

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

Citation: Re Cerisse, 2017 BCSECCOM 142

Date: 20170428

**Christine Maria Cerisse,  
Laurence Frederick Austin, also known as Lawrence Frederick Austin  
and Thomas John Sadler**

<b>Panel</b>	Nigel P. Cave Judith Downes Don Rowlatt	Vice Chair Commissioner Commissioner
<b>Hearing Date</b>	April 4, 2017	
<b>Submissions Completed</b>	April 4, 2017	
<b>Date of Decision</b>	April 28, 2017	
<b>Appearing</b>		
Derek Chapman	For the Executive Director	
H. Roderick Anderson	For Christine Maria Cerisse	

**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 January 31, 2017 (2017 BCSECCOM 27) are part of this decision.
- [2] We found that Cerisse contravened section 168.1(1)(a) of the Act in her answers to three questions during her interview with Commission staff in October 2013. We also found that the other respondents had not contravened the Act. Therefore, Cerisse is the only respondent for whom we must determine the appropriate sanctions.
- [3] The parties made written and oral submissions with respect to the appropriate sanctions for the respondent's misconduct.
- [4] This is our decision with respect to sanctions.

## **II. Position of the Parties**

[5] The executive director submits that the following orders under sections 161(1) and 162 of the Act are appropriate sanctions for Cerisse's misconduct:

(a) for the later of a period of six months and the date she pays her administrative penalty, that Cerisse:

- cease trading in any securities, under section 161(1)(b)(ii);
- resign any position that she holds as a director or officer of an issuer, under section 161(1)(d)(i);
- is prohibited from becoming or acting as a director or officer of any issuer or registrant, under section 161(1)(d)(ii);
- is prohibited from becoming or acting as a registrant or promoter, under section 161(1)(d)(iii);
- is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, under section 161(1)(d)(iv);
- is prohibited from engaging in investor relations activities, under section 161(1)(d)(v); and

(b) under section 162 of the Act, that Cerisse pay to the Commission an administrative penalty in the amount of \$25,000 to \$30,000.

[6] Cerisse submits that the appropriate sanctions in this case are as follows:

(a) under section 161(1)(j) of the Act, that she be reprimanded; and

(b) under section 162 of the Act, that she pay to the Commission an administrative penalty of not more than \$10,000.

## **III. Analysis**

### **A. Factors**

[7] 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.

[8] 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.

## **B. Application of the Factors**

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

[9] Cerisse lied on three separate occasions, under oath, in an interview with Commission Staff. This is serious misconduct as noted by this Commission in *Nuttall (Re)*, 2012 BCSECCOM 97 (at para. 8):

Nuttall lied under oath in a compelled interview. This is serious misconduct. The Commission's investigative powers under the Act are one of the most powerful tools at the Commission's disposal to protect the public interest. A witness who fails to tell the truth puts at risk the effective exercise of those powers.

[10] There was a theme to the false statements made by Cerisse. She was attempting to conceal the identity of the ownership or control over several entities that had participated in, or were connected to, a public market transaction that the Commission was investigating. The repeated nature of these lies and the consistent theme to those lies leads us to conclude that her misconduct was intentional.

[11] There is no evidence that Cerisse's false statements hindered or frustrated the Commission's investigation.

[12] While acknowledging that her conduct was serious, Cerisse submitted that we should take into account that at the time of her interview she was not made aware that she was the target of the investigation by Commission staff nor was she provided with any documents to review in advance of the interview with Commission staff. We do not agree with those submissions. Whether someone is a target of a Commission

investigation or not is not relevant to the public interest expectation that people who give evidence under oath do so truthfully. Further, an inability to view documents prior to an interview might affect a witness' ability to remember those documents during the interview but does not justify deliberate false statements about them.

***Enrichment; harm to investors***

- [13] There is no evidence that Cerisse was enriched by her misconduct nor is there evidence that investors were harmed by her false statements.

***Mitigating or aggravating factors; past conduct***

- [14] There are no mitigating factors in this case.

- [15] Cerisse does not have a history of securities regulatory misconduct.

- [16] The executive director says that it is an aggravating factor that Cerisse was formerly registered under the Act. In essence, the executive director submits that Cerisse would have known that the securities industry, as a regulated industry, requires its participants to have integrity, particularly when dealing with the regulatory authorities.

- [17] We do not view Cerisse's former registration status as a material aggravating factor, if one at all. We think all members of the public would understand that it is important to provide truthful answers to regulatory authorities when providing evidence under oath. However, as will be discussed below, we do think that Cerisse's conduct raises concerns about her fitness to be a registrant.

***Risk to investors and markets***

- [18] The executive director has characterized Cerisse's lies as calculated to hide her control and direction over the shares of an OTC listed issuer and thereby hide her improper trading of those shares (albeit that we found that that trading occurred outside of the limitation period under the Act).

- [19] We characterize Cerisse's lies slightly differently. We did not find that Cerisse's trading activity was improper. Her misconduct does not cause us to view her as a risk with respect to trading in securities. In our view, all of her lies were in aid of hiding who owned or controlled various corporate entities that were engaged in a public markets transaction. That desire to hide the identity of the ownership and control of corporate entities from regulatory authorities causes us to have significant concerns as to Cerisse's fitness to be both a registrant and to have positions of control or direction in corporate entities. A registrant and persons who hold positions of authority within corporations and participate in the capital markets must do so with honesty and integrity.

***Specific and general deterrence***

- [20] We agree with the executive director that the sanctions we impose must be sufficiently severe to ensure that both Cerisse and others will be deterred from making false and misleading statements to investigators.

### *Previous Orders*

- [21] The executive director directed us to five decisions involving respondents who provided false statements to regulatory authorities, including four decisions of this Commission and one decision of the Alberta Securities Commission: *Re Wood*, 2015 BCSECCOM 169, *Nuttall* (supra), *Re Dhala*, 2015 BCSECCOM 336, *Edward Bernard Johnson*, 2007 BCSECCOM 437 and *Re Hagerty*, 2014 ABASC 348.
- [22] The respondent submitted that the circumstances in *Nuttall* were the most similar to those in the case before us and sought to distinguish all of the other decisions (other than *Dhala*, on which they made no submissions) on the basis that the misconduct of the respondents in those cases was significantly more egregious than her misconduct.
- [23] We think that *Nuttall*, *Wood* and *Hagerty* are all recent and analogous circumstances to the case at hand and offer the best guidance on the appropriate sanctions for Cerisse's misconduct.
- [24] In *Nuttall*, the respondent was found to have made four false statements to investigators. The respondent also testified at the hearing and attempted to explain her false statements given in her earlier compelled interview. Those explanations, given during the hearing, were not found to be credible by the panel.
- [25] The panel outlined that specific and general deterrence was the most important factor in that case and that their sanctions must have some logical connection to the nature of the misconduct. The panel ordered that *Nuttall* be prohibited from purchasing securities until the later of six months and when she paid her administrative penalty; that she be reprimanded; and that she pay an administrative penalty of \$15,000.
- [26] In *Wood*, the respondent was found to have lied to Commission investigators during a compelled interview and to have acted contrary to the public interest. The panel found that the respondent's lies did have an impact on the Commission's investigation. The panel held that sanctions in the range of those imposed in the *Nuttall* and *Johnson* decisions were appropriate for *Wood*'s contraventions of section 168.1(1)(a). *Wood* was ordered to pay an administrative penalty of \$30,000 and received six month prohibitions from acting as a registrant or in a management or consultative capacity (these orders were extended to 12 months for *Wood* having acted contrary to the public interest as well).
- [27] In *Hagerty*, the respondent gave false statements in her interview with staff of the Alberta Securities Commission and then repeated those false statements during the hearing. *Hagerty* was ordered to pay an administrative penalty of \$20,000 and to pay \$7,500 for costs. There were no market prohibitions imposed.
- [28] The respondent says that her misconduct was less than that of the respondent in *Hagerty* as she did not repeat her false statements during the hearing and less than that of the respondent in *Wood* in that her false statements did not impair a Commission investigation.

[29] We agree that Cerisse's misconduct was less serious than that of the respondent in *Wood* but we do not see a material difference between Cerisse's misconduct and that of the respondent in *Hagerty*. As Cerisse did not give oral evidence during the hearing, she neither repeated nor rescinded her false statements given during her interview.

### **C. Appropriate Orders**

[30] We agree with the decision in *Nuttall* that specific and general deterrence are the most significant factors in making our sanctions decision. We also agree that, if we are to impose market prohibitions, those market prohibitions must be linked to the misconduct of the respondent.

[31] As noted above, we find the respondent's conduct to be analogous to that of the respondents in *Nuttall* and *Hagerty* and less serious than that of the respondent in *Wood*. We think an administrative penalty of \$20,000 is appropriate in the circumstances to achieve the objectives of specific and general deterrence.

[32] With respect to market prohibitions, we do not agree with the executive director that a prohibition on purchasing or selling securities is appropriate in the circumstances. As noted above, we do not view Cerisse's misconduct as being connected to inappropriate trading in securities. In our view, her misconduct relates to a lack of transparency as to the control and direction of corporations who engaged in a public market transaction. Given the risk that Cerisse poses to the public in this area, we think it appropriate to impose prohibitions on her acting as a registrant or as a director, officer or in a management or consultative capacity for six months.

### **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)(d)(i) that Cerisse resign any position that she holds as a director or officer of any issuer, other than an issuer all the securities of which are owned beneficially by her or members of her immediate family;
2. under sections 161(1)(d)(ii) through (iv) of the Act, that Cerisse
  - a) is prohibited from becoming or acting as a director or officer of any issuer, other than an issuer all the securities of which are owned beneficially by her or members of her immediate family;
  - b) is prohibited from becoming or acting as a registrant; and
  - c) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market

until the later of six months from the date of the decision or the date the amount in subparagraph 3 below has been paid; and

3. under section 162, Cerisse pay an administrative penalty of \$20,000.

April 28, 2017

**For the Commission**

Nigel P. Cave  
Vice Chair

Judith Downes  
Commissioner

Don Rowlatt  
Commissioner