

# 2005 BCSECCOM 463

**Paul Robert Maudsley  
and  
Shaylor Management Ltd.**

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

## **Hearing**

<b>Panel</b>	Brent W. Aitken	Vice Chair
	John K. Graf	Commissioner
	Robert J. Milbourne	Commissioner

**Dates of Hearing** March 21 and 22, 2005

**Date of Findings** July 14, 2005

## **Appearing**

Joyce M. Johner For the Executive Director

## **Findings**

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 In a notice of hearing dated November 15, 2004, the Executive Director alleges that between 1996 and 2003:
1. Paul Robert Maudsley and Shaylor Management Ltd. perpetrated a fraud, contrary to sections 57 and 57.1 of the Act;
  2. Maudsley failed to deal fairly, honestly and in good faith with his clients, contrary to section 14(2) of the *Securities Rules*, BC Reg. 194/97; and
  3. Maudsley's and Shaylor's conduct was contrary to the public interest.

### **I. Background**

- ¶ 3 This hearing arises out of Maudsley's conduct while working for Investors Group Inc. as a mutual fund salesperson in its South Surrey Regional Office in White Rock, British Columbia.

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### A. Maudsley and Shaylor

- ¶ 4 Maudsley did not appear in person or by counsel at the hearing. He was interviewed under oath by commission staff on July 23, 2003 and was represented by counsel at that interview. The evidence included the transcript of the interview.
- ¶ 5 Maudsley was registered under the Act as a salesperson restricted to trading in mutual funds until he was terminated for cause by Investors on March 3, 2003.
- ¶ 6 Shaylor is a company incorporated under the British Columbia *Company Act*. It was incorporated as a “shelf” company in July 2000. Its name was changed and its share capital restructured on October 17, 2000. On December 7, 2000, it was formally organized. The only shareholders were Maudsley’s wife Tina (75%) and his mother Lesley (25%). Tina and Lesley were Shaylor’s only directors and officers (Tina was president and Lesley vice president). Tina and Lesley were also the sole signing authorities on Shaylor’s bank account.
- ¶ 7 Tina was interviewed under oath by commission staff on February 28, 2005 and again on March 10, 2005. She was represented by counsel at the February interview but chose to appear without representation at the March interview. Lesley was interviewed under oath by commission staff on March 1, 2005 and was represented by counsel at that interview.
- ¶ 8 In their interviews, Tina and Lesley said that they organized Shaylor on Maudsley’s instructions. Neither of them had any significant role in the company or any understanding that they were to have a role. Neither of them understood that they had any ownership interest in the company. Tina didn’t think that Shaylor was a “real company” and thought that Maudsley was just “using my name”. Similarly, Lesley understood she was to be a director but did not believe she had any duties as a result. Neither was she aware that she had signing authority on Shaylor’s bank account.
- ¶ 9 Only Maudsley made deposits to Shaylor’s bank account and was the only one who saw the bank statements. Tina signed cheques only on Maudsley’s direction and sometimes signed blank cheques for Maudsley to use. Most of the cheques issued on the Shaylor account were signed by Maudsley, who forged Tina’s signature.

### B. Maudsley’s activities

- ¶ 10 In January 2003 commission staff were contacted by a compliance officer at a mutual fund dealer. The compliance officer was concerned about an “off-book” transaction involving Maudsley and a person who was a client of both Maudsley and the compliance officer’s dealer. Commission staff then contacted Investors,

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which launched an internal investigation. That became the principal investigation into Maudsley's activities.

- ¶ 11 Tom Vowell is the Vice President of Business Standards and Compliance at Investors and in that capacity leads the compliance function at that firm. Vowell led the investigation of Maudsley's activities. The investigation appears to have been thorough and Vowell appeared to be a credible witness. Much of what follows is based on his evidence.
- ¶ 12 Between July 1997 and December 2002, Maudsley followed a pattern of persuading some of his mutual fund clients to redeem their funds and, ostensibly, invest the proceeds in other securities, mostly shares of a company called SAMsys Technologies, a public company listed on the Toronto Stock Exchange. In some cases he redeemed clients' mutual funds without their consent, only later obtaining their concurrence with the purported reinvestment strategy. Twenty-three of his clients (through 16 accounts) followed his advice and redeemed about \$1.6 million worth of mutual funds. The clients ranged in age from 25 to 86, with nearly half being over 70. At Maudsley's request, the clients paid the proceeds to him or to Shaylor. Maudsley did not invest their funds in other securities. Instead, he took their money for his own use.
- ¶ 13 The following is a description of the Maudsley's conduct in connection with those clients:
- In October 2002 Maudsley redeemed \$10,000 of mutual fund investments held by a 38 year old client who discovered this through an unexpected deposit to her bank account of \$10,000. On inquiry she found that it had come from Investors. She contacted Maudsley, who said he had redeemed her mutual fund investments as part of a strategy he claimed they had discussed to invest money into stocks. After discussion, the client agreed to invest \$5,000 into stocks and \$5,000 into GICs. She then wrote a cheque to Shaylor for \$10,000. Maudsley never bought the new investments.
  - In May 2001 Maudsley redeemed \$26,500 of mutual fund investments held by a married couple around 30 years of age, who then transferred \$25,500 of the proceeds to Shaylor for Maudsley to invest in SAMsys. Maudsley never bought the SAMsys shares.
  - In May and July 2001 Maudsley redeemed \$25,000 of mutual fund investments held by a client in her 60s who then transferred \$30,000 to Shaylor. Maudsley bought no securities with these funds. The mutual fund investments that Maudsley redeemed were in the client's registered accounts,

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so the redemptions triggered an income tax liability and also resulted in a reduction of her eligibility for benefits under the Pharmacare program.

- In October 2002 Maudsley redeemed \$15,000 of mutual fund investments, and in January 2003 another \$17,500, held by a client who was 77. The client transferred the funds to Shaylor. Maudsley also persuaded her to draw down an additional \$25,000 on her line of credit and transfer those funds to Shaylor. Then Maudsley told her that the cheque to Shaylor associated with the January \$17,500 redemption had been mis-dated, and he needed a replacement cheque. She provided him with a second cheque for that amount. The truth is that the first cheque was not mis-dated and Maudsley deposited both in Shaylor's account. He bought no securities with these funds.
- In August 2000 Maudsley advised another client, also 77, to redeem about \$16,400 of mutual fund investments from a trust account the client managed for his son, who is schizophrenic. This was just after the death of the client's wife. The client also gave Maudsley \$65,000 from the proceeds of a sale of a condominium. The client gave both these amounts to Maudsley to invest in GICs and other investments, but instead Maudsley deposited them to Maudsley's and Shaylor's accounts. He bought no securities with the funds.
- Between March 2001 and October 2002 Maudsley redeemed over \$46,000 of mutual fund investments held by a married couple in their 50s who then transferred nearly \$50,000 to Shaylor, at Maudsley's request, for Maudsley to invest in SAMsys and another company. Maudsley bought no securities with the funds.
- Between May 2001 and May 2002 Maudsley redeemed \$60,000 of mutual fund investments held by a married couple, the husband about 71 and the wife about 64, who then transferred \$67,200 to Shaylor for Maudsley to invest in SAMsys. Maudsley bought no securities with the funds.
- Maudsley had as clients a married couple in their 50s who had two accounts – one for themselves and a trust account for their son, who is a quadriplegic. Between April 2001 and November 2002 Maudsley redeemed just under \$87,000 of mutual fund investments held in the couple's account. They transferred \$96,000 to Shaylor for Maudsley to invest in SAMsys and other securities. Maudsley bought no securities with the funds.

The trust account for the couple's son, then 25, was established with the proceeds of an insurance settlement arising from the car accident that rendered him a quadriplegic. Between May and December 2002 Maudsley redeemed

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about \$239,700 of mutual fund investments held in this account. Of these redemption proceeds, \$206,500 was transferred to Shaylor for Maudsley to invest in other securities, mostly bonds. At the time, the son was about 25. Maudsley bought no securities with the funds.

- Investors discovered the facts about another elderly Maudsley client only because Maudsley volunteered the information during an interview with Investors in August 2003. In December 2000 and January 2001 this client transferred over \$96,000 to Maudsley. Maudsley bought no securities with the funds.
- Another client of Maudsley's was rendered a paraplegic in a car accident and had invested the proceeds of an insurance settlement in mutual funds at Investors. In July 1997 Maudsley began redeeming mutual funds from the client's account without telling him. From July 1997 to October 1998 the client transferred about \$250,200 to Maudsley, and from November 1998 to September 2000 transferred about \$232,650, for a total of about \$482,850. This client is about 31. He had been receiving monthly payments of \$2,500 from Maudsley, which he believed were interest payments from his investments. However, they were simply payments from Maudsley directly and stopped once Maudsley left Investors. Maudsley had bought no securities for the client with the money he took from the client's account.
- In July and December 2001 Maudsley redeemed nearly \$25,000 of mutual fund investments held by a married couple in their 60s who then transferred nearly \$25,000 to Shaylor, at Maudsley's request, for Maudsley to invest in SAMsys. Maudsley bought no securities with the funds.
- In an interview with Investors in September 2003 Maudsley drew Investors' attention to another elderly married couple who were his clients. In September 1999 Maudsley redeemed over \$60,000 of their mutual fund securities and they transferred the \$60,000 to Maudsley. He bought no securities with the funds.
- Between November 1999 and April 2002 Maudsley redeemed nearly \$227,000 of mutual fund securities held by a married couple in their 70s who transferred just over \$227,000 to Shaylor and Maudsley for Maudsley to invest in SAMsys and other securities. This amounted to all of the money in their Investors account. Maudsley bought no securities with the funds.

In October 2002 the couple contacted Maudsley because they wanted money out of their account to buy a new car. They asked him how much cash was

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available in their Investors account for that purpose and Maudsley told them there was about \$20,000. This was untrue, Maudsley having long since spent their money. However, he provided them with a cheque for \$20,000 from Shaylor to conceal the fact that they had no funds in their Investors account.

- Between May 2001 and December 2002 Maudsley redeemed \$30,000 of mutual fund securities held by a client who was about 70 at the time. She transferred \$28,000 to Shaylor for Maudsley to invest in SAMsys. Maudsley bought no securities with the funds.
- Between April and October 2002 Maudsley redeemed almost \$54,000 of mutual fund securities held by a married couple in their 60s who then transferred the \$54,000 to Shaylor for Maudsley to invest in equity securities. Maudsley bought no securities with the funds.

### **C. Where the money went**

- ¶ 14 Maudsley told his clients that the money they gave him and Shaylor would be used to invest in SAMsys or other securities. Instead, he used the money for his own purposes (banking records show that the funds deposited in Shaylor's account were transferred to accounts in the name of Maudsley or his wife Tina).
- ¶ 15 Maudsley has little to show for it. He admits that he had a substance abuse problem and told Vowell in September 2003 that he used the money for his personal and lifestyle expenses, including, according to Vowell, "his cocaine and gambling habit and alcohol addiction." Maudsley made a similar admission in his July 2003 interview with commission staff.

### **D. Investors' response**

- ¶ 16 Investors has compensated these clients a total of just over \$2.3 million. The components of the compensation varied from client to client and included:
- the return of all monies the clients gave to Maudsley or Shaylor (about \$1.6 million)
  - foregone returns from funds redeemed
  - redemption fees
  - compensation for unsuitable investments recommended by Maudsley
  - losses due to unsuitable leveraged investing recommended by Maudsley
- ¶ 17 It appears that Investors has satisfactorily compensated Maudsley's clients for their losses.

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### II. Analysis and Findings

- ¶ 18 Section 159 of the Act says “Proceedings under this Act . . . must not be commenced more than 6 years after the date of the events that give rise to the proceedings.”
- ¶ 19 The notice of hearing was issued on November 15, 2004. The allegations in the notice of hearing are based in part on Maudsley’s redemption of mutual fund securities in one client’s account between July 1997 and October 1998 (just over half of the total that the client transferred to Maudsley).
- ¶ 20 In *Dennis* 2005 BCSECCOM 65, the Commission ruled that when a series of events or transactions in a continuing course of conduct spans a period of time, the “date of the events” in section 159 means the date of the last event in the series. This reasoning was followed by the Commission in *Barker* 2005 BCSECCOM 146.
- ¶ 21 In this case, Maudsley’s activities relating to the client’s account constitute one course of conduct involving redemptions of the client’s mutual funds securities, the use of the proceeds of those redemptions for Maudsley’s own purposes, and Maudsley’s concealing the evidence of that by making monthly payments to the client. These events form a continuous pattern of conduct that began in 1997 and continued through 2002. Under the reasoning in *Dennis*, we may therefore take into account all of this conduct in determining whether Maudsley contravened the legislation and whether it is in the public interest to make orders under the Act.

### A. Fraud

- ¶ 22 The notice of hearing alleges that Maudsley and Shaylor engaged in transactions, or a series of transactions, which perpetrated a fraud on persons in British Columbia, contrary to sections 57 and 57.1 of the Act. (In argument, the Executive Director did not pursue the alleged contravention of section 57.1.)
- ¶ 23 Section 57 says:
57. A person . . . must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security . . . if the person knows, or ought reasonably to know, that the transaction or series of transactions
- . . .
- (b) perpetrates a fraud on any person in British Columbia.
- ¶ 24 In section 1(1), “trade” is defined to include “a disposition of a security for valuable consideration”. Maudsley’s redemptions of his clients’ mutual fund securities were therefore trades, and both he and Shaylor participated in

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transactions relating those trades by receiving the proceeds. Both Maudsley and Shaylor also participated in transactions relating to the acquisition of securities because the funds they received were funds that Maudsley's clients had instructed him to invest in SAMsys or other securities.

- ¶ 25 Did Maudsley and Shaylor know that those transactions perpetrated a fraud on persons in British Columbia?
- ¶ 26 In our opinion, we need concern ourselves only with Maudsley's knowledge. It is clear from the evidence that Maudsley was the controlling mind and will of Shaylor and that Tina and Lesley were solely his nominees. Section 1(1) defines "director" as "a director of a corporation or an individual occupying or performing, with respect to a corporation . . . a similar position or similar functions". It defines "officer" as ". . . the president, vice president, the secretary, . . . the treasurer, . . . and any other individual . . . acting in a capacity similar to those specified offices."
- ¶ 27 That Tina and Lesley owned all the shares of Shaylor is irrelevant – Maudsley ran the company. He alone saw its bank statements, made the deposits and directed the disposition of its funds.
- ¶ 28 We therefore find that he was performing the role of director and officer of Shaylor and accordingly, under the definitions of those terms, was a director and officer of Shaylor. In fact, he was, in essence, the sole director and officer of Shaylor because neither Tina nor Lesley played any significant role in its affairs. The functional definitions in the Act of "director" and "officer" are intended to ensure that the substance of an individual's relationship with an issuer is what is relevant, and that the individual cannot escape accountability through the artifice of appointing compliant nominees.
- ¶ 29 It is trite law that a corporation is deemed to have the knowledge of those who control its affairs. Since we have found that Maudsley was the controlling mind and will of Shaylor, his knowledge is attributed to Shaylor. Therefore, if he knew that the transactions perpetrated a fraud on persons in British Columbia, so did Shaylor.
- ¶ 30 Section 57(b) was considered by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. The Court said:

29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal standard of proof beyond a reasonable



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doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

¶ 31 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

. . . the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

¶ 32 In our opinion, the evidence provides clear and convincing proof that Maudsley and Shaylor committed what *Théroux* describes as a “prohibited act” and that it caused deprivation. Maudsley redeemed mutual fund securities without his clients' knowledge, or did so with their consent by deceiving them about how the proceeds of the redemptions would be invested. He simply took their money, or caused Shaylor to do so – about as stark an instance of deceit as there can be.

¶ 33 Because of Maudsley's deceit, his clients suffered deprivation. They were deprived not just of the money they transferred to him, but of the investment opportunities associated with those funds. The money transferred to Maudsley and Shaylor by his clients was about \$1.6 million, but the deprivation was much greater: to make them whole, Investors had to compensate them with over \$2.3 million.

¶ 34 It is also our opinion that the evidence provides clear and convincing proof that Maudsley had subjective knowledge of the deceit, and that it would result in the deprivation of others. He was the one redeeming the mutual fund securities, or advising his clients to do so. He was the one who directed them to pay the proceeds to himself or Shaylor. He was the one who, as their trusted adviser, promised to invest the funds in other securities. He was the one who had them direct their money to himself or Shaylor and then used it for his own purposes.

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- ¶ 35 His knowledge of the deceit is also betrayed by his attempts to conceal his activities. He concealed his theft of his paraplegic client's money by making monthly payments to the client, leading the client to believe that the income was coming from his investments. He concealed his theft of the money of the couple seeking funds for a new car by providing them with the funds out of the Shaylor account.
- ¶ 36 It is inconceivable that Maudsley did not know his conduct was deceitful, and that it had as its result the deprivation of others.
- ¶ 37 We therefore find that Maudsley and Shaylor contravened section 57(b).

### **B. Fair Dealing**

- ¶ 38 The notice of hearing alleges that Maudsley failed to deal fairly, honestly and in good faith with his clients, contrary to section 14(2) of the Rules.
- ¶ 39 Section 14(2) says:

14(2) A registered . . . salesperson . . . of a dealer or adviser must deal fairly, honestly and in good faith with the clients of the dealer or adviser.

- ¶ 40 We have already found that Maudsley redeemed mutual fund securities in the accounts of his clients, sometimes without their knowledge and consent. When he did have their consent, he obtained it by lying about what he intended to do with the proceeds. In fact, he stole the proceeds. In addition, he relied on his relationship with his clients as a financial adviser to facilitate this pattern of organized thievery, and targeted his vulnerable clients as his victims.
- ¶ 41 There could not be a more blatant contravention of section 14(2) and we so find.

### **C. Public interest**

- ¶ 42 We have not made a finding that Maudsley or Shaylor acted contrary to the public interest. This allegation was redundant in the notice of hearing because it was not based on any conduct other than already-alleged contraventions of the Act and Rules.

### **III. Submissions on Sanctions**

- ¶ 43 We direct the parties to make their submissions on sanctions as follows:

By August 12            The Executive Director delivers submissions to the respondents and the Secretary to the Commission

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By September 2      The respondents deliver response submissions to the  
Executive Director and the Secretary to the Commission

Any party wishing an oral hearing on the issue of sanctions so  
advises the other party and the Secretary to the Commission

By September 12      The Executive Director delivers reply submissions (if any) to  
the respondents and the Secretary to the Commission

¶ 44 July 14, 2005

¶ 45 **For the Commission**

Brent W. Aitken  
Vice Chair

John K. Graf  
Commissioner

Robert J. Milbourne  
Commissioner