2007 BCSECCOM 627

Ian Gregory Thow,
611276 BC Ltd, 657594 BC Ltd, 679071 BC Ltd, 699109 BC Ltd,
705671 BC Ltd, AYG Investments Inc, M600 Holdings Ltd,
Thow Financial Planning Corp, Vancouver Island Jet Inc,
and 1047145 Alberta Ltd

Sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken	Vice Chair
	Kenneth G. Hanna	Commissioner
	Robert J. Milbourne	Commissioner
Dates of Hearing	May 29-31, June 6 and 14, and July 6, 2007	
Date of Findings	October 16, 2007	
Appearing		
J. Douglas MacKay	For the Executive Director	

Findings

I Introduction

¶ 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 June 29, 2006, the executive director alleges that between January 2003 and May 2005, Ian Gregory Thow contravened the Act by:
1. failing to deal fairly, honestly, and in good faith with his clients,
2. trading in securities without being registered,
3. making misrepresentations, and
4. perpetrating a fraud.

¶ 3 The executive director also alleges that the respondents acted contrary to the public interest.

¶ 4 None of Thow and the corporate respondents appeared at the hearing, nor were any of them represented by counsel. The record shows that the respondents were duly served, and that Thow knew the hearing date.

II Synopsis

¶ 5 This hearing involves Thow's misappropriation of millions of dollars of his clients' funds through his promotion of securities other than the mutual funds he was registered to sell.

¶ 6 The notice of hearing alleges that Thow misappropriated up to $30 million, but the executive director set out to prove the misappropriation of a lesser amount, still in the millions of dollars. The executive director says that is enough to establish that Thow contravened the Act as alleged in the notice, and to provide the foundation for an appropriate sanction.

¶ 7 Thow was a mutual fund salesperson employed by Berkshire Investment Group Inc., a mutual fund dealer and member of the Mutual Fund Dealers Association of Canada. Thow was also an officer, director, and branch manager with Berkshire. Thow's registration permitted him to trade only in mutual funds. Thow started as a mutual funds salesperson with Investors Group Financial Services Inc. He moved to Berkshire in November 1998. Berkshire terminated his employment in June 2005. Thow is no longer registered under the Act.

¶ 8 Thow persuaded some clients to invest in short-term construction loans. There is no evidence that these loans existed. Thow persuaded others to buy shares in National Commercial Bank Jamaica Limited. To some clients he identified the shares as preferred shares. Those shares did not exist. Thow persuaded one client to invest in Berkshire's initial public offering. Berkshire never had any plans to go public.

¶ 9 Thow advised clients to liquidate their mutual fund portfolios, to mortgage their homes, or to use other sources of borrowed funds, to raise the money to buy these investments. In several cases, Thow helped the clients arrange financing through relationships he apparently had with two individuals who were loan officers at Scotiabank and the Bank of Montreal, respectively.

¶ 10 To buy the investments that Thow promoted, his clients gave their funds to Thow personally, to AYG Investments Inc., or to 657594 BC Ltd. Thow owned and controlled AYG and 657594. He also owned and controlled all of the other corporate respondents, some of which were the ultimate recipients of the funds these clients gave to Thow to invest in the construction loans, the NCB Jamaica shares, and the Berkshire shares.

¶ 11 Thow used the money he received from his clients for these investments for other purposes, mostly for his own personal and business use.

III Background

A Thow's relationships with his clients

¶ 12 Thow had hundreds of clients. The clients we refer to in these Findings are those whose testimony formed part of the evidence in the hearing. Thirteen of those 26 clients testified at the hearing. The testimony of the other 13 is in the transcripts of their interviews with commission investigators.

¶ 13 Thow built trust with his clients, in some cases charming and befriending them in the process.

¶ 14 Some clients trusted him simply because he had been their financial adviser for many years. He had been their adviser when he was with Investors Group. They said they were satisfied with his advice and with the investments he had recommended for their portfolios. When he moved to Berkshire, they followed him.

¶ 15 Thow's public profile also engendered trust among his clients. When explaining why they found him trustworthy, clients mentioned his senior executive position in Berkshire and his high-profile support of various charitable and community causes. As one client put it, "We thought he was a paragon of virtue . . . he was running Crime Stoppers and he was always donating to these various charities, and he just seemed, like, you know, the man of the hour."

¶ 16 Some clients were impressed with his wealth, and with his apparent close relationship with Michael Lee Chin, the principal of Berkshire and who was, Thow said, a controlling shareholder of NCB Jamaica. Thow encouraged this, describing his own wealth and success to his clients. He showed clients letters from banks attesting to his net worth, and even offered clients the opportunity to look at his T4 income tax slips to show how much money he made. He drew his clients' attention to his trappings of wealth, telling them he made about $6 million a year, and managed close to half a billion dollars of investment assets.

¶ 17 Thow invited clients to presentations and dinners involving Michael Lee Chin (some he ferried to the presentations in his jet) and many were impressed that Thow introduced them to Michael Lee Chin, often having them photographed with him. Thow touted these events to his clients as "billionaire's presentations", or an "opportunity to meet a billionaire."

¶ 18 Clients testified about Thow's large waterfront home, his aircraft (including a Cessna 182 single-engine aircraft, a Bell 206 helicopter, a Cessna Citation X personal jet, and a Cessna Bravo personal jet), his sports and luxury cars (including two Mercedes, a Cadillac Escalade, a Corvette, and a Porsche Boxster), his boats (a SeaRay ski boat and a Boston Whaler) and his 56-foot Sea Ray yacht. All of these, Thow told his clients, he owned outright.

¶ 19 For many clients, though, it was simply the personal touches that made the difference. Two sisters who were his clients liked the way he would drop in for tea. He told them, "I love you ladies, you are my favourite ladies". It was, the witness said, "always kiss, kiss, hug, hug."

¶ 20 Another client said his and his wife's trust in Thow

> ". . . was based on a sort of hundred large and small things. He took a real interest in our son and in his medical school. He had a picture of our son's medical school graduation picture on his bookcase in his office, the only picture outside of members of his family that he had in his office."

¶ 21 However his clients came to trust Thow, they relied on him. Most of them were not sophisticated in financial matters and relied on Thow's advice to achieve their investment objectives. These excerpts from his clients' testimony are examples:

> "We knew nothing, really. We just relied on Mr. Thow totally."

> "People may wonder why did you give Thow that much money without having documentation. But we had worked with Ian Thow since 1993 and we trusted him. You know, he was the senior vice-president of Berkshire. . . . . He was a significant person in the community, and when he told us that, you know, this was a safe investment and that we would be getting documentation, we took him at his word. And you know, we found that, you know, one of the major products that the financial industry sells is trust, and we trusted him after 12 years of working with him. So that's why we did it."

> "He hit us at a very vulnerable point in our life . . . . He just targeted us and because we were good friends with this guy and trusted him, he got away with it."

B The investments

Short-term construction loans

¶ 22 Thow persuaded 15 clients to invest in short-term loans that he said would be used to fund developers involved in new construction. The clients were attracted by the very high, above market, rates of return. Thow offered most clients a three-month return of 8%, and made even better offers to some, including:

- 8% interest in one month on $100,000, with a bonus of $8,000
- $484,000 in return for a five-month investment of $349,000
- 20% in six months

¶ 23 Expressed as simple annual interest rates, these returns ranged from 32% to 192%.

¶ 24 Thow offered the loans to several clients at a time when the value of their mutual funds had fallen in response to market conditions. Thow presented the loans as a means by which the clients could recoup their losses.

¶ 25 Thow advised most of these clients to fund their investments in these loans by using their available cash on hand, by liquidating their mutual fund portfolios, and by mortgaging their homes.

¶ 26 Thow told most of the clients that the loans were secured by mortgages (he told some they were first mortgages). All of the clients who invested in the loans pressed him to provide documents, but he deflected these inquiries by telling them that their investment was evidenced by their cancelled cheque and that a well-known large Vancouver law firm, which he named, knew all about the loans. He told them their investments were safe because the law firm held the documentation. He told some that Berkshire held the securities. With two exceptions, Thow provided no documents to evidence these loans.

¶ 27 The first exception was one couple who repeatedly demanded documentation. Thow finally presented them with a document between them and AYG entitled "Private Business Transaction Agreement". It stated that they invested $426,150 to AYG (in fact, they invested $349,000) and that AYG would pay them interest on that amount at 8.5% per annum. The next paragraph in the document was a general release in favour of Thow and AYG. The next paragraph was a clause imposing a confidentiality obligation on the clients.

¶ 28 The clients initially refused to sign the document, considering it "to be a phoney document" and "not to be worth the paper it was written on". In the end, however, they signed it, because "we didn't have any choice. We wanted some sort of agreement, and this is all we could get."

¶ 29 The second exception is a couple to whom Thow gave a document entitled "Declaration of Bare Trust and Agency Agreement". It is dated May 20, 2005 and is among AYG, Thow, and the clients. It states that the couple advanced $100,000 and that AYG added another $150,000 and then lent the resulting $250,000 to an unnamed borrower at 10% with a bonus of $20,000. Principal, interest and bonus were due one month later, on June 19, 2005. The document contained an indemnity clause in favour of Thow and all his companies and a clause imposing a confidentiality obligation on the clients.

¶ 30 Thow led some clients to believe that the so-called loans were a new product that Berkshire was offering. He told clients who asked why their money was going to 657594 or AYG that those were the companies Berkshire was using to process the loans.

¶ 31 There is no evidence that there were any loans made to developers. None of the loans were products sponsored by Berkshire. There is no evidence that the Vancouver law firm Thow mentioned, or any other lawyers, had anything to do with the loans. Although some clients received some payments, all have lost a significant portion of their investment in these loans. Most lost their whole investment.

¶ 32 The following paragraphs summarize the testimony of the clients who gave money to Thow to invest in the short-term construction loans.

<u>Clients 1 and 2</u>

¶ 33 These clients, a retired couple, gave Thow $349,000 for investment in short-term construction loans. To help fund the investment, Thow recommended that they sell their mutual funds and mortgage their home. They did, raising $159,000 from the sale of their mutual funds and $125,000 from the mortgage.

¶ 34 They have received no interest and no repayment of principal. They had their home paid for, no debt and "money in the bank." Now, they say, they are dependent on their pensions, and a significant portion of their income is going to mortgage payments.

<u>Clients 3 and 4</u>

¶ 35 These clients, retired sisters, gave Thow $455,000 for investment in short-term construction loans. To help fund the investment, Thow recommended that they sell their mutual funds (including their RRSP accounts), which they did, raising $130,000. Thow also arranged for them to obtain a line of credit through a loan officer with a Victoria branch of Scotiabank. This loan was a major source of funds for their investment.

¶ 36 They persuaded Thow to repay them $30,000 to pay the income taxes associated with collapsing their RRSPs, and another $10,000 they needed for other purposes. Otherwise, they have received no interest and no repayment of principal. They owe the bank over $400,000. They say their health has been affected. One sister suffered a heart attack that they attribute to the stress associated with the loss of their money.

Client 5

¶ 37 This client, retired, gave Thow $446,500 for investment in short-term construction loans. To help fund the investment, Thow recommended that she sell her mutual funds, which she did, raising $350,000. Thow also arranged for her to borrow $50,000 from Scotiabank from the same loan officer as Clients 3 and 4. The client also borrowed $46,500 from a friend.

¶ 38 Thow told her the investment was for 90 days. When the term was up she asked about her money and Thow told her he had reinvested it. She protested that she had not authorized him to do that, and he told her, “trust me, I know what I’m doing and I’m going to make you very comfortable during your retirement.”

¶ 39 She persuaded Thow to repay her $30,000 to help repay the loan from her friend and another $10,000 she needed to pay moving expenses. Otherwise, she has received no interest and no repayment of principal.

Clients 6 and 7

¶ 40 These clients, a retired couple, gave Thow $475,000 for investment in short-term construction loans. At first they gave Thow only $100,000, but he told them that they needed more in order to meet the minimum investment. To help fund the investment, Thow recommended that they mortgage their home. They say he told them to do so because “the investments were totally safe, vetted by the legal firm, and securities held by Berkshire.” He sent them to the same loan officer at Scotiabank, where they obtained a mortgage, raising $375,000.

¶ 41 They have received no interest and no repayment of principal. “[T]here’s been a significant impact on us,” the husband testified. “You know, there’s the personal impact just the disbelief of violation of our trust. The fact that now these funds basically represent two full careers of savings . . . . We had to curtail a number of things . . . it has taken away options we had for the future . . . ”

Clients 8 and 9

¶ 42 These clients, a working couple, gave Thow $350,000 for investment in short-term construction loans. Their first investment was $250,000 using borrowed funds. The source of the funds was a line of credit at Scotiabank arranged for them by the same loan officer. Soon after making this investment, they became anxious about it, and the husband applied pressure to Thow to repay them. Thow did, just over two weeks later, with interest of $1,000.

¶ 43 The husband was having problems with stress and Thow approached the wife to suggest a smaller investment that might be easier for them to handle. He suggested $100,000. They were encouraged by the $1,000 in interest they received after only two weeks in the previous investment, so they agreed, again using proceeds from the line of credit.

¶ 44 They have received no interest on the $100,000 investment and no repayment of principal. They say it has taken an emotional toll on them and their three teen-aged children. They are now separated. They say it has been a major financial setback for them.

Clients 10 and 11

¶ 45 These clients, a retired couple, gave Thow $313,000 for investment in short-term construction loans. They kept their investment money separate and did not typically share details with one another about their investments. Later, they found out that both had invested with Thow, and that Thow had told the husband not to tell his wife about the investments, and had told the wife to tell no one about them, not even her daughter.

¶ 46 The husband invested $83,000, $45,000 of which he borrowed. The remaining $38,000 was funded by the sale of mutual funds, on Thow's recommendation.

¶ 47 The wife invested $230,000, funded substantially with borrowed funds. Thow told her the investment was for three months. When the term was up she asked about her money. Thow told her it was "locked in" for another month. When that month passed and she asked to be repaid, Thow told her "well, I took it upon myself to reinvest it for another three months". He told her that at the end of that three-month period she would be repaid.

¶ 48 They have received no interest and no repayment of principal. The wife says her account is "stripped completely" and she has had turn to her daughter for financial assistance.

Clients 12 and 13

¶ 49 These clients, a couple that at the time was nearing retirement, gave Thow $390,000 to invest in short-term construction loans. Thow told them their investment would earn $40,000 in three months. To fund the investment, Thow recommended that they sell their mutual funds and draw down a line of credit secured by a mortgage on their home that they had previously arranged with the previously-mentioned loan officer at Scotiabank. They did, raising $90,000 from the sale of their mutual funds and $300,000 from the line of credit.

¶ 50 They invested in September of 2004. They asked for some documentation to evidence their investment, so Thow said he would give them a cheque for $390,000 for them to hold as security. A couple of months passed and they had not received the cheque. After several calls, Thow went to their home in November. This is how the wife described his visit:

> " . . . he stated that our investments were doing great and in the early part of 2005 we could expect to realize a healthy return, about, you know $40,000 or so.
> . . .
> And – and just before leaving, he – he pulled the cheque from his pocket and just – it was folded and he just pulled it out of his shirt pocket and, you know, then he – he kind of looked at me and said, 'You know, this is really a lousy way of doing business." Well, our relationship at his point had been based on trust and – and goodwill. And – and you know, up to this point Mr. Thow had not done anything untoward towards us.
> . . .
> And he made me feel really petty – and uncomfortable, and made me feel like I didn't trust him after all these years. So I didn't take the cheque."

¶ 51 In February 2005 they met with Thow and he told them that he had reinvested their money in another loan that would come due in March. March came and went and they tried to reach Thow but did not see him until July. By then they had read newspaper accounts about investigations into his conduct. Thow told them they would be repaid.

¶ 52 They have received no interest and no repayment of principal. Since investing with Thow they have retired and are repaying their bank loans from their pension income. They say they have "really tightened up" and are "not spending." They say the experience has had a devastating effect. As the wife said in her testimony:

> "We revealed to him all that was important to us, and we were accessible, open and honest. We expected no less from a senior officer of Berkshire. The bottom line is that we trusted him on the basis of both his position and performance, and we never expected our trust to be abused for his personal gain and self-interest."

Clients 14 and 15

¶ 53 These clients, an elderly retired couple, gave Thow $365,000 to invest in short-term construction loans, although it does not appear they understood fully the nature of the investment. They funded the investment through the sale of their mutual funds, $225,000 of which were purchased with funds from a Scotiabank line of credit secured by a mortgage on their home.

¶ 54 They asked Thow for repayment of $15,000 to cover some expenses. He gave them $10,000. Otherwise, they have received no interest and no repayment of principal.

Shares in NCB Jamaica

¶ 55 Thow persuaded 10 clients to invest in shares of NCB Jamaica. Thow induced clients to invest by telling them about the large profits he said he had made by investing in the bank. He played up the role of Michael Lee Chin who, he said, was a controlling shareholder of the bank and was growing its business rapidly.

¶ 56 He promised clients large short term gains, telling one client that there were "some big things happening at the bank and I could earn what he called 'quick money'." He told another client he could double his $30,000 investment in a week.

¶ 57 Some clients, who were reluctant to invest, Thow approached later and told them that he had invested in the bank for them, and told them that the amount he had invested had already gone up in value significantly. He then asked them to invest more. They did.

¶ 58 Thow advised several of these clients to fund their investments in these loans by using their available cash on hand, by liquidating their mutual fund portfolios, and by mortgaging their homes.

¶ 59 Thow told one client that the investment was in the bank's common shares. He told four clients that they were invested in the bank's preferred shares. The remaining clients were unclear on the precise nature of their investment in the bank.

¶ 60 None who invested received documentation evidencing their investment. Thow told them that they could not invest the funds through their Berkshire account because it had to be done through a Jamaican broker. Thow told them to give the money to him, and that he would hold the share certificates in trust for them.

¶ 61 None of this was true. NCB Jamaica has had no preferred shares outstanding since November 2000. In addition, there is no evidence that Thow invested any client money in any securities of the bank. Although some clients received some payments, all have lost a significant portion of their investment in these loans, as detailed below.

¶ 62 The following paragraphs summarize the testimony of the clients who gave money to Thow to invest in shares of NCB Jamaica.

Client 16

¶ 63 This client, a businessman and airline pilot, gave Thow $1.6 million to invest in preferred shares of the bank. Thow told him that the preferred shares were not listed, but he could track the price of the bank's common shares on an internet site, and that the preferred shares "were doing way better."

¶ 64 The client invested in several tranches. In between, Thow gave him substantial sums in return, characterizing them as a combination of profit and return of capital.

¶ 65 The client says he has lost about $630,000. He is an airline pilot and says he cannot fly due to the medication he needs for depression associated with his experience with Thow. He says he is anxious and doesn't sleep at night. "It's just been hard on myself, my family . . . it's terrible," he said. "It's just really, really, impacted my life. I just can't believe it."

Client 17

¶ 66 This client, a businessman in his 50's, gave Thow over $1 million to invest in shares of the bank.

¶ 67 After investing, the client looked up the price of the bank's common shares on the internet, and told Thow that the price of those shares did not seem to match the profits Thow was representing. Thow told him he was invested in "a different type of share."

¶ 68 On two occasions the client demanded a return of funds and on both occasions Thow gave him $200,000. Later, Thow told him that his remaining investment was worth $4.2 million.

¶ 69 Other than the $400,000 Thow gave him, the client received no return on his investment and no return of his capital. He says he has lost about $750,000, (the evidence documents only $640,000 of this loss).

Clients 18 and 19

¶ 70 These clients, a retired couple, gave Thow $650,000 to invest in shares of the bank, funded in part by a $500,000 drawdown on a line of credit secured by a mortgage on their home. Thow had sent them to a loan officer at BMO, who arranged the line of credit for them.

¶ 71 The clients had told Thow that their investment approach was very conservative. He told them that he would never put their money in peril. He told them an investment in the bank "was a special opportunity for his Berkshire clients", and recommended it as "a very good investment because of Michael Lee Chin's involvement."

¶ 72 The clients invested $500,000 and asked for some evidence of their investment. Thow told them that their cancelled cheque would be sufficient.

¶ 73 Sometime during the year following their investment, he told them their investment was worth $2.2 million. They were uncomfortable with the amount they had invested and asked Thow to sell $300,000 worth of the shares. Thow said he would pay them out of his own money, so that their full investment could continue to grow. Thow paid them the $300,000. Later he told them he would like another $150,000 to maintain their position. They gave him the money.

¶ 74 Other than the $300,000 Thow gave them, they have received no return on their investment and no return of their capital.

Client 20

¶ 75 This client, a retired individual, gave Thow $360,000 to invest in the bank. The client told Thow he wanted to invest conservatively. Thow told him he could make 18% on an investment in the bank made up of GICs and common shares. The client borrowed $360,000 on an existing line of credit to make the investment.

¶ 76 The client received payments back from Thow totalling $193,000. Apart from those, he received no return on his investment and no return of his capital.

Clients 21 and 22

¶ 77 These clients, a working couple, gave Thow $539,000 to invest in preferred shares in the bank. At Thow's invitation, they went to one of the "billionaire's presentations" and had their pictures taken with Michael Lee Chin. Afterwards they became Thow's clients.

¶ 78 Thow told them that at Berkshire they invested only in “solid strategies,” and “basically followed Warren Buffett’s theories.” He told them that Berkshire “didn’t take any risks. There was no risk and no drama, as he would call it.”

¶ 79 They told Thow that the husband’s main income was a disability pension and that the wife did not have a pension plan, so they wanted to make some provision for retirement. The husband told Thow, “I wanted something that was rock solid. I needed to have the security.”

¶ 80 Thow told them that he had all his clients invested in NCB Jamaica. Later, at a meeting they had with him while their accounts were being transferred from another firm, Thow told them that he had bought some NCB Jamaica shares for them and the shares had already gone up $40,000. He told them they could take out the money any time. Thow explained to them that he said to himself “I’m going to give this to the [clients] and see what it will make in two or three weeks.”

¶ 81 When they began to invest their portfolio, he told them he wanted them to invest in the bank because “it was in its early stages and it was just making nothing but money.” He told them that Michael Lee Chin was involved in it, and “was really promoting the bank and it was going nowhere but up.”

¶ 82 Thow flew these clients and some others to Jamaica in his jet to show them the bank.

¶ 83 The clients received payments back from Thow totalling $370,000. Apart from those, they received no return on their investment and no return of their capital.

<u>Client 23</u>

¶ 84 This client, a resident of Alberta, gave Thow US$200,000 to invest in the bank. He says Thow was never clear with him whether the shares in which he believed he was investing were common or preferred.

¶ 85 The client had helped Thow finance the purchase of a business jet. Thow talked to him about investing in the bank, but the client chose not to invest at that time. About two weeks later, Thow told him he had purchased $100,000 worth of bank shares for the client because he had treated Thow so well in connection with the financing of the jet. Thow told the client that the $100,000 was now worth $132,000.

¶ 86 The client invested US$100,000. Later on, Thow told him that the investment had grown to $155,000 and asked him if would like to invest more. The client invested another US$100,000.

¶ 87 The client pressed Thow for some documentation to evidence his investment. The client says Thow told him, "Your $200,000 is worth $400,000 and some odd and you are doing just great. He says, 'It's still offshore,' he says, 'it takes some time, you know, to get this stuff all resolved.' " Later, Thow offered to fly the client to Jamaica to see the bank for himself. The trip was deferred for several months but eventually they flew to Jamaica in Thow's jet.

¶ 88 While they were in Jamaica, Thow said he had to return to Victoria suddenly for a family emergency. Before he left, he told the client that his investment was worth $631,000. The client asked for the return of his original $200,000 investment.

¶ 89 Thow stalled. Finally, Thow invited the client to a dinner with Michael Lee Chin and told him that he would give him the $200,000 after the dinner. Before the dinner, Thow asked the client not to say anything to Michael Lee Chin about the investment. When the client asked why, Thow said, "Well, it's all taken care of and I've got your money for you. . . . We don't need to get Michael excited or anything."

¶ 90 After the dinner, Thow told the client he couldn't give him the money for another two weeks.

¶ 91 The client has received no return on his investment and no return of his capital.

Client 24

¶ 92 This client gave Thow $30,000 to invest in the bank. Thow told him he could double his money in one week. The client raised money to invest by drawing down on a pre-existing line of credit.

¶ 93 A couple of weeks later the client contacted Thow looking for his money. Thow told him his investment was worth $100,000. The client was still looking to get his money back but faced a delay of several months before Thow returned $30,000 to him.

¶ 94 The client had other funds in his Berkshire accounts. Thow suggested he use the funds to make another investment in the bank. The client refused. He then discovered that Thow had sold his mutual funds anyway and withdrew $100,000. The client immediately contacted Thow's assistant and demanded the return of the funds. The funds were returned, but the transactions cost the client $6,000 in fees.

¶ 95 Later, Thow told the client that the client had made $10,000 on his bank shares. Thow had a boathouse for sale and offered it to the client in exchange for the $10,000. The client accepted.

¶ 96 This client received a return of $10,000 on his investment (in the form of the boathouse) and had his capital returned.

Client 25

¶ 97 This client, a resident of Alberta in his late 40's, gave Thow $1 million to invest in preferred shares of the bank. This was funded in part by a $750,000 mortgage against the client's farm.

¶ 98 The client asked for documentation, but Thow did not provide any. He told the client that his investment was "doing great", at one point telling him it was worth $3 million.

¶ 99 About six months after investing, the client told Thow he wanted to recover about $250,000 to $300,000 of his investment. Thow told him that he could get him only $50,000, which was paid.

¶ 100 Other than the $50,000 that Thow gave him, the client has received no return on his investment and no return of his capital.

Shares in Berkshire's supposed IPO

Client 26

¶ 101 This client, an individual nearing retirement, gave Thow $120,000 to invest in an initial public offering that Thow told him would be completed "in about a week". In return, Thow gave the client a $120,000 cheque to hold as security.

¶ 102 The week passed and the client asked Thow about his money. Thow said that the approvals were taking longer than expected, and that in the meantime the funds were invested and "doing well."

¶ 103 Berkshire's general counsel testified that Berkshire never took any steps to make a public offering of shares. The cheque that Thow gave the client is now worthless and the client has lost his investment.

Summary of client losses

¶ 104 We prepared the following chart, which compiles and summarizes the evidence of the clients as to the amounts they gave Thow for investment, the amounts they recovered, and their net loss or gain (not including unpaid investment returns):

Summary of losses ($000's, rounded to nearest thousand)

CLIENT NO.	AMOUNT ADVANCED	AMOUNT RECOVERED	LOSS (GAIN)
Construction loans			
1 & 2	349	0	349
3 & 4	455	40	415
5	447	40	407
6 & 7	475	0	475
8 & 9	350	251	99
10 & 11	313	0	313
12 & 13	390	0	390
14 & 15	365	10	355
NCB Jamaica			
16	1,600	975	625
17	1,040	400	640[1]
18 & 19	650	300	350
20	360	193	167
21 & 22	539	370	169
23	200[2]	0	200
24	30	40	(10)
25	1,000	50	950
Berkshire IPO			
26	120	0	120
Total	**8,683**	**2,669**	**6,014**

[1]Client testified that his losses were about $750,000.
[2]US Dollars. Valued at par for purposes of chart totals.

C Thow's use of his clients' funds

¶ 105 The evidence included a report from James P. Blatchford Consulting Limited, a forensic accounting firm. James Blatchford, the firm's principal, testified at the hearing. Blatchford is a Certified Management Accountant and now carries on a forensic accounting practice through Grant Thornton LLP Chartered Accountants. He holds a Masters of Business Administration and is a Certified Fraud Examiner. According to his curriculum vitae, he has 30 years of experience in forensic and investigative accounting, including 14 years with the RCMP. He has testified as a forensic accounting expert before the Provincial Court, the British Columbia Supreme Court, the Law Society, and this commission. We accept him as an expert.

¶ 106 The objective of the Blatchford report was to account for the funds that Thow's clients gave him for investment in the construction loans and the shares of NCB Jamaica. By reviewing banking records and documents, Blatchford traced investor funds through personal, family and corporate bank and credit card accounts controlled by Thow.

¶ 107 As a result of the review, Blatchford says that Thow did not account for client funds through Berkshire, instead depositing them into personal, family and corporate bank accounts that he controlled and managed. He says that Thow made significant numbers of transfers among the personal, family and corporate bank accounts that he controlled and managed, and that as the clients' funds moved among the accounts, they were depleted.

¶ 108 Blatchford found that, in many cases:

- Thow used client funds to eliminate overdrafts in Thow's personal, family and corporate accounts and to pay existing balances on Thow-controlled credit cards, lines of credit, and corporate loans.
- Thow's use of funds were more consistent with the payment of Thow's personal, family and corporate expenses than with investment in construction loans or shares in NCB Jamaica.
- Client funds were traceable through several bank accounts and were used in a manner inconsistent with investment in construction loans or shares in NCB Jamaica.
- Thow commingled client funds with each other and with other funds in a manner inconsistent with the implicit trust expected by investors of a registered representative.

¶ 109 Blatchford also found that in some cases client funds were depleted by immediate payment to another client.

¶ 110 Based on these findings, Blatchford reached these opinions:

- Thow did not manage or control funds received from clients in a manner consistent with their expectations.
- Thow depleted client funds, contrary to the purported purpose of investing in the construction loans or shares of NCB Jamaica.
- Thow purposely used client funds to support personal, family, and corporate financial obligations.
- Thow purposely commingled client funds in a manner intended to extinguish the individual client's proprietary claims to their funds.

¶ 111 Blatchford dismisses inadvertent error as an explanation for Thow's handling of client funds. Quoting from the report:

> "From an accounting perspective, it was apparent that the circumstances analyzed . . . were not due to inadvertent error. We found that Mr. Thow often received client funds by way of cheque purportedly intended for an investment on their behalf, after which the proceeds he then immediately transferred to his personal, family, or corporate bank accounts. The volume of transactions subsequent to the receipt of clients' cheques alone suggests that Mr. Thow was intimately aware of the movement of the funds between the various bank and credit card accounts that he controlled."

> "In other cases, Mr. Thow directly applied his investor clients' funds towards the retirement of personal, family and corporate debt or outstanding credit card balances. In the documents reviewed, we found no evidence of the purchase of preferred shares of [NCB Jamaica] or lending for the purposes of property development . . . . That is, in our view, there was no evidence of a structured or discrete handling of the proceeds from each investor in a manner in that we would consider to be consistent with the purchase of [NCB Jamaica] shares or . . . lending . . . . In our opinion, there was little, if any, inadvertent error."

¶ 112 The following paragraphs summarize Blatchford's conclusions about the disposition of most of the funds the clients described above gave to Thow. References to:

- bank and credit card accounts are to Thow-controlled accounts
- commingling of funds are to commingling in Thow-controlled accounts
- cash withdrawals are to cash withdrawals from Thow-controlled accounts
- personal expenses are to personal expenses of Thow and his family
- business expenses are to Thow's own business expenses

<u>Clients 1 and 2</u>

¶ 113 A payment of $40,000 that Clients 1 and 2 gave Thow to invest was commingled with other funds and transferred to five other bank accounts and a loan account. Funds from the bank accounts were used to cover cash withdrawals and to pay a French tutor, a law firm, and an aviation company.

¶ 114 Blatchford concludes that "it was not apparent from this series of transactions" that these clients' funds were used to invest in construction loans.

Clients 3 and 4

¶ 115 In Blatchford's opinion, $50,000 of the funds Clients 3 and 4 gave Thow for investment was combined with $50,000 from another client (not any of the 26 that are the focus of this hearing) and used toward a payment of $150,000 to Client 16.

Clients 5, 10 and 11

¶ 116 Client 5 gave Thow $46,500 to invest in construction loans. Instead, Blatchford concludes, these funds were used to pay Thow's credit card debts and other personal and corporate expenses, including car payments and an $11,000 payment to Vancouver Island Helicopters.

¶ 117 A $350,000 payment that Client 5 gave to Thow was commingled with a $230,000 payment from Clients 10 and 11 and $50,000 from another source. In Blatchford's opinion, at least $30,000 of these funds was used to pay credit card balances, overdrafts, and to clear cheques. He says $360,000 of the funds was used for unknown purposes, including a $350,000 payment to a Barrie Rogers.

Clients 6 and 7

¶ 118 In Blatchford's opinion, the $475,000 that Clients 6 and 7 gave Thow to invest was used as follows:

- $200,000 was commingled with other funds and used either to make a payment to Client 17, or to reduce an overdraft (the overdraft was caused by a US$84,000 payment to an unknown recipient)
- $175,000 was commingled with other funds and used for operating cash flow for Thow-controlled accounts
- $100,000 was used to eliminate overdrafts in Thow-controlled accounts, and to make a $34,000 aircraft lease payment to "GECEF Canada"

Clients 12 and 13

¶ 119 Blatchford concludes that a $90,000 payment that Clients 12 and 13 gave Thow to invest was commingled with existing funds and used primarily to make a payment to Client 17. The balance was used to pay bank account overdrafts, reduce loan balances, pay expenses, and possibly, Blatchford says, to pay other clients.

¶ 120 Amounts withdrawn from funds commingled with the Client 12 and 13 funds include $500,000 paid to Old Mill Pontiac and $167,000 paid to Three Point Motors (a Victoria Mercedes dealership).

¶ 121 In Blatchford's opinion, there is no evidence that any of the proceeds were used to invest in construction loans.

Clients 14 and 15

¶ 122 In Blatchford's opinion, none of the $365,000 that Clients 14 and 15 gave Thow to invest was invested in construction loans as they intended. Instead, he concludes that their funds were commingled with funds from other sources and used to pay credit card balances for personal expenses and to cover cash advances and account overdrafts. The personal expenses included US$20,000 spent at the Sheraton Maui between February 5 and March 1, 2004.

¶ 123 Amounts withdrawn from the funds commingled with the Client 14 and 15 funds include $250,000 paid to Thow's assistant for purposes unknown, and $220,000 to an unknown recipient.

Client 16

¶ 124 Blatchford traced all but about $100,000 of the $1.6 million that Client 16 gave Thow to invest in NCB Jamaica. He concludes that none of these funds was used for that purpose. Instead, some of the funds were used for Thow's personal expenses, to cover cash withdrawals and overdrafts, and to cover in part a cheque for $500,000 to GE Capital. The personal expenses included a $22,600 payment to a car dealership relating to a 2003 Mercedes 500SL, and a $3,100 mortgage payment. The notation on the cheque to GE Capital said it was for a "Refundable deposit CX S/N 750-0097", an apparent reference to Thow's Citation X business jet. Some of the funds were used for unknown purposes.

Client 17

¶ 125 Blatchford traced about $747,000 of the $1 million or so that Client 17 gave Thow to invest in NCB Jamaica. He concludes that none of these funds was used for that purpose. Instead, the funds were used for personal expenses, to make mortgage payments, and to cover cash withdrawals and account overdrafts. The personal expenses included $15,100 paid to Cessna Aircraft and an $84,000 aircraft lease payment. Some of the funds were used for unknown purposes including payments of $200,000 to "Tri-T Farms Ltd." and $100,000 to "Reef Condominium Dev."

Clients 18 and 19

¶ 126 Blatchford concludes that Thow did not manage the $500,000 that Clients 18 and 19 gave him to invest in NCB Jamaica in a manner consistent with that investment. In Blatchford's opinion, these funds were transferred through Thow-controlled corporate and personal bank, credit card, and loan accounts, and lines of credit. The result was the depletion of the $500,000 for purposes not consistent with an investment in NCB Jamaica.

¶ 127 In Blatchford's opinion, the additional $150,000 that Clients 18 and 19 gave Thow to invest were not used to invest in NCB Jamaica. Instead they were immediately commingled with other funds on hand and used to pay expenses and to make payments to individuals for unknown reasons.

Client 20

¶ 128 Blatchford concludes that $100,000 of the funds that Client 20 gave Thow to invest in NCB Jamaica was commingled with the funds of other investors and used entirely to pay part of the $500,000 refundable deposit to GE Capital for Thow's Citation X business jet (mentioned in the discussion of Client 16).

Clients 21 and 22

¶ 129 Blatchford concludes that $200,000 of the funds that Clients 21 and 22 gave Thow to invest in NCB Jamaica was commingled with the funds of other investors and used to pay credit card balances, cash advances, account overdrafts and part of the $500,000 refundable deposit to GE Capital for the jet.

Client 25

¶ 130 In Blatchford's opinion, $750,000 of the funds that Client 25 gave Thow to invest was not used to invest in NCB Jamaica. Instead, the funds were commingled with other funds. Some of these funds were used to pay credit card balances and to cover overdrafts, to pay for a fishing trip (in the amount of $86,000), and to make a $200,000 payment to Client 17. Some of the funds were used for unknown purposes, including a payment of $300,000 to an unknown recipient.

IV Analysis and Findings

¶ 131 The executive director alleges that Thow contravened the legislation and MFDA rules by:

1. failing to deal fairly, honestly, and in good faith with his clients,
2. trading in securities without being registered,
3. making misrepresentations, and
4. perpetrating a fraud.

¶ 132 The executive director also alleges that the respondents acted contrary to the public interest.

A Dealing with clients in bad faith

¶ 133 The executive director alleges that Thow contravened section 14(2) of the *Securities Rules*.

¶ 134 Section 14(2) of the Rules says "a registered . . . salesperson [or] . . . trading . . . director or officer . . . of a dealer . . . must deal fairly, honestly and in good faith with the clients of the dealer . . . ."

¶ 135 MFDA Rule 2.1.1(a) imposes the identical obligation on registrants.

¶ 136 This is how Thow treated his clients:

- He solicited funds from his clients to invest in the construction loans, the NCB Jamaica shares, and the Berkshire IPO. Then he used the funds his clients gave him to invest in those securities for other purposes.
- Most of the money he took was for investments that did not exist.
- He encouraged clients to sell their mutual funds and mortgage their homes to raise the money for these so-called investments.
- He "reinvested" their funds without their permission.
- He liquidated one client's mutual fund account without the client's permission and appropriated the proceeds before reversing the transactions at the client's insistence.
- He provided no documentation to evidence his clients' investments.
- He lied to them about where their money had gone, how much their investments were worth, and when they would be repaid.

¶ 137 Thow's conduct represents as blatant a contravention of these rules as one could imagine: he dealt unfairly, dishonestly, and in bad faith with his clients.

¶ 138 We find that Thow failed to deal fairly, honestly and in good faith with the clients, and in so doing contravened section 14(2) of the *Securities Rules* and MFDA Rule 2.1.1(a).

B Illegal trading

¶ 139 The executive director alleges that Thow contravened section 34(1)(a) by trading securities without being registered to do so.

¶ 140 Section 34(1) says "a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . .".

¶ 141 The investments Thow offered his clients were construction loans, common and preferred shares of NCB Jamaica, and shares of Berkshire. We find that interests in loans and shares are securities as defined in section 1(1) of the Act.

¶ 142 Thow was registered to trade only mutual funds in British Columbia. Section 1(1) defines a mutual fund as:

> "an issuer of a security that entitles the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a

> proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the security."

¶ 143 The loans and shares that Thow offered his clients are not securities described in this definition. We find that the investments Thow offered his clients were not mutual funds.

¶ 144 Section 1(1) defines trade:

> "'trade' includes
>
> (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, installment or otherwise . . .
>
> . . .
>
> (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e);"

¶ 145 Thow offered Client 20 common shares of NCB Jamaica, and Client 26 common shares of Berkshire, and took valuable consideration from them to invest in those securities. In doing so, he traded securities in British Columbia.

¶ 146 Thow also offered 15 clients construction loans, and nine clients preferred shares of NCB Jamaica. He took valuable consideration from them to invest in these securities. There is no evidence that the loans existed. The NCB Jamaica preferred shares did not exist. However, this is not a barrier to finding that Thow traded securities. His conduct is captured by paragraph (f) of the definition of "trade" because he solicited money for investments that, had they existed, would have been securities.

¶ 147 We therefore find that Thow traded securities in British Columbia that were not mutual funds, and in so doing contravened section 34(1).

C Misrepresentation

¶ 148 Section 50(1)(d) of the Act says that a "person . . . with the intention of effecting a trade in a security, must not . . . make a statement that the person knows, or ought reasonably to know, is a misrepresentation."

¶ 149 Section 1(1) defines misrepresentation as "(a) an untrue statement of a material fact, or (b) an omission to state a material fact that is . . . necessary to prevent a statement that is being made from being false or misleading."

¶ 150 Section 1(1) also defines material fact as "a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value" of the relevant securities.

¶ 151 To find that Thow contravened section 50(1)(d), we must conclude that:

1. his untrue statements and omissions related to material facts, and therefore were misrepresentations,
2. Thow knew or ought reasonably to have known that they were misrepresentations, and
3. Thow made the misrepresentations with the intention of effecting a trade in a security.

¶ 152 Thow made untrue statements and omissions:

- He told clients they would be investing in short-term construction loans, secured by mortgages and yielding high rates of return, with no risk. There is no evidence that the loans existed. The clients received no returns and in all cases lost most or all of their money.
- He told clients they would be investing in preferred shares of NCB Jamaica and a result would earn significant profits. The shares did not exist. The clients incurred significant losses.
- He told clients that the construction loans were safe because they were documented by a Vancouver law firm and held by the firm or by Berkshire. There is no evidence that the law firm had any involvement and none of these investments was booked through Berkshire. All of the money investors gave Thow to invest he deposited into accounts he managed and controlled.
- He told clients that he had invested in NCB Jamaica preferred shares on their behalf and that the shares he so acquired had increased in value significantly. None of that was possible because the shares did not exist.
- He told clients who gave him money to invest in NCB Jamaica preferred shares that their investment was "doing great". This was impossible because the shares did not exist.
- He told clients that an investment in NCB Jamaica preferred shares was safe. This was untrue. The shares did not exist and the clients lost most of their money.
- He told one client that Berkshire was about to go public and took money from the client to invest in the offering. No such offering was planned and the client lost his money.

¶ 153 In our opinion, all of these statements and omissions related to material facts:

- A representation that a security exists when it does not obviously significantly affects its value.
- A representation about a security's expected returns and safety of capital significantly affects its value.

- A representation that a security would be held by Berkshire, rather than in Thow's personal and corporate accounts, is relevant to safety of capital and therefore significantly affects its value.

¶ 154 We therefore find that Thow's untrue statements and omissions related to material facts.

¶ 155 Thow had to have known, at the time he made the statements, that he had no intention of investing any client funds in construction loans, if in fact they existed, or in preferred shares of NCB Jamaica, because they did not exist. He also had to have known that the returns he promised his clients were not achievable. He was a senior officer of Berkshire. He had to have known that Berkshire had no plans to issue shares in an IPO.

¶ 156 Thow also knew that he was using his clients' money for his own purposes instead of investing it in the securities he described to them.

¶ 157 We find that Thow knew that these untrue statements and omissions were misrepresentations.

¶ 158 Thow made these misrepresentations for the purpose of persuading his clients to invest in the construction loans, the shares of NCB Jamaica, and the shares of Berkshire. As we have found, interest in loans and shares are securities.

¶ 159 We therefore find that Thow made misrepresentations to his clients and in so doing contravened section 50(1)(d).

D Fraud

¶ 160 The notice of hearing alleges that Thow engaged in transactions, or a series of transactions, which perpetrated a fraud on persons inside and outside British Columbia, contrary to sections 57(b) and 57.1(b).

¶ 161 Section 57(b) 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."

¶ 162 Section 57.1(b) 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 anywhere."

¶ 163 We have already found that Thow traded securities when he solicited clients to invest in construction loans, shares in NCB Jamaica, and shares in Berkshire. Did he know that those transactions perpetrated a fraud on persons in British Columbia or anywhere?

¶ 164 The language describing fraud in sections 57(b) and 57.1(b) is identical. 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 doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element."

¶ 165 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)."

¶ 166 The evidence provides clear and convincing proof that Thow committed what *Théroux* describes as a "prohibited act" and that it caused deprivation. We have found that Thow made misrepresentations, by definition an act of deceit.

¶ 167 Thow did not use his clients' money for the purposes they gave it to him. He told them it would be invested. As described in the Blatchford report, Thow spent the money clients gave him to invest on personal and corporate expenses, to reduce loans and overdrafts, and to pay other clients.

¶ 168 Thow solicited funds from investors to invest in construction loans. There is no evidence that these loans existed. He also solicited funds for investment in preferred shares of NCB Jamaica. These shares did not exist. He solicited funds from one client to invest in a public offering by Berkshire. Berkshire had no plans to go public.

¶ 169 Thow deprived the 26 clients, 24 in British Columbia and two in Alberta, of their money. Of the $8.7 million they invested, they lost about $6 million. Blatchford traced about $5.4 million of this and concludes that none of it was spent as the clients intended.

¶ 170 The Blatchford report identifies several large payments for unknown purposes, some to unknown recipients. These include $200,000 to Tri-T Farms, $100,000 to Reef Condominium, $350,000 to Barrie Rogers, and payments of $220,000, $300,000, and US$84,000 to unknown recipients. There is no evidence that these outlays, totalling about $1.3 million, were invested in accordance with the clients' expectations. However, even if they were, the amount pales in comparison to the funds Thow converted to his own use.

¶ 171 It is also our opinion that the evidence provides clear and convincing proof that Thow had subjective knowledge of the deceit, and that it would result in the deprivation of others.

¶ 172 We have found that Thow knew he was making misrepresentations. He knew he was telling clients that their funds would be invested in construction loans and NCB Jamaica preferred shares, knowing those securities did not exist. He knew that Berkshire had no plans for an IPO.

¶ 173 Thow was the person who managed and controlled his personal, family and corporate accounts. Blatchford's opinion is that Thow's disposition of investor funds involved no inadvertent error. The evidence supports that opinion. Thow knew he was depriving his clients because he knew he was using that money instead for his personal and business use.

¶ 174 We therefore find that Thow perpetrated a fraud on persons inside and outside British Columbia, and in so doing contravened sections 57(b) and 57.1 (b).

E Public interest

¶ 175 Thow's conduct in contravention of the Act, the Rules, and the MFDA Rules, is clearly contrary to the public interest and we so find.

¶ 176 The corporate respondents 611276 BC Ltd., 657594 BC Ltd., 679071 BC Ltd., 699109 BC Ltd., AYG Investments Inc., M600 Holdings Ltd., and Vancouver Island Jet Inc. facilitated the fraud Thow perpetrated on his clients and in all cases were recipients of client funds. We find their conduct was contrary to the public interest.

¶ 177 We did not see evidence to support findings against 705671 BC Ltd., Thow Financial Planning Corp., or 1047145 Alberta Ltd.

V Summary of Findings

¶ 178 We find that Thow:

1. failed to deal fairly, honestly and in good faith with his clients, contrary to section 14(2) of the Rules and the rules of the MFDA, when he lied to them and took their money;
2. traded in securities without being registered to do so, contrary to section 34(1)(a) of the Act, when, while registered as a mutual fund salesperson, he traded securities that were not mutual funds;
3. made misrepresentations, contrary to section 50(1)(d), when he made untrue statements of material facts about the securities he offered to his clients, and when he omitted material facts about those securities; and
4. perpetrated a fraud, contrary to sections 57(b) and 57.1(b), when he made misrepresentations to his clients, and used their funds for his own purposes instead of investing them as his clients intended.

¶ 179 We find that seven of the corporate respondents, 611276 BC Ltd., 657594 BC Ltd., 679071 BC Ltd., 699109 BC Ltd., AYG Investments Inc., M600 Holdings Ltd., and Vancouver Island Jet Inc., acted contrary to the public interest. We make no findings against 705671 BC Ltd., Thow Financial Planning Corp., or 1047145 Alberta Ltd.

¶ 180 Thow has hundreds of clients. We know that 26 of them, 24 in British Columbia and two in Alberta, gave Thow $8.7 million to invest. Instead, he spent on the money on himself, causing losses to these clients of $6 million.

¶ 181 This case represents one of the most callous and audacious frauds this province has seen. Thow preyed on his clients by offering them non-existent securities and instead using the funds to support his lavish lifestyle. He took their money and betrayed their trust. He has left a trail of financial devastation and heartbreak.

VI Submissions on Sanctions

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

By November 2	The executive director delivers submissions to Thow and the Secretary to the Commission
By November 16	Thow delivers response submissions (if any) to the executive director and the Secretary to the Commission

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

By November 23	The executive director delivers reply submissions (if any) to Thow and the Secretary to the Commission

¶ 183 October 16, 2007

¶ 184 **For the Commission**

Brent W. Aitken
Vice Chair

Kenneth G. Hanna
Commissioner

Robert J. Milbourne
Commissioner