

# 2011 BCSECCOM 573

**Ajit Singh Basi**

***Securities Act, RSBC 1996, c. 418***

## **Hearing**

<b>Panel</b>	Brent W. Aitken	Vice Chair
	David J. Smith	Commissioner
	Suzanne K. Wiltshire	Commissioner

**Submissions completed**      October 13, 2011

**Date of Decision**              December 22, 2011

**Appearing**  
Shawn R. McColm              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 On June 7, 2011, the executive director issued a notice of hearing (2011 BCSECCOM 270) alleging fraud against Ajit Singh Basi.
- ¶ 3 On July 12, 2011 the Commission held a set date hearing and on September 9, 2011 it ruled the hearing would be conducted in writing, and that issues of liability and sanction would be heard at the same time.
- ¶ 4 Basi did not appear at the set date hearing, entered no evidence and made no submissions.
- ¶ 5 During the relevant period Basi was a resident of British Columbia and was a mutual fund salesperson registered under the Act.
- ¶ 6 Basi told an investor that he could buy shares of MGM at a price below what the stock was then trading. He told her there was a limit on how many shares he could purchase himself, but that he could buy shares for her.
- ¶ 7 The investor sent him \$15,500 to buy the MGM shares. Before she sent the money, Basi confirmed to her by text message that he had sold her shares at 14.63

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– a figure within the trading range of MGM shares that day on the New York Stock Exchange.

- ¶ 8 Basi did not use her money to buy MGM shares. Instead, he deposited the money into an intermediary entity that he controlled and used \$11,050 of the funds to pay down personal indebtedness and for other personal uses.
- ¶ 9 Net of bank fees, only \$4,445 was left in the intermediary’s account. The investor eventually recovered that money. She has not recovered the remaining \$11,055.

### II Findings

- ¶ 10 Section 57(b) of the Act says that a person “must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or ought reasonably to know, that the conduct . . . perpetrates a fraud on any person.”
- ¶ 11 In considering section 57(b), the British Columbia Court of Appeal held in *Anderson v. British Columbia (Securities Commission)* 2004 BCCA 7 that to establish fraud under that section, the elements of fraud must be present, as cited in *R. v. Theroux* [1993] 2 SCR 5. Those elements are a prohibited act (deceit, falsehood, or some other fraudulent means), deprivation caused by the prohibited act (actual loss or placing the victim’s pecuniary interests at risk), and subjective knowledge by the perpetrator of both the prohibited act and that it could result in deprivation of another.
- ¶ 12 We find that the executive director proved that Basi perpetrated a fraud, contrary to section 57(b) of the Act.

### III Sanctions

- ¶ 13 The factors relevant to sanction are set forth in *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22 (see page 24).
- ¶ 14 Basi stole the investor’s money. Fraud is the most serious misconduct under the Act.
- ¶ 15 Basi benefited from his illegal activity – he took \$11,050 of the investor’s money and used it for personal purposes and was enriched by the \$11,055 that she lost.
- ¶ 16 That the investor was harmed is obvious. There is no evidence to suggest that she will recover any part of the \$11,055 she lost. In these circumstances, we consider it appropriate to order disgorgement.
- ¶ 17 All of this damages the integrity and reputation of our markets.

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- ¶ 18 There are no mitigating factors.
- ¶ 19 The orders we are making are intended to deter Basi from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.
- ¶ 20 We have followed the approach in recent cases of ordering an administrative penalty that is a multiple of the amount raised by the fraud.

### **IV Orders**

- ¶ 21 Considering it to be in the public interest, we order:
1. under section 161(1)(b) of the Act, that Basi cease trading permanently, and is permanently prohibited from purchasing, securities or exchange contracts;
  2. under section 161(1)(d)(i) and (ii), that Basi resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer, registrant, or investment fund manager;
  3. under section 161(1)(d)(iii), that Basi is permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
  4. under section 161(1)(d)(iv), that Basi is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
  5. under section 161(1)(d)(v), that Basi is permanently prohibited from engaging in investor relations activities;
  6. under section 161(1)(g), that Basi pay to the Commission the funds he obtained as a result of his contraventions of the Act, which we find to be not less than \$11,055; and

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7. under section 162, that Basi pay an administrative penalty of \$100,000.

¶ 22 December 22, 2011

¶ 23 **For the Commission**

Brent W. Aitken  
Vice Chair

David J. Smith  
Commissioner

Suzanne K. Wiltshire  
Commissioner