

# 2003 BCSECCOM 609

COR#03/130

## Decision

**Wilfred Lorne Rast and  
RCW Financial Services Inc.**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

## Hearing

<b>Panel</b>	Joyce C. Maykut, Q.C.	Vice Chair
	Joan L. Brockman	Commissioner
	Marc A. Foreman	Commissioner

**Date of Hearing** August 19, 2003

**Date of Decision** September 5, 2003

## Appearing

Sean K. Boyle For Commission staff

Wilfred Lorne Rast For himself

## Introduction

¶ 1 This is our decision in a hearing under section 161(1) of the *Securities Act* against Wilfred Lorne Rast and RCW Financial Services Inc. Commission staff is seeking orders that Rast and RCW:

1. be prohibited from purchasing or trading any securities or exchange contracts
2. be prohibited from engaging in any investor relations activities

and that Rast:

3. be prohibited from acting as a director or officer of any issuer
4. pay an administrative penalty of \$200,000
5. pay the costs of the hearing.

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### Background

- ¶ 2 Rast was a registered representative from March 3, 1989 to March 10, 1998. From 1993 to 1998 Rast was employed by securities dealer Sector Securities Inc. at its branch office in Chilliwack, British Columbia. He was also registered with the Insurance Counsel of British Columbia from September 10, 1996 to March 28, 1998 as a Level 2, life agent.
- ¶ 3 While at Sector, Rast stole approximately \$500,000 of client funds that had been given to him to invest. The victims were clients of Rast's whom he had met through his family, community, church and business ventures. Rast said that between 1993 and 1998, he was running a small financing business through his company, RCW Financial. He said his troubles began when two businesses he financed, failed. He used client funds to keep his operation going and to pay investors promised rates of interest. In doing so, he knowingly diverted funds over a long period of time and he attempted to hide or conceal his activities with false statements and dividend payments.
- ¶ 4 The usual practice for clients at Sector was for the client to provide a cheque payable to either Sector or directly to an individual mutual fund. Rast, however, requested his clients to make their cheques payable to his personal company, RCW. Rast did not purchase securities on his clients' behalf, but rather retained the funds and used them for his own purposes. Further, in many instances, Rast sent his clients false statements indicating that they held certain investments they believed were purchased for them, when in fact no such purchases had ever been made.
- ¶ 5 In summary, staff alleged that:
- Rast and RCW engaged in transactions or series of transactions, which perpetrated frauds on persons in British Columbia contrary to section 57 and 57.1 of the Act,
  - Rast failed to deal fairly, honestly and in good faith with his clients contrary to section 14(2) of the *Securities Rules*,
  - Rast's and RCW's conduct was contrary to the public interest and damaging to the capital markets in British Columbia.
- ¶ 6 The facts supporting the allegations are not disputed and are set out in an agreed statement of facts. In addition, Rast admitted at the hearing that he and his company, RCW, engaged in a series of transactions that perpetrated frauds on persons in British Columbia contrary to sections 57 and 57.1 of the Act and that he failed to deal fairly, honestly and in good faith with his clients contrary to section 14(2) of the *BC Securities Rules*.

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- ¶ 7 On January 24, 2001, Rast was charged with 21 counts of fraud, forgery and theft of client funds between 1993 and 1998. Rast appears to have cooperated fully with investigators and the police. Rast pled guilty to ten counts of theft over \$5,000 contrary to section 334(a) of the *Criminal Code of Canada*. On January 27, 2003, Rast was sentenced by a judge of the Provincial Court of British Columbia to three years incarceration and ordered to compensate his clients approximately \$500,000.
- ¶ 8 Particulars of Rast's conduct are as follows:

### ***Verna Graham***

In October 1997, Graham gave Rast \$20,000 to invest in mutual funds on her behalf. She wished to purchase an equal amount of two mutual funds. Graham's cheque was made payable to a brokerage firm and not to RCW. The forms to open an account at the firm on behalf of Graham were purportedly prepared by Rast, but never submitted. Rast purchased \$10,000 units in one fund, but not in the other. Graham requested confirmation of her interest in the second fund. Rast delayed for a period of time and advised that he had been unable to place this order. By March of 1998 there was no confirmation that any units had been purchased in the second fund on Graham's behalf. Graham's son took over the investigation and insisted on an explanation. Eventually there followed an in-house investigation, as well as a police investigation, and during that time Rast admitted that he had initialed a change to Graham's cheque, making it payable to RCW, his own company. Following the discovery of this wrongdoing, Rast returned \$10,000 together with \$728 of interest by bank draft dated March 6, 1998.

### ***Robert Henry Peters and Leanna Peters***

The Peters had given Rast a cheque for \$100,000 dated July 7, 1993 payable to RCW for investments on their behalf. Of this amount the Peters wished to purchase \$17,000 of a Trimark Select Growth Fund and \$16,000 of CI Mutual Funds. The cheque was deposited into RCW's account at Fraser Valley Credit Union. From 1993 through 1998 regular statements were received by the Peters indicating that they held an interest in those two funds. In fact, neither Trimark nor CI Fund had any record of Rast making those purchases on behalf of his clients, the Peters. The Peters' capital loss was \$33,000.

### ***Edna Covey***

In the fall of 1996, Covey wished to invest in two mortgage funds. She signed all the requisite forms and made out a cheque in the amount of

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\$50,000 in favour of RCW. No such investments were ever made by Rast on behalf of Covey. Covey's capital loss is \$50,000.

### ***Joseph Paul Raymond Demeules***

In October 1996, Demeules gave Rast a cheque for \$27,000 dated October 17, 1996 and payable to RCW, which was to be invested in mortgage funds. The cheque was deposited into the RCW account at the First Heritage Savings Credit Union. No such investments were ever made by Rast on behalf of Demeules. Demeules' capital loss is \$27,000.

### ***Mary Plett***

Plett gave Rast a cheque for \$20,000, on February 21, 1997, payable to RCW to invest in mutual funds. The cheque was deposited into the RCW account at the First Heritage Savings Credit Union. Rast provided a letter to Plett stating that he had purchased \$10,000 worth of two specific funds, on her behalf. No such investments were ever made by Rast on behalf of Plett. Rast has paid back \$4000. Plett's capital loss is \$16,000.

### ***David Dirks and Anne Dirks***

In the spring of 1997, the Dirks sold their farm and gave \$400,000 to Rast to invest on their behalf. They made out various cheques, including one for \$50,000, dated June 17, 1997, payable to RCW. The cheque was deposited into the RCW account at the First Heritage Savings Credit Union. Rast did properly invest \$350,000 of those funds on behalf of the Dirks. However, no such investment was ever made with the \$50,000. The Dirks' capital loss is \$50,000.

### ***Stanley and Joanne Epp***

In the spring of 1997 the Epps also sold their farm. They gave Rast an undated cheque for \$100,000, payable to RCW, to invest in a mortgage fund, which would provide income for them in their retirement. The cheque was deposited in the RCW account at the First Heritage Savings Credit Union on May 12, 1997. The Epps moved to Saskatchewan and they did receive two cheques purporting to be interest or dividend payments with respect to their investments. Then those payments stopped. In fact, Rast had never made any investment on their behalf. The Epps' capital loss is \$100,000.

### ***Eric and Evangeline Thiessen***

The Thiessens had known Rast since August 1996. They became his clients in 1997 and relied upon him for financial planning. Upon the advice of Rast, and using the equity in their home as security, the Thiessens took out a line of credit of \$100,000. The Thiessens gave Rast a

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cheque for \$100,000, dated February 12, 1998 and payable to RCW, which was intended to purchase units in three separate mutual funds. The cheque was deposited to the RCW account at the First Heritage Savings Credit Union. Rast made no investment on behalf of the Thiessens, and their capital loss is \$100,000, not including the interest that they had to pay to the bank on their line of credit.

### *Stanley James Schulz and Marilyn Rose Schulz*

In February of 1998, the Schulzes provided Rast with a cheque for \$60,000, dated February 10, 1998 payable to RCW. The cheque was deposited into the RCW account at the First Heritage Savings Credit Union. The cheque was to be used by Rast to purchase three separate mutual funds on behalf of the Schulzes. Rast made no investment on behalf of the Thiessens, and their capital loss is \$60,000.

### *Edward and Diane Fast*

The Fasts gave Rast a cheque for \$30,000, dated February 28, 1998, payable to Viewpoint Financial Services Inc., which Rast asked them to change to RCW. The cheque was deposited into RCW's account at First Heritage Savings Credit Union. The cheque was to be used by Rast to purchase a series of mutual funds on behalf of the Fasts. No investments were purchased on behalf of the Fasts and their capital loss is \$30,000.

- ¶ 9 We find that Rast has taken responsibility for his conduct and has pled guilty. He acknowledges that what he did was wrong and believes he still has an obligation to repay all of his clients.
- ¶ 10 Rast is 45 years old and has five children. At the time of his sentencing, three of his children were with his ex-wife and two children, aged 19 and 17, were with Rast. It is not clear what his family situation is now that he is incarcerated. However, prior to his incarceration Rast was working to repay some of the funds he had stolen.

### **Discussion and Findings**

- ¶ 11 The facts agreed, the parties concentrated on what, if any, orders the Commission ought to make in these circumstances.
- ¶ 12 Commission staff argue that, in addition to a \$200,000 administrative penalty, it is necessary in the public interest to issue orders that will effectively ban Rast permanently from the securities markets.

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- ¶ 13 Rast does not generally oppose staff's submission on sanction but asks that he be allowed to trade for his own account because that is the only way he can realistically make any money to repay his clients.
- ¶ 14 In making public interest orders under sections 161 and 162 of the Act, the Commission must consider the protection of investors and the efficiency of, and public confidence in, capital markets generally.
- ¶ 15 However, we must look at the particular facts of each case to determine how far the section 161(1) sanctions must go to be effective in preventing future conduct by a respondent that is likely to be prejudicial to the public interest in fair and efficient capital markets.
- ¶ 16 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission discussed the factors relevant to sanction as follows (at page 24):

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 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.

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- ¶ 17 This list of factors has to be read in light of *Re Cartaway Resources Corp.* 2002 BCCA 461, where the court held that the Commission cannot consider general market deterrence in issuing sanctions (at paragraph 98):
- . . . past misconduct is relevant only to the extent that it may lead the Commission to conclude that future misconduct by the respondent, not by any and all other market participants, is likely.
- ¶ 18 Commission staff also referred us to two cases, in which the Commission sanctioned individuals where there were similar allegations of conversion of client funds and fraud. See *Re Stenner* [1998] 4 BCSC Weekly Summary 18, and *Re Anderson and Montaldi* 2003 BCSECCOM 184. The *Stenner* case in our view was particularly on point as it also involved a registrant who pled guilty to securities related criminal conduct regarding the conversion of client funds and fraud.
- ¶ 19 The Commission banned Stenner from the markets for 30 years and ordered him to pay a \$60,000 administrative penalty, the maximum of which at that time was \$100,000.
- ¶ 20 With this in mind, what public interest orders under sections 161 and 162 should we make against Rast?
- ¶ 21 Conduct relating to trading in securities that results in a criminal conviction is a very serious matter that necessarily undermines the integrity of our capital markets. What makes this case particularly egregious is that Rast was a registrant under the Act and was obliged to deal fairly, honestly and in good faith with his clients. Instead, he dealt with them unfairly, dishonestly and in bad faith. He knowingly diverted funds over a long period of time and he attempted to hide or conceal his activities with false statements and dividend payments. He received money belonging to each of the clients and represented to each of them that he had carried out their instructions to invest it on their behalf. In each case, he converted a substantial sum, apparently for his own use. His clients lost approximately \$476,000. Rast's conduct was highly prejudicial to the public interest.
- ¶ 22 Rast abused his position as a registrant and the trust his clients placed in him. As a result, he is now in jail and has been ordered to compensate his victims. His clients lost substantial sums that they thought were invested safely.
- ¶ 23 In mitigation, Rast has repaid \$24,000 to two clients and says he intends to repay all of his investors over time. By all accounts, Rast has cooperated with the police and investigators. He has taken responsibility for his actions. He pled guilty to the

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criminal charges and admitted the regulatory allegations made against him. He has clearly accepted the consequences of his misconduct.

- ¶ 24 However, despite Rast's good intentions to repay his clients over time, the investing public must be protected from him.
- ¶ 25 Therefore, considering it to be in the public interest to do so, we order:
1. under section 161(1)(b) of the Act, that Rast and RCW Financial are prohibited from purchasing or trading any securities for 30 years except through a registered representative for Rast's own account;
  2. under section 161(1)(c) of the Act, that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Rast or RCW Financial for 30 years;
  3. under section 161(1)(d)(ii) of the Act, that Rast is prohibited from becoming or acting as a director or officer of a reporting issuer for 30 years;
  4. under section 161(1)(d)(iii) of the Act, that Rast and RCW Financial are prohibited from engaging in investor relations activities for 30 years;
  5. under section 161(1)(f) of the Act, that Rast is prohibited from becoming a registrant under the Act; and
  6. under section 162 of the Act that Rast pay an administrative penalty of \$200,000.
- ¶ 26 There will be no order for costs.
- ¶ 27 September 5, 2003
- ¶ 28 **For the Commission**

Joyce C. Maykut, Q.C.  
Vice Chair



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Joan L. Brockman  
Commissioner

Marc A. Foreman  
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