and in respect of Eshun in the amount of $750,000.

[61] In *Bracetek*, the respondent Sidhu entered into a settlement agreement with the executive director admitting that he committed one illegal distribution of securities for consideration of $1.75 million. The corporate respondent, Bracetek, did not participate in the proceedings. The panel found that Bracetek illegally distributed securities totaling $1.75 million and ordered sanctions that included a market ban for seven years, payments to the Commission, under section 161(1)(g) of the Act, in the amount of $850,000 and an administrative penalty of $50,000.

[62] In *SBC Financial,* the panel found that SBC illegally distributed securities for consideration of $1.54 million through 45 transactions. SBC was also found to have

conducted unregistered trading contrary to section 34(a) of the Act. The panel ordered 10 year market bans against SBC and its director. The majority of the panel held that since a majority of the investors' funds were issued in a manner consistent with the investors' expectations, it was in the public interest to only issue disgorgement against SBC and its director for the portion that was paid to the director. The dissenting commissioner would have issued a disgorgement order for the entire amount raised on the basis that the use of investors' funds in accordance with their expectations was irrelevant when investors were denied the fundamental protection of the Act and did not receive sufficient information regarding SBC and its securities to make an informed investment decision, and the respondents dealt with the investors in an unregistered capacity without fulfilling their basic obligations, as registrants. The Commission ordered SBC's director to pay a $100,000 administrative penalty, but held that it was unnecessary to order SBC to pay an administrative penalty because SBC did not act independently from its director.

[63] The decisions in *Bridges* and *Spangenberg* were reviewed above.

Obstruction

[64] This panel found that by failing to comply with the demands made for information and documents that were reasonably required for the investigation of the matters that are the subject of this hearing, White breached section 57.5(1)(a) of the Act.

[65] The only reported decision of this Commission on sanctions for obstruction of justice is *Re Wang,* 2021 BCSECCOM 153. The Court of Appeal overturned the Commission's finding of liability, but there was no appeal of the decision on sanction: *Wang v. British Columbia (Securities Commission),* 2023 BCCA 101.

[66] In the Commission's sanction decision in *Wang*, the panel noted that by coaching investors to lie to a Commission investigator in an attempt to prevent an investigation from proceeding, the respondents tried to hamper the Commission's ability to detect misconduct in the capital markets and impair its ability to protect investors. The Commission imposed administrative penalties of $30,000 against one respondent and $40,000 against the other.

V. Section 161(1)(g) orders

[67] Section 161(1)(g) authorizes us to order:

> if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly as a result of the failure to comply or the contravention.

[68] Orders under section 161(1)(g) are sometimes known as "disgorgement orders".

[69] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, adopted a two-step approach from *Re SPYru Inc.*, 2015 BCSECCOM 452 at paragraphs 131 and 132, when considering section 161(1)(g) orders:

> [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This

> determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
>
> [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[70] The executive director submits that it is in the public interest for this panel to make an order under section 161(1)(g) against the Respondents.

[71] The Court of Appeal in *Poonian* further adopted several principles to apply in interpreting section 161(1)(g):

a) The purpose of s. 161(1)(g) is to deter persons from contravening the Act by removing the incentive to contravene, i.e., by ensuring the person does not retain the "benefit" of their wrongdoing.

b) The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the Act, such as the claims process set up under Part 3 of the Securities Regulation or the s. 157 compliance proceedings in the Act.

c) There is no "profit" notion, and the "amount obtained" does not require the Commission to allow for deductions of expenses, costs, or amounts other persons paid to the Commission. It does, however, permit deductions for amounts returned to the victim(s).

d) The "amount obtained" must be obtained by that respondent, directly or indirectly, as a result of the failure to comply with or contravention of the Act. This generally prohibits the making of a joint and several order because such an order would require someone to pay an amount that person did not obtain as a result of that person's contravention.

e) However, a joint and several order may be made where the parties being held jointly and severally liable are under the direction and control of the contravener such that, in fact, the contravener obtained those amounts indirectly. Non-exhaustive examples include use of a corporate alter ego, use of other persons' accounts, or use of other persons as nominee recipients.

[72] Finally, the Court of Appeal in *Poonian* held that the executive director need only provide evidence of the "approximate" amount obtained, directly or indirectly, by a respondent, following which the burden of proof switches to the respondent to disprove the reasonableness of the amount.

[73] The executive director seeks a disgorgement order against the Respondents in the amount of $275,771.54, on a joint and several basis.

[74] The executive director submits that this amount represents the full amount of the Respondents' ill-gotten gains from their fraudulent misconduct. The basis for this order is set out below.

Applying the two-step approach to the Respondents

Step 1 – Can a section 161(1)(g) order be made?

[75] In the circumstances of this case, the key question in this part of the analysis is whether the Respondents obtained amounts as a result of their contravention of the Act. We begin by repeating some of the conclusions we expressed in our findings on liability.

[76] This panel has already found that:

a) White took a portion of the proceeds of distribution from some investors, in the amount of $175,771.54, and used such funds to repay other investors and to repay a personal loan to her stepfather; and

b) the Respondents distributed securities to two investors for proceeds of $100,000 while failing to disclose that, at the time of such distribution, Kingdom was unable to make and had defaulted on payments to other investors.

[77] It is unclear to this panel whether the amounts in question were paid directly to White or directly to Kingdom or some combination of both. For the purposes of this analysis, that clarity is not required. This panel has found that, as the sole director, CEO and controlling mind of Kingdom and as the person who controlled all of Kingdom's bank accounts, including all disbursements from such accounts, Kingdom was White's corporate alter ego and any acts or failures to act by Kingdom that resulted in breaches of this Act could not have occurred without White's authorization**.**

[78] For the purposes of this analysis, it has been proven that the Respondents obtained $275,771.54 paid by investors.

[79] The evidence establishes that no money has been returned to the investors. Therefore, we do not have to consider repayments in arriving at the appropriate disgorgement amount. We conclude that we *can* make a section 161(1)(g) order against White and Kingdom in the amount of $275,771.54.

Step 2 – Is it in the public interest to make a section 161(1)(g) order against White and Kingdom?

[80] We found that the Respondents used $275,771.54 in a fraudulent manner. Therefore this panel finds that it is in the public interest, equitable and not punitive to order White and Kingdom to disgorge the full $275,771.54 that they obtained jointly through fraud.

[81] The Respondents deprived the investors of their money and benefited from their misconduct. There are no mitigating circumstances in this case that would warrant not making a disgorgement order. Given the control White exercised over Kingdom, as her corporate alter ego, a joint and several order may be made against the Respondents.

[82] This panel finds the test for applying section 161(1)(g) has been met and concludes that it is in the public interest to make an order that White and Kingdom, jointly and severally, pay $275,771.54 under that section.

VI. Conclusions regarding appropriate sanctions

A. Market Prohibitions

[83] There is affidavit evidence before this panel, led by the executive director, that we accept, including:

a) a recent list, obtained from BC Registry Services, of active companies of which White is a director; and

b) screen scrapes of a publicly accessible website with respect to a more recent venture led by White, Steadfast Developments, where White holds herself out to be a “social justice land developer, TedX speaker, author, philanthropist”. The base proposition put forth by Steadfast Developments is strikingly similar to that of Kingdom.

[84] This Commission has found that:

a) White and Kingdom illegally distributed securities and committed fraud by using investor funds for personal purposes and to repay other investors, and by distributing securities to investors without disclosing that Kingdom was unable to make and had defaulted on payments owed to other investors; and

b) White obstructed justice.

[85] This panel will, within our power, lessen the probability that such harm occurs again.

[86] Again, the Respondents’ breaches of the Act have done immeasurable harm to the reputation and integrity of our capital markets and may cause future investors to be less confident when viewing our capital markets due to concerns about being unable to rely on the integrity of market participants.

[87] Based on our analysis of the harm done to the investors, the risk of damage to public confidence in the integrity of our capital markets, the identified aggravating factors, and the continuing risk the Respondents pose to the public, this panel concludes that broad prohibitions should be ordered against the Respondents to limit their participation in our capital markets, except in the case of White, as an investor through accounts for her own benefit which are supervised for suitability. Given the seriousness of the conduct of the Respondents and their continuing significant risk to the public, these prohibitions should be permanent.

B. Administrative penalties

[88] As noted, the Respondents committed serious contraventions of the Act. The fact that White maintained virtually no business records and failed to comply with demands made for information and documents that were reasonably required for the investigation of these matters only served to make matters worse. The irreparable harm caused to investors and the negative impact the Respondents’ acts and omissions had on the trust investors generally have in the fairness and integrity of our capital markets calls for significant penalties. The precedents that have been presented to us reflect similar, relatively recent cases of illegal distributions of securities, fraud, poor record keeping, and predatory interactions with investors including preying upon shared spirituality. The

limited precedents for obstruction of justice leave room for this panel to reflect all penalties for all contraventions in one order.

[89] No evidence was before this panel that would lead us to conclude that, at the outset, the Respondents set about to distribute securities illegally, and to defraud investors and obstruct justice. To that extent, we can distinguish some of the precedents presented to us by the executive director and we are prepared to do so. Our willingness to make such distinction is not to be seen as an attempt by this panel to render the harm suffered by investors, by virtue of the impugned acts or omissions of the Respondents, any less relevant or material.

[90] This panel imposes on White an administrative penalty of $350,000.

[91] The executive director did not seek an administrative penalty against Kingdom and we find no reason to depart from that approach.

VII. Orders

[92] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

White

1. under section 161(1)(d)(i), White resign any position she holds as a director or officer of an issuer or registrant;

2. White is permanently prohibited:

    i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if she gives the registered dealer or registrant a copy of this decision, in advance, she may trade in or purchase exchange traded funds or mutual fund securities through such registered dealer for her own account only in registered retirement savings plans, registered retirement income funds, locked-in retirement accounts or tax-free savings accounts (all as defined in the *Income Tax Act* (Canada);

    ii) under section 161(1)(c), from relying on any exemptions set out in the Act, the regulations or a decision;

    iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of an issuer or registrant;

    iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

    v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

    vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:

        (A) an issuer, security holder or party to a derivative, or

(B) another person that is reasonably expected to benefit from the promotional activity;

3. White pay to the Commission $275,771.54, jointly and severally with Kingdom, under section 161(1)(g)of the Act; and

4. White pay to the Commission an administrative penalty of $350,000 under section 162 of the Act.

Kingdom

1. Kingdom is permanently prohibited:

   i) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives;

   ii) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:

   (A) an issuer, security holder or party to a derivative, or
   (B) another person that is reasonably expected to benefit from the promotional activity ; and

2. Kingdom pay to the Commission $275,771.54, jointly and severally with White, under section 161(1)(g) of the Act.

April 12, 2024

For the Commission

James Kershaw
Commissioner

Deborah Armour, KC
Commissioner

Jason Milne
Commissioner

NOTICE: The orders made against Cherie Evangeline White and KingdomInvestments2015 Inc. (formerly KingdomRealty Inc. and Kingdom Investments Inc.) in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to them.