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

Citation: Re Rush, 2016 BCSECCOM 55 Date: 20160222

Robert Bruce Rush and Breakthrough Financial Inc.

Panel	Nigel P. Cave	Vice Chair
	George C. Glover, Jr.	Commissioner
	Gordon L. Holloway	Commissioner
Hearing Dates	October 5 and 6, 2015	
Submissions Completed	December 14, 2015	
Date of Findings	February 22, 2016	
Appearing		
Joel Hill	For the Executive Director	

Decision

I. Introduction

[1] This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

[2] The executive director issued a notice of hearing in respect of the respondents on July 4, 2014, *Re Rush* 2014 BCSECCOM 241.

[3] On February 23, 2015, the executive director amended the notice of hearing (BCSECCOM 68). In the amended notice of hearing the executive director alleges that:

a) the respondents perpetrated a fraud on an investor contrary to section 57(b) of the Act;

b) the respondents traded in securities without being registered to do so in contravention of section 34 of the Act;

c) Robert Bruce Rush, as a director of Breakthrough Financial Inc., authorized, permitted and acquiesced in Breakthrough's contraventions of sections 57(b) and 34 of the Act and therefore also contravened those same sections pursuant to section 168.2 of the Act; and

d) the respondents' conduct harmed the reputation, integrity and credibility of the province's securities market and regulatory environment, and was contrary to the public interest.

[4] During the hearing, the executive director called three witnesses, two Commission investigators (one of whom is a computer forensic investigator) and an investor (Investor G), tendered documentary evidence and provided written submissions.

[5] Although they had notice of the hearing, the respondents did not attend the hearing, tender any evidence or provide any written submissions.

[6] At the commencement of the hearing, the executive director indicated that he was abandoning his allegation that the respondents' conduct was contrary to the public interest.

[7] Following the completion of the liability portion of the hearing, the executive director applied to have the sanctions portion of the hearing dealt with together with the liability portion. As the respondents had not participated in any manner in the hearing, we granted that application.

[8] We provided the parties with an opportunity to make oral submissions on liability and sanction but none of the parties requested to do so. Therefore, submissions on both liability and sanction in the matter proceeded only in writing.

[9] The following are our findings on liability and our decision on sanctions.

II. Background

[10] Rush is a resident of British Columbia. He was previously registered under the Act in a limited capacity to sell mutual funds. He held that registration between March 2005 and November 2007 during which time he worked for a large financial services company selling mutual funds and insurance products.

[11] While in this job, one of Rush's clients was Investor G. Investor G purchased life insurance products and mutual funds with the assistance of Rush.

[12] Rush has not been registered in any capacity under the Act since November 2007.

[13] Rush left his employment with the financial services company in November 2007 to start his own business.

[14] In January 2008 Rush incorporated Breakthrough. Rush was the sole officer and director of Breakthrough.

[15] Breakthrough has never been registered under the Act. Breakthrough was dissolved in August 2011 for failing to file Annual Reports.

[16] After going into business for himself, Rush contacted Investor G and told her that he was still a financial consultant and could provide services to her.

[17] As a result of their previous business dealings, Investor G told Rush that she trusted him and would continue to do business with him.

[18] Investor G had a locked-in pension worth approximately $80,000. Rush advised Investor G that he knew of a way for her to re-invest her locked-in pension in higher return investments and do so on a tax-free basis. Investor G agreed to follow this advice and entered into a series of transactions that resulted in her effectively borrowing against her pension and receiving the cash proceeds therefrom.

[19] Rush told Investor G about certain investments that were being promoted by a third party and offered through an investment company (we refer to this throughout as RHI and the principal of RHI as FM). One of the RHI's products was a foreign exchange trading account. Rush told Investor G that this account offered an average return of 3% per month and could return more depending upon the amount invested.

[20] Investor G agreed to make an investment in a foreign exchange trading account with RHI.

[21] On July 19, 2008, Investor G wrote a cheque, payable to Breakthrough, for $73,200. These funds were derived from borrowing against her pension. Investor G was told by Rush that she should make the cheque payable to Breakthrough and that he would then forward the funds to RHI.

[22] Rush did not forward the $73,200 to RHI. It was clear from a review of Breakthrough's and Rush's banking records that these funds were used by Rush on personal expenses.

[23] Rush's version of what happened to Investor G's funds has changed over time. Rush first told a Commission investigator that he had forwarded Investor G's funds to RHI. During a second communication with the Commission investigator, Rush then suggested that all

of his clients who had invested in the RHI products had wired their funds directly to RHI. Finally, in a later interview under oath, Rush admitted that Investor G's funds had been provided to him and used for personal expenses. However, he suggested that FM or RHI owed him money at the time of Investor G's investment and that Rush and FM agreed to an arrangement whereby FM would use the money due to Rush to make an investment on behalf of Investor G and Rush could keep Investor G's funds (the "Set-off Arrangement").

[24] Rush admitted that he had no documentary evidence to support the existence of the Set-off Arrangement.

[25] Rush did not tell Investor G about the Set-off Arrangement, that her funds had not been sent to RHI or that Rush had spent her funds on his personal expenses.

[26] As set out in paragraph 53, we find Rush's third version of events was not credible.

[27] In March 2009, Rush incorporated another company to carry on his financial consulting business, Avellanas Capital Management Inc.

[28] Following Investor G's investment with the respondents, she received sporadic payments from Breakthrough and Avellanas. In total, Investor G received $12,790. These amounts were purportedly returns on her investment. She did not receive any funds directly from RHI.

[29] Investor G also received three statements of account from Rush or Avellanas: on March 27, 2009 (purporting to show her investment growing to $79,983.02), April 18, 2009 (purporting to show her investment growing to $84,064.09) and January 26, 2011 (purporting to show her investment growing to $106,940.54, net of withdrawals).

[30] A review of Breakthrough's banking records does show that RHI sent 14 payments to Breakthrough. These payments occurred prior to the end of February 2009. RHI sent one further payment directly to Rush's bank account in October 2009. Rush had other clients who had purportedly invested in RHI products. The evidence is not clear whether these payments were commission payments to Breakthrough or Rush or were on account of any client investments. There is no evidence that links any of these payments from RHI to Breakthrough to Investor G.

[31] At the end of 2010, Investor G was notified by the Canada Revenue Agency that it was reassessing her 2008 taxes as a result of its view that her scheme to unlock the funds in her locked-in pension was a sham. CRA sought $35,000 in taxes and penalties from Investor G.

[32] As a result of this reassessment, Investor G asked Rush to withdraw her investment from RHI. Investor G did not get her funds returned and Rush blamed FM and RHI for the delay.

[33] Investor G eventually started receiving e-mails from an e-mail address at profxgrowth@gmail.com. These e-mails were purportedly electronically signed by FM. The e-mails provided excuses for the delay in payment (including that FM's wife was seriously ill) and two of them attached account statements – on September 30, 2011 (purporting to show her investment growing to $108,554.17) and on April 23, 2012 (purporting to show her investment growing to $110,910.31).

[34] On July 18, 2012, Investor G learned that the Alberta Securities Commission had issued a notice of hearing against FM and RHI alleging that they had engaged in securities related misconduct.

[35] The e-mails, purportedly from FM at the profxgrowth@gmail.com address, stopped after this and Investor G has not had any of her funds returned to her (except for the $12,790 set out above).

[36] The IP address associated with profxgrowth@gmail.com confirms that these e-mails were sent through Google Inc.'s Gmail service. Commission staff obtained records from Google Inc. that confirm that the profxgrowth@gmail.com address was registered with Rush's e-mail address and telephone numbers as contact information. Further, the internet service provider through whom Investor G received these e-mails, purportedly from FM, provided records which confirm that these emails originated from a computer located within Rush's residence.

[37] We find that each of the e-mails sent to Investor G from the profxgrowth@gmail.com address was actually sent by Rush and not FM.

III. Law

Standard of Proof

[38] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada held:

> 49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[39] The Court also held (at paragraph 46) that the evidence must be "sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test.

[40] This is the standard that the Commission applies to allegations: see, for example, *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

Registration Requirements

[41] Section 34(1) says "A person must not… trade in a security …unless the person is registered in accordance with the regulations…"

[42] There are several terms in section 34 that are defined elsewhere in the Act. The relevant provisions of the Act are as follows:

a) Section 1(1) defines "trade" to include "(a) a disposition of a security for valuable consideration" and "(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)".
b) Section 1(1) defines "security" to include "(a) a document, instrument or writing commonly known as a security", "(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person", "(d) a bond, debenture, note or other evidence of indebtedness ..." and (l) "an investment contract."
c) Section 1(1) defines "distribution" as "a trade in a security of an issuer that has not been previously issued".

[43] Prior to September 28, 2009, contraventions of section 34 were determined based upon a "trade trigger". What is meant by that is that each person who was involved in each trade in a security needed either to be registered under the Act or be exempt from the requirement to be so registered. The "trade trigger" is the relevant test in this case as the trades took place prior to September 28, 2009.

[44] In *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 163, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

> 37 The determination of whether an exemption applies is a question of mixed law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.

> 38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship…

Liability under section 168.2(1)

[45] Section 168.2(1) of the Act states that if a company contravenes a provision of the Act an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual "authorizes, permits, or acquiesces in the contravention".

Fraud

[46] Section 57(b) says

> A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct
> . . .
> (b) perpetrates a fraud on any person.

[47] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at page 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).

IV. Analysis and Findings

a) Fraud

i) In respect of a security

[48] In order to contravene section 57(b), the impugned conduct must relate to securities. Section 1(1) of the Act defines a security to include, among other things, an "investment contract".

[49] The decision in *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112 sets out the well-known definition of an investment contract – where there is an investment of money in a common enterprise with profits to come from the efforts of others.

[50] In this case, there is no evidence that any investment product was actually purchased with Investor G's funds. However, Investor G was clearly giving her funds to the respondents with a view that they would be invested in a foreign exchange trading investment of some kind. Investor G's profits were to come from the efforts of persons other than herself – in this case FM or RHI. The evidence is clear that Investor G was not required to do anything else other than deposit her funds to earn her promised returns.

[51] We find that the investment proposal promoted by the respondents to Investor G was an investment contract and therefore was a security. We also find that the acts of deceit committed by the respondents, discussed below, were in respect of this security.

ii) Actus reus of fraud

[52] The executive director says that the respondents committed the prohibited act or deceit necessary to establish fraud when they deceived Investor G by taking her funds for the purported investment in foreign exchange trading through RHI and then did not send RHI the funds as Investor G was promised. Instead, the funds from Investor G were used for Rush's personal expenses. Rush then continued to perpetrate the fraud by other dishonest acts such as delivering account statements on the purported investment to Investor G and by impersonating FM.

[53] We agree with the executive director's submissions. We find Rush's explanation of the Set-off Arrangement not credible. We make this finding for the following reasons:

- the Set-off Arrangement is inconsistent with what Investor G was told would happen with her funds;
- Rush's explanation of the Set-off Arrangement was his third attempt at explaining to Commission investigators what happened to Investor G's funds;
- this third attempt to explain what happened to Investor G's funds is inconsistent with both of his previous attempted explanations;
- the Set-off Arrangement is not supported by any documentary or other evidence.

[54] We find that Rush and Breakthrough committed a deceit when they took Investor G's funds on the promise of delivering them to RHI and then failing to do so. The deceit was then continued by further dishonest acts right through until mid - 2012.

[55] We also find that this deceit resulted in deprivation. Investor G's pecuniary interests were put at risk from the moment that she provided her funds to the respondents based on their deceit. In this case, there was actual deprivation as the funds (other than $12,790) were spent on Rush's personal expenses and lost.

iii) Mens rea of fraud

[56] We also find that the respondents had the requisite subjective knowledge of the deceit and the deprivation. Rush was aware that he told Investor G that he would send her funds to RHI and that he did not. This must be so as Rush had control of the bank accounts through which Investor G's funds flowed. He was aware that, instead, he spent Investor G's funds on personal expenses. Rush was also aware that he was continuing the dishonesty through 2012 through various means, not the least of which was impersonating FM.

[57] As Rush was the controlling mind and management of Breakthrough, we find that Breakthrough, similarly, had the necessary mens rea for fraud.

[58] We find that the respondents perpetrated a fraud on Investor G in the amount of $73,200 in contravention of section 57(b) of the Act.

b) Unregistered trading

[59] We have found that the foreign exchange investment scheme promoted to Investor G by the respondents is a security.

[60] The actions taken by the respondents in respect of this security:

- introducing the investment idea to Investor G
- promoting the security's investment returns
- acting as a purported intermediary between Investor G and RHI

are all acts in furtherance of a trade. Therefore, under section 34 of the Act the respondents were required to either be registered under the Act to carry on this activity or have an exemption from the requirement to be so registered.

[61] The respondents were not registered under the Act at the relevant time. The availability of an exemption from the requirements of section 34 is a question of mixed law and fact. The onus is on the respondents to meet the evidentiary burden of establishing the factual basis for the existence of such an exemption. There was no evidence tendered at the hearing to suggest that the trade by the respondents to Investor G qualified for such an exemption. Therefore, the respondents have failed to satisfy this onus.

[62] We find that the respondents contravened section 34 of the Act when they carried out acts in furtherance of a trade in a security to Investor G in the amount of $73,200.

c) Contraventions of section 168.2

[63] The executive director submits that Rush should be held liable under section 168.2 for Breakthrough's contraventions of section 57(b) and 34.

[64] Under section 168.2, an officer or director of a corporate entity may be liable for the contraventions of that corporate entity if that director or officer "authorizes, permits or acquiesces" to the misconduct. There have been many decisions which have considered the meaning of the terms "authorizes, permits or acquiesces". In sum, those decisions require that the respondent have the requisite knowledge of the corporate entity's contraventions and ability to have influence over the actions of the corporate entity (through action or inaction).

[65] In this case, Rush was the sole controlling mind of Breakthrough. Rush had control of the corporate entity's bank accounts. Rush clearly had the requisite level of knowledge and ability to influence the activities of Breakthrough in order to have authorized, permitted or acquiesced to its contraventions of the Act. We find Rush liable under section 168.2 with respect to Breakthrough's contraventions of sections 57(b) and 34.

V. Summary of findings

[66] We have found that:

a) the respondents perpetrated a fraud, contrary to section 57(b) of the Act on Investor G with respect to a trade in securities in the amount of $73,200;
b) the respondents traded in securities in contravention of section 34 with respect to the trade in securities to Investor G in the amount of $73,200; and
c) Rush, pursuant to section 168.2 of the Act, is liable for the contraventions of sections 57(b) and 34 carried out by Breakthrough.

VI. Sanctions

a) Position of the Executive Director

[67] The executive director seeks the following orders:

- permanent orders against the respondents permanently banning them from our capital markets under sections 161(1)(b)(ii), 161(1)(c) and 161(1)(d)(iii), (iv) and (v) of the Act;
- orders under sections 161(1)(d)(i) and (ii) of the Act against Rush permanently prohibiting him from being a director or an officer of any issuer or registrant;

- an order under section 161(1)(g) of the Act requiring the respondents to pay to the Commission the $73,200 that they received from Investor G through their misconduct; and
- an order under section 162 of the Act requiring the respondents to pay an administrative penalty of $200,000.

b) Factors

[68] 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.

[69] 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.

c) Application of the factors

Seriousness of the conduct

[70] The Commission has frequently held that fraud is the most serious misconduct under the Act. See *Manna Trading Corp Ltd.* 2009 BCSECCOM 595.

[71] In this case, the fraud involved multiple acts of deceit of Investor G carried out over a significant period of time. Rush also impersonated a third party with a view to preventing Investor G from detecting his earlier deceit. The respondents' misconduct was very serious.

[72] Contraventions of section 34 are also inherently serious because the registration requirements of the Act are foundational for protecting investors and the integrity of the capital markets. The requirement in section 34 that those who trade in securities must be registered is intended to ensure that those who carry out this activity do so in a prescribed manner which is intended to protect investors.

Harm to investors

[73] Investor G has clearly suffered substantial harm from the misconduct of the respondents. The vast majority of the funds given to the respondents has been lost. In addition, the respondents induced Investor G to enter into a pension unlocking scheme which ran afoul of the CRA and resulted in Investor G incurring additional costs.

[74] Investor G submitted a victim impact statement that outlined that her personal life has been significantly damaged by the respondents' misconduct.

Enrichment

[75] The respondents were enriched by the $73,200 given to them by Investor G. The evidence clearly established that these funds were simply used by Rush to pay personal expenses.

Aggravating or mitigating factors; past misconduct

[76] There are no mitigating factors in this case.

[77] It is a significant aggravating factor that Rush has a history of securities regulatory misconduct.

[78] In February 2014, the Mutual Fund Dealers Association of Canada found that, prior to leaving his previous employment, Rush had sold clients unsuitable, unapproved foreign exchange investments that turned out to be fraudulent. The MFDA also found that Rush did not cooperate with their investigation. Rush was permanently banned from the MFDA.

[79] It is clear that Rush has little regard for the well-being of those he purports to assist in the capital markets.

Fitness to continue to participate in the capital markets

[80] Rush's past regulatory misconduct and the fact that he engaged in fraud suggests that he is totally unfit to participate in our capital markets as a registrant or otherwise.

[81] That Rush would engage in prolonged conduct that involved multiple acts of deceit (including attempts to avoid detection) suggests that he represents a very great risk to our capital markets.

Specific and general deterrence

[82] The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct.

Previous Orders

[83] The executive director provided three previous decisions of this Commissions as support for his requested sanctions: *Mesidor*, 2014 BCSECCOM 6, *Cho (Re)*, 2013 BCSECCOM 454 and *Basi (Re)*, 2011 BCSECCOM 573.

[84] In *Mesidor*, the respondent perpetrated a fraud on two investors by taking $32,000 from them for foreign exchange trading but only advancing approximately half of that amount into the trading account, the remainder the respondent used for personal expenses. The respondent also prepared a false financial statement for his company which he sent to one of the investors. The Commission imposed permanent market bans on the respondent and ordered him to pay $16,000 under a disgorgement order (even though the respondent had repaid $2,000 to the investors,) and $75,000 for an administrative penalty. The panel did not take the amounts paid to investors into account in determining the amount of its order under section 161(1)(g) because there was no evidence as to whether the $2,000 repaid to investors was attributable to the funds obtained by the respondent through his fraud or from the investor funds which were properly invested.

[85] In *Basi*, the respondent perpetrated a fraud on one investor by taking $15,500 from the investor to purchase shares but instead deposited the funds into his account and spent $11,000 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 and $100,000 for an administrative penalty.

[86] In *Cho*, the respondent was found to have contravened the Act through illegal distributions, misrepresentation and fraud connected with the distributions of securities to five investors for a total of $102,000. The respondent was also found to have used multiple identities over the course of the misconduct to create the impression of a larger organization than in fact existed. The respondent repaid a significant portion of the funds originally obtained as purported returns on the original investments. The Commission

imposed permanent market bans on the respondent and ordered him to pay $20,500 under a disgorgement order (this being the amount of the original investment that had not been returned to the investors) and $200,000 for an administrative penalty.

[87] The executive director says that the respondents' misconduct in this case most similarly resembles that of the respondent in *Cho* and is more serious than the misconduct of the respondents in *Mesidor* and *Basi*. In particular, the executive director says that this case involves additional misconduct (i.e. the contravention of section 34) from that of *Mesidor* and *Basi* and that Rush has a history of regulatory misconduct that those respondents did not have.

[88] We agree with these submissions. The misconduct in the present case is more significant that found in *Mesidor* and *Basi*. Both the quantum of the fraud and the repeated nature of the deceptions make this misconduct more serious.

d) Market prohibitions

[89] Those who commit fraud represent the most serious risk to our capital markets. This is true of the respondents in this case. Their misconduct was serious and carried out with multiple acts of dishonesty. Rush also has a history of securities regulatory misconduct.

[90] Permanent market prohibitions are appropriate in the circumstances.

e) Section 161(1)(g) orders

[91] The funds obtained from Investor G by fraud were deposited into Breakthrough's bank account. Breakthrough was owned and controlled by Rush. Rush took Investor G's funds and spent it on his personal expenses. Therefore, it is clear that the respondents obtained $73,200 as a result of their contraventions of the Act. A portion of this amount, $12,790, was returned to Investor G as a purported return on her investment. Although we could order that the full $73,200 obtained through the respondents' contravention of the Act be paid to the Commission under section 161(1)(g), in this case, because there was only one victim and she was repaid $12,200, it is appropriate and in the public interest that the section 161(1)(g) order be reduced by that amount to $60,410.

[92] It is in the public interest to make an order in the amount of $60,410 against the respondents. In this case, as there was a clear co-mingling of the funds between the respondents we would make them jointly and severally liable for this amount.

f) Administrative penalties

[93] The nature of the misconduct in this case requires, for reasons of both general and specific deterrence, that there be an order made for a significant administrative penalty.

[94] There are no mitigating factors in this case and Rush has a history of securities regulatory misconduct.

[95] We agree, with the executive director, based on the respondents' misconduct, the need for specific and general deterrence and previous Commission decisions, $200,000 is the appropriate amount of administrative penalty in this case. The executive director requested that we make the respondents jointly and severally liable for the $200,000 requested administrative penalty between the two respondents.

[96] It is generally not appropriate to make an order for an administrative penalty on a joint and several basis (see *HRG Healthcare*, 2016 BCSECCOM 5).

[97] In this case, the controlling mind of the misconduct was Rush. Breakthrough has been dissolved. In this case, Breakthrough was only a vehicle through which Rush committed his misconduct. There is no need to impose an administrative penalty against a dissolved corporate respondent that was merely the alter ego of the individual respondent. We order that Rush be personally subject to an order of $200,000 under section 162.

VII. Orders

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

Rush

1. under section 161(1)(b), (c), and (d)(i) to (v),

    a) Rush cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;

    b) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply permanently to Rush;

    c) Rush resign any position he holds as, and is prohibited from becoming or acting as, a director or officer of any issuer or registrant;

    d) Rush is permanently prohibited from becoming or acting as a registrant or promoter;

    e) Rush is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and

    f) Rush is permanently prohibited from engaging in investor relations activities;

2. under section 161(1)(g) of the Act, that Rush pay to the Commission $60,410; and

3. under section 162 of the Act, that Rush pay to the Commission an administrative penalty of $200,000;

Breakthrough

4. under sections 161(1)(b) and d(iii) and (v),

    a) all persons cease trading permanently, and be permanently prohibited from purchasing any of its securities;

    b) Breakthrough cease trading in, and be prohibited from purchasing, any securities or exchange contracts, permanently;

    c) Breakthrough be permanently prohibited from becoming or acting as a registrant or promoter; and

    d) Breakthrough is permanently prohibited from engaging in investor relations activities;

5. under section 161(1)(g) of the Act, that Breakthrough pay to the Commission $60,410; and

6. Rush and Breakthrough are jointly and severally liable with respect to the amounts owing to the Commission pursuant to paragraphs 2 and 5.

February 22, 2016

For the Commission

Nigel P. Cave
Vice Chair

George C. Glover, Jr.
Commissioner

Gordon L. Holloway
Commissioner