

2007 BCSECCOM 365

Foresight Capital Corporation, Gilbert Kenneth Wong, and Jill Ellen MacGregor Bock aka Jill Ellen MacGregor

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

Hearing

| | | |
|--------------|---------------------|--------------|
| Panel | Robin E. Ford | Commissioner |
| | Marc A. Foreman | Commissioner |
| | Robert J. Milbourne | Commissioner |

Date of findings February 27, 2007

Date of last submission May 2, 2007

Date of decision June 28, 2007

Submissions filed by

Douglas B. Muir
and Alan E. Keats For the Executive Director

Gilbert Kenneth Wong For Foresight Capital Corporation

Jill Ellen MacGregor Bock For herself

Decision

Introduction

- ¶ 1 This is our decision in this matter. We issued our findings dated February 27, 2007 (see 2007 BCSECCOM 101). We made findings against Foresight Capital Corporation and Jill Ellen MacGregor Bock. We made no findings against Gilbert Kenneth Wong. The executive director, Foresight and Bock have filed submissions on sanctions. We have considered our findings, the submissions and the public interest in making our decision.

Findings – Foresight

- ¶ 2 Foresight was registered as a securities dealer from June 9, 1997 to October 12, 2001 and as a mutual fund dealer from October 12, 2001 to December 15, 2002. It had an extensive record of compliance problems related to procedural and supervisory deficiencies. In May 2000, Foresight entered into a settlement with the executive director in which it gave undertakings and paid \$10,000. Further, in

2007 BCSECCOM 365

June 2001, the executive director, by order, placed conditions on its registration, limiting its activities to mutual fund sales only and requiring the resignation of its compliance officer, which became effective in August 2001. It ceased operations in December 2002 and was dissolved by the BC Registrar of Companies for failure to file on July 25, 2005.

- ¶ 3 We found that Foresight failed to meet its working capital requirements for June, July, August and October of 2002, contrary to section 19(5) of the *Securities Rules*, BC Reg. 194/97.

Findings - Bock

- ¶ 4 As a registrant, Bock was required under section 48(1)(b) of the Rules to make reasonable enquiries concerning each client to determine the suitability of a proposed purchase or sale for that client. We found that, in the period December 1999 to December 2000, in relation to four of the six clients who testified before us, Bock breached section 48(1)(b) as follows.
- ¶ 5 Ms F was 69 years old, divorced, and essentially retired with an annual income of about \$30,000 and net worth of between \$375,000 and \$455,000 (including her home). Bock overstated her net worth at \$600,000 (by inappropriately capitalizing her OAS and CPP entitlements) and recommended an investment of \$25,000 in an exempt product. Together with earlier investments in exempt products, this resulted in a total investment of \$75,500 in speculative and illiquid exempt products that were highly risky. The issuer later cancelled the investment.
- ¶ 6 We found that Bock “knew” her client Ms F, but in choosing to ignore what she knew about her client’s financial circumstances and objectives she failed to exercise sound professional judgment and accordingly breached section 48(1)(b) by recommending investments that were unsuitable for her.
- ¶ 7 Ms AG was 50 years old, single and working full-time as a nurse. Her annual salary was about \$50,000 and her net worth about \$220,000. Bock overstated her net worth at more than \$400,000 (by inappropriately capitalizing her future OAS and other pension entitlements) and recommended investments of \$67,500 (net of a VCC tax credit) in speculative and illiquid exempt products that were highly risky.
- ¶ 8 We found that Bock “knew” her client Ms AG and proposed an investment strategy to meet her financial objectives, but did not properly disclose the nature and risks of the investments and accordingly breached section 48(1)(b) by recommending investments that were unsuitable for her.

2007 BCSECCOM 365

- ¶ 9 Ms LM was 49 years old, divorced and working full-time in a technical support position. Her annual salary was about \$47,000 and her net worth was about \$48,000. Bock recommended that LM purchase \$35,000 of speculative and illiquid exempt products that were highly risky.
- ¶ 10 We found that Bock did not “know” her client Ms LM as a result of insufficient inquiry into her financial objectives and accordingly breached section 48(1)(b) by recommending investments that were unsuitable for her.
- ¶ 11 Ms IS was 54 years old, divorced and working part-time as a care-giver. Her annual income was at most \$30,000 and her net worth was about \$220,000. Bock overstated her net worth at \$430,000 (by inappropriately capitalizing her future OAS and CPP payments) and recommended that she invest \$82,000 (net of a VCC tax credit) in speculative and illiquid exempt products that were highly risky.
- ¶ 12 We found that Bock did “know” her client Ms IS, but in choosing to ignore what she knew about her client’s financial circumstances and objectives she failed to exercise sound professional judgment and accordingly breached section 48(1)(b) by recommending investments that were unsuitable for her.

Factors relevant to sanction

- ¶ 13 In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 (at page 24), the Commission discussed some factors it considers before making orders under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The Commission pointed out that the circumstances of each case are different, so it is not possible to produce an exhaustive list of all the factors the Commission considers in making its orders. In making our decision, we have discussed the factors we have considered relevant.

Foresight Capital Corporation – discussion

- ¶ 14 Under section 162 of the Act, the executive director seeks an administrative penalty of \$80,000.
- ¶ 15 Foresight says we should not impose any sanction. It asks us to follow *Sniper Sports Ltd* (2005 BCSECCOM 560) and find that no sanction may be imposed because Foresight has been dissolved. In *Sniper*, the Commission found that the *Business Corporations Act*, SBC 2002, c. 57, did not apply to Sniper at the time it was dissolved. The *Business Corporations Act* did, however, apply to Foresight when it was dissolved in 2005. Under its terms, in our view, we may impose a sanction.

2007 BCSECCOM 365

Seriousness of the respondent's conduct

- ¶ 16 Section 19 of the Rules requires that dealers maintain a specified minimum level of working capital to ensure that they can meet their financial commitments to their clients.
- ¶ 17 In this case, overall, Foresight's deficiencies were not great, and were short-lived. There was no evidence of serious capital adequacy issues.

Damage done to British Columbia markets

- ¶ 18 The executive director provided no evidence of damage to investors or markets.

Extent to which the respondent was enriched

- ¶ 19 There is no evidence that Foresight was enriched by the breaches.

Risk that the respondent poses to British Columbia investors and markets

- ¶ 20 Foresight ceased to be registered under the Act in 2002 and is dissolved. There is no evidence that it may be revived.

Mitigating factors

- ¶ 21 The executive director says there are no mitigating factors.
- ¶ 22 Foresight submits, and we agree, that the deficiency arose innocently through administrative error and misunderstanding.

Past conduct of the respondent

- ¶ 23 The subject of capital adequacy had not been the focus of Foresight's previous compliance reviews by BCSC staff.

Orders made by the Commission in the past

- ¶ 24 Foresight provided several cases involving small companies and relatively small capital deficiencies. In these cases, the regulatory authority imposed fines only where the breaches were of a recurrent nature, or they were accompanied by more serious breaches.

Decision on Foresight

- ¶ 25 We do not consider it to be in the public interest to make an order against Foresight in the circumstances described above.

Jill MacGregor Bock - discussion

- ¶ 26 Under section 161(1) of the Act, the executive director seeks orders, for a period of three to five years, prohibiting Bock from purchasing or trading securities, except for Bock's own account, from acting as a director or officer of an issuer,

2007 BCSECCOM 365

and from engaging in investor relations activities. Under section 162 of the Act, the executive director seeks an administrative penalty of \$60,000, \$15,000 per breach of section 48(1)(b) of the Rules.

- ¶ 27 Bock says sanctions should be limited to a restriction on the sale of exempt products for six months from May 16, 2001 and an administrative penalty of \$1,000, \$250 per breach of the Rules.

Seriousness of the respondents' conduct

- ¶ 28 Section 48 of the Rules is a key responsibility of registrants and any contravention is inherently serious.
- ¶ 29 In *Re Marc Lamoureux* ((2002) ABSECCOM REA), that Commission said:

This and other commissions and the courts have repeatedly emphasized the importance for the protection of the investing public, of the registration requirements of the Act and the special role played by registrants within the regulatory system. (paragraph 16)

and:

This regulatory registration system is intended to ensure that the investing public receives appropriate advice from competent and ethical people. Public investors expect full regulatory compliance by registrants. (paragraph 17)

and further:

Public confidence in the integrity of the capital markets is jeopardized when a registrant fails to comply with securities regulations. (paragraph 18)

- ¶ 30 We agree.
- ¶ 31 Bock has a BA in Economics and an MBA. She had an extensive history in the financial services area prior to becoming registered as a mutual fund salesperson in British Columbia in 1995. She became registered as a securities salesperson in 1997. Bock had a good understanding of the exempt products she was selling and she was an experienced financial planner. Simply put, she knew, or ought to have known, of her obligations under section 48. While her registration ceased in January 2001, she is currently licensed to sell insurance.

2007 BCSECCOM 365

¶ 32 Her conduct could hardly be less consistent with the role and responsibility of a registrant under section 48. We find it particularly troubling that, in her submissions, she has shown no real understanding of what she has done and no remorse. She is still unwilling to acknowledge her breaches.

¶ 33 In particular, in her submissions, she continues to assert:

- that her practice of including capitalized pension values in clients' net worth was appropriate; and
- her belief that her clients must accept some or all of the responsibility to do their own due diligence and assess suitability, including reading the promotional literature given to them, and that their failure to do so in some way excuses her from her duty to comply with section 48.

Damage done to British Columbia markets

¶ 34 Bock recommended unsuitable investments to four people. All lost confidence in the British Columbia markets. Others aware of this case would also have lost confidence in both the integrity of the markets, and those registered to operate in them.

Harm suffered by investors as a result of the respondent's conduct

¶ 35 While the evidence shows that three of the four clients lost money, it is not adequate to allow us to calculate total net loss in each case given the complexity of the investments, the financing arrangements for them and the accompanying tax consequences for the investors.

Extent to which the respondent was enriched

¶ 36 The evidence is not clear as to how much Bock earned in commissions from her recommendations to the four clients and the executive director made no submissions in this regard.

Risk that the respondent poses to British Columbia investors and markets

¶ 37 While she is no longer registered under the Act, Bock continues to be active in the financial markets in British Columbia through her insurance business. That business can include the sale of segregated funds (a product not dissimilar to mutual funds) and the provision of financial planning services and could include the sale of exempt products.

¶ 38 We are satisfied that if Bock continued to sell exempt products, there would be a serious risk that she would engage in similar unacceptable conduct which would jeopardize the public interest.

2007 BCSECCOM 365

Need to demonstrate the consequences of conduct and general deterrence

- ¶ 39 We agree with the executive director that our sanctions should communicate clearly to market participants the seriousness of a contravention of section 48 of the Rules to achieve an appropriate level of general deterrence.

Mitigating factors

- ¶ 40 The executive director submits that there are no mitigating factors.
- ¶ 41 Bock submits that she purchased certain of the investments herself, three of which completely failed. She argues that we should take into account the fact that her gross loss exceeded those of the four clients.
- ¶ 42 This we absolutely decline to do. Whether or not Bock believed the investments were suitable for herself has no bearing on their suitability for her clients. It is also well settled that the subsequent performance of an investment has no relevance to whether or not it is suitable for a client at the time the registrant makes the recommendation.
- ¶ 43 Bock submits she has already paid a price for her breach of the Rules. Enforcement staff asked her to cease engaging in investor relations activities and selling exempt products during its investigation and these proceedings and she submits she has done so since June 2001.
- ¶ 44 Bock has been disciplined by the Insurance Council. They have put conditions on her license to sell insurance products because of these proceedings.
- ¶ 45 Bock has no prior convictions or regulatory sanctions against her under the Act.

Orders made by the Commission in the past

- ¶ 46 Both the executive director and Bock submitted cases from proceedings of the Commission and other regulatory authorities for our consideration. Many were settlements, and most had significant distinguishing characteristics from the situation before us.
- ¶ 47 We considered them all, and gave appropriate weight to them in making our decision.

Decision on Bock

- ¶ 48 The executive director asks for orders that, for three to five years:

2007 BCSECCOM 365

- a) under section 161(1)(b) of the Act, Bock is prohibited from purchasing or trading securities except through one registered representative for Bock's own account; and
- b) under section 161(d)(ii) of the Act, Bock is prohibited from becoming or acting as an officer or director of any issuer.

¶ 49 The executive director has not explained why orders under sections 161(1)(b) and (d)(ii) would be appropriate. We are not persuaded that they would be in the public interest.

¶ 50 The executive director also asks for orders that, for three to five years:

- a) under section 161(1)(c) of the Act, the exemptions described in sections 44 to 47, 74, 75, 98, and 99 of the Act do not apply to Bock; and
- b) under section 161(1)(d)(iii) of the Act, Bock is prohibited from engaging in investor relations activities.

¶ 51 Given the evidence before us as to the nature of Bock's breaches of section 48, and her extensive history in the exempt products segment of the industry and her high profile in marketing meetings to which she invited her clients, we agree with the executive director.

¶ 52 The executive director also asks, pursuant to section 162 of the Act, that Bock pay an administrative penalty of \$15,000 per breach of section 48 of the Rules, for a total penalty of \$60,000. We agree that we should impose a penalty, but find that the quantum of the administration penalty requested is inconsistent with the cases referred to us by the parties.

¶ 53 Accordingly, considering it to be in the public interest, we order:

- (a) 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 Bock, except that the exemption in section 45(7) applies as long as Bock is trading for her own account;
- (b) under section 161(1)(d)(iii) of the Act, that Bock is prohibited from engaging in investor relations activities;
- (c) under section 162 of the Act, that Bock pay an administrative penalty of \$25,000; and

2007 BCSECCOM 365

(d) that the orders under sections 161(1)(c) and (d)(iii) of the Act continue for three years and, from the end of the three-year period, they continue:

- i. until Bock pays the administrative penalty (if she has not already done so), and
- ii. unless Bock is registered under the Act as a salesperson with a registrant.

¶ 54 June 28, 2007

¶ 55 **For the Commission**

Robin E Ford
Commissioner

Marc A. Foreman
Commissioner

Robert J. Milbourne
Commissioner