

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act*, RSBC 1996, c. 418

Citation: Re Lau, 2016 BCSECCOM 320

Date: 20160919

**Tin Chao Alan Lau**

<b>Panel</b>	Judith Downes	Commissioner
	Gordon L. Holloway	Commissioner
	Don Rowlatt	Commissioner

**Submissions Completed** August 19, 2016

**Date of Decision** September 19, 2016

**Appearances**

Shaneel Sharma For the Executive Director

Tin Chao Alan Lau For himself

**Decision**

**I. INTRODUCTION**

- [1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The Findings of this panel on liability made on June 15, 2016 (2016 BCSECCOM 207) are part of this decision.
- [2] The panel found that the respondent, Tin Chao Alan Lau, perpetrated a fraud on an investor in the amount of \$50,000 in contravention of section 57(b) of the Act.

**II. POSITIONS OF THE PARTIES**

- [3] The executive director seeks the following orders under sections 161(1) and 162 for Lau's contravention of the Act:
- a) Lau be permanently prohibited from trading in securities and exchange contracts,
  - b) that none of the exemptions set out in the Act, the regulations or a decision apply to Lau,
  - c) Lau be permanently prohibited from becoming or acting as a director or officer of any issuer or registrant, becoming or acting as a registrant or promoter, acting in a management or consultative capacity in connection with activities in the securities market and engaging in investor relations activities,
  - d) Lau pay \$37,266 to the Commission under section 161(1)(g) (a section 161(1)(g) order is sometimes referred to as a "disgorgement order"), and

e) Lau pay an administrative penalty of \$125,000.

[4] Lau did not make any submissions with respect to sanctions. He stated that he disagreed with the Findings.

### **III. ANALYSIS**

#### **A. Factors**

[5] Orders under sections 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.

[6] In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent's conduct,
- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

[7] Of those factors, the following are the most relevant to determining the appropriate sanctions against Lau in this case.

#### ***Seriousness of conduct***

[8] There is no issue regarding the seriousness of Lau's misconduct. The Commission has consistently held that fraud is the most serious misconduct prohibited by the Act. See *Manna Trading Corp Ltd.* 2009 BCSECCOM 595.

- [9] Fraud against a vulnerable senior is a particularly egregious form of fraud. In this case, the investor was a senior who was a volunteer at a seniors centre. Lau was the chairperson of the centre. The investor had no investment experience. He could not read or speak English, the language in which the document authorizing the transfer of his funds to Lau was drafted. The investor testified that he considered Lau as his mentor and regarded him highly. Lau's misconduct in these circumstances is particularly serious.

***Enrichment***

- [10] Lau benefitted from the use of the investor's capital to pay off Lau's personal debt. None of the investor's funds was used for the purposes represented to the investor.

***Harm to the investor***

- [11] The investor suffered substantial harm as a result of Lau's misconduct. The financial loss was significant given the investor's circumstances. He has recovered only \$12,734 of his \$50,000 investment. These monies were to be used to pay basic living expenses of the investor and his wife. The investor also testified that his personal life has been significantly damaged by Lau's misconduct.
- [12] During the sanctions phase of the hearing, Lau submitted draft unsigned documents in Chinese (with an English translation) set up for signature by the investor. The documents make reference to a purported settlement between Lau and the investor. We did not receive signed copies of the documents and we have no further evidence that there was ever a settlement between the parties. As a result, we have given these documents no weight.

***Risk to investors***

- [13] The readiness with which Lau took advantage of a vulnerable senior in this case demonstrates that he presents an ongoing risk to investors.

***Aggravating and mitigating factors; past misconduct***

- [14] Lau does not have a history of regulatory misconduct.
- [15] There are no mitigating or aggravating factors in this case.

***Specific and general deterrence***

- [16] The sanctions we impose must be sufficient to ensure that Lau and others will be deterred from engaging in similar misconduct.

***Previous orders***

- [17] The executive director provided three previous decisions of this Commission as support for his requested sanctions: *Basi (Re)*, 2011 BCSECCOM 573, *Dhala (Re)*, 2015 BCSECCOM 336 and *Re Rush*, 2016 BCSECCOM 55.

- [18] In *Basi*, the respondent committed fraud on one investor in the amount of \$15,500. The investor gave that amount to the respondent for the purpose of investment and the respondent spent the majority of the funds on personal expenses. The Commission imposed permanent market bans on the respondent and ordered him to pay \$11,000 under a disgorgement order (which amount was net of the funds returned to the investor). The Commission also imposed an administrative penalty of \$100,000.
- [19] In *Dhala*, the respondent committed fraud on four investors in the total amount of \$38,250. The respondent was also found to have breached section 168.1(1)(a). The pattern of the transaction with each investor was substantially similar. The investors gave monies to the respondent for the purpose of investment and the respondent spent a significant amount of the funds received on personal expenses. The Commission imposed permanent market bans on the respondent and ordered him to pay \$26,900 under a disgorgement order (which amount was net of the funds returned to the investors). The Commission also imposed an administrative penalty of \$125,000, \$100,000 of which related to the fraud.
- [20] In *Rush*, the respondents committed fraud on an investor in the amount of \$73,200 and traded in securities in contravention of section 34. The individual respondent was also found liable for the contraventions of the Act carried out by the corporate respondents. While the basic nature of the fraud was similar to *Basi* and *Dhala*, it was more egregious in that the fraud involved multiple acts of deceit carried out over a significant period of time as well as impersonation by the individual respondent of a third party with a view to preventing the investor from detecting his earlier deceit. In addition, the respondents induced the investor to enter into a pension unlocking scheme which ran afoul of Canadian tax laws and resulted in the investor incurring additional costs. The individual respondent also had a history of securities regulatory misconduct. The Commission imposed permanent market bans on the respondents and ordered the respondents to pay \$60,410 under a disgorgement order (which amount was net of the funds the respondents had returned to the investor). The Commission also imposed an administrative penalty of \$200,000 against the individual respondent.
- [21] The misconduct in this case is similar to *Basi* and *Dhala* in that there was never an actual investment and the investors' funds were used to pay the respondent's expenses. However, the circumstances in *Rush* were very different from this case and we do not find *Rush* to be applicable.

## **B. Appropriate sanctions**

### ***Market prohibitions***

- [22] The executive director has applied for permanent market bans against Lau. The Commission has consistently issued permanent market bans against those who have been found to have committed fraud. There are no facts before us that support diverting from such sanctions in this case. The fraud was committed against a vulnerable senior and was significant in amount given the financial circumstances of the investor.
- [23] We agree that permanent market bans against Lau are appropriate.

***Section 161(1)(g) order***

- [24] The executive director has asked that an order under section 161(1)(g) in the amount of \$37,266 be made against Lau, being the \$50,000 obtained by Lau as a result of his contravention of the Act, less \$12,734 in interest and principal that he repaid to the investor.
- [25] We agree that it is appropriate to order under section 161(1)(g) that Lau pay \$37,266 to the Commission.

***Administrative penalty***

- [26] The executive director has asked for an administrative penalty of \$125,000. He says that the penalty in this case should be greater than in *Basi* and *Dhala* as the fraud is larger and the misconduct more serious.
- [27] There are factors relevant to this case that were not present in the cases cited by the executive director.
- [28] Evidence was presented at the hearing relating to Lau's financial circumstances. Records of personal bank accounts and credit cards showed that during the period from 2012 to 2014, Lau was frequently in overdraft and often carried a balance close to the credit limit. While there was no direct evidence as to Lau's current financial circumstances, we conclude, from testimony at the hearing, that Lau's financial resources remain very limited. This is unlikely to change given that Lau is 90 years old and has very limited work prospects.
- [29] The executive director says that the predatory and deceitful nature of Lau's misconduct and the substantial loss suffered by the investor demonstrate the need for a significant penalty as general deterrence. He says that these factors outweigh any consideration we might give to Lau's inability to pay.
- [30] The Commission has stated that, while a respondent's ability to pay an administrative penalty should not be determinative of whether the penalty should be imposed, it is a consideration in determining what orders are appropriate for specific deterrence in the circumstances. See *The Falls Capital Corp (Re)*, 2015 BCSECCOM 422.
- [31] It was clear from Lau's testimony that he places the utmost importance on his reputation in the community and that his reputation has suffered as a result of these proceedings. It will undoubtedly be damaged further when Lau is required to resign as a director and officer of Canadian Low Income Seniors Affordable Housing Society under the terms of the market bans. We believe that this reputational damage will be more significant to Lau than any financial penalty.
- [32] Considering all of these factors, we find an administrative penalty of \$85,000 is appropriate. The penalty exceeds the amount of the fraud and enrichment and reflects the seriousness of Lau's misconduct and other factors relevant to sanction, making it appropriate for Lau personally. Further, it serves as a meaningful general deterrent to others from engaging in similar misconduct.

#### **IV. ORDERS**

[33] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

1. under section 161(1)(b)(ii), Lau be permanently prohibited from trading in, or purchasing securities or exchange contracts;
2. under section 161(1)(c), any of all of the exemptions set out in the Act, the regulations or a decision do not apply to Lau permanently;
3. under section 161(1)(d)(i), Lau resign any position he holds as a director or officer of an issuer or registrant;
4. under section 161(1)(d)(ii), Lau is permanently prohibited from becoming or acting as a director or officer of an issuer or registrant;
5. under section 161(1)(d)(iii), Lau is permanently prohibited from becoming or acting as a registrant or promoter;
6. under section 161(1)(d)(iv), Lau is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
7. under section 161(1)(d)(v), Lau is permanently prohibited from engaging in investor relations activities;
8. under section 161(1)(g), Lau pay to the Commission \$37,266; and
9. under section 162, Lau pay to the Commission an administrative penalty of \$85,000.

September 19, 2016

**For the Commission**

Judith Downes  
Commissioner

Gordon L. Holloway  
Commissioner

Don Rowlatt  
Commissioner