

2005 BCSECCOM 388

Carey Brian Dennis

Sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Robin E. Ford	Commissioner
	Joan L. Brockman	Commissioner
	John K. Graf	Commissioner

Date of Hearing September 15, 2004

Date of Findings January 28, 2005

Date of Decision June 1, 2005

Submissions by

Sean K. Boyle For the Executive Director

Decision

Introduction

- ¶ 1 We issued our findings on liability in this matter on January 28, 2005 (2005 BCSECOM 65). We directed that the executive director file written submissions on sanctions. Commission staff sent the submissions to Carey Brian Dennis. Dennis has neither filed submissions on sanctions nor requested an opportunity to make oral submissions. Staff filed a bill of costs on April 25, 2005 and served it on Dennis.
- ¶ 2 This is our decision on orders under sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418. It should be read with our findings. As set out in the notice of hearing, we have considered whether it is in the public interest that:
1. under section 161(1)(c) of the Act, any or all of the exemptions described in sections 44 to 47, 74, 75, 98 or 99, do not apply to Dennis;
 2. under section 161(1)(d) of the Act, Dennis resign any position he holds as a director or officer of any issuer, and that he be prohibited from becoming or acting as a director or officer of any issuer;
 3. under section 161(1)(d) of the Act, Dennis be prohibited from engaging in investor relations activities;

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4. under section 174 of the Act, Dennis pay prescribed fees or charges for the costs of or related to the hearing; and
5. we should make any other orders in the circumstances.

Reasons

¶ 3 In summary, we found that Dennis:

1. directly engaged in a series of transactions relating to a trade in or acquisition of a security when he knew that the transactions perpetrated a fraud on seven persons in British Columbia, contrary to section 57(b) of the Act; and
2. failed to deal fairly, honestly, and in good faith with the seven clients, contrary to section 14 of the *Securities Rules*, BC Reg. 194/97.

¶ 4 From September 1993 until July 1997, Dennis was a financial adviser and of some standing and good reputation in the community of Salmon Arm in British Columbia. He was registered under the Act as a mutual fund salesperson. His registration was restricted to the offering and sale of securities in which his employer was permitted to trade under its registration.

¶ 5 Dennis deprived seven clients in British Columbia of \$247,576. He intentionally misled the clients to believe that their money was invested in a mortgage or other mutual fund with Mutual Life. However, he actually intended to (and did) place their money with a sole proprietorship called Dennis Financial Services. He used their money to invest in mortgages or a mortgage pool in his own name or for other business or personal purposes. Dennis, through Dennis Financial, used trust funds to pay his own bills. He also knowingly put the clients' money at risk by placing their money with Dennis Financial Services and by investing the money, in his name and at his discretion, in investments that were less than secure.

¶ 6 On October 10, 2003, in the Supreme Court of British Columbia, Dennis was found guilty of four counts of fraud and four of theft for this conduct. On December 9, 2003, he was sentenced to two years and three months in prison on each count, to run concurrently, and ordered to make restitution in the amount of \$106,185.10. We do not know whether Dennis has complied with the order for restitution.

¶ 7 In the criminal proceedings, Dennis admitted that his conduct was dishonest and that he realized the serious criminal nature of his conduct. He concealed his activities by mechanisms such as generic receipts (which did not indicate who had issued them) or by telling the clients, or allowing them to believe, that Dennis Financial was part of Mutual Life. His clients had no reason to make further

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inquiries of him because they trusted him. He hid the existence of his involvement in Dennis Financial from Mutual Life.

- ¶ 8 In making our decision, we are guided by the Commission's decision in *Re Eron Mortgage Corp*, [2000] 7 BCSC Weekly Summary 22. The decision sets out a non-exhaustive list of factors we usually consider when making orders against a person under sections 161(1) and 162 of the Act.
- ¶ 9 Applying the *Eron* criteria, Dennis' conduct was very serious and highly prejudicial to the public interest. He badly hurt seven vulnerable clients and their families and he enriched himself through fraud. The amounts of money he took from his clients were very significant to them. He took advantage of his trusted position as financial advisor and his good reputation in the community over a period of three and half years. As a registrant, Dennis knew about the requirements of the securities legislation and about the duty to deal with his clients fairly, honestly, and in good faith. He completely disregarded the requirements at issue in this case. He betrayed the trust of those who came to him for financial advice who were entitled to expect him to treat them fairly, honestly, and in good faith. Instead, he advised them to invest in Dennis Financial Services and used their money for personal purposes. He concealed his real activities from his employer and from his clients.
- ¶ 10 There are no mitigating factors in evidence before us. Dennis has not cooperated with the Commission. He has shown no remorse to us. There is no evidence that he has voluntarily or otherwise repaid any money to his victims.
- ¶ 11 Dennis poses a significant risk to investors and markets in British Columbia. We must deter him, and others, from similar conduct. He is clearly unfit to hold a position of trust as a registrant or a corporate director and officer. Dennis is now in his fifties. We consider it to be in the public interest to remove Dennis from our markets for a long period and to impose on him a substantial administrative penalty. In coming to this decision, we have in particular taken into account the orders imposed by the Commission in *Hughes* (2005 BCSECCOM 196), *O'Connor* (2005 BCSECCOM 197), *Barker* (2005 BCSECCOM 146) and *Rast* (2003 BCSECCOM 609).

Orders

- ¶ 12 We order that:
1. under section 161(1)(b) of the Act, Dennis cease trading in and is prohibited from purchasing any securities for 30 years except that he may rely on the exemption in section 45(2)(7) of the Act to buy or sell securities for his own

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account through a registrant to whom he has first provided a copy of this decision;

2. under section 161(1)(c) of the Act, the exemptions under the Act (except section 45(2)(7) as specified above) do not apply to Dennis for 30 years;
3. under section 161(1)(d)(i) of the Act, Dennis resign any position he holds as a director or officer of any issuer;
4. under section 161(1)(d)(ii) of the Act, Dennis is prohibited from becoming or acting as a director or officer of any issuer for 30 years;
5. under section 161(1)(d)(iii) of the Act, Dennis is prohibited from engaging in investor relations activities for 30 years; and
6. under section 162 of the Act, Dennis pay an administrative penalty of \$200,000.

¶ 13 Dennis was given notice that staff would seek costs under section 174 of the Act and *Securities Regulation*, BC Reg. 196/97, section 22, item 28.

¶ 14 We order that Dennis pay the prescribed fees or charges of or related to the hearing in the amount of \$21,140.36.

¶ 15 June 1, 2005

¶ 16 **For the Commission**

Robin E. Ford
Commissioner

Joan L. Brockman
Commissioner

John K. Graf
Commissioner

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