Citation: 2015 BCSECCOM 29

Rashida Samji, Rashida Samji Notary Corporation and Samji & Assoc. Holdings Inc.

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Judith Downes	Commissioner
	Gordon L. Holloway	Commissioner
Dates of Hearing	December 9, 2014	
Date of Decision	January 16, 2015	

Appearing

Joyce Johner Anthony Abato	For the Executive Director
H. Roderick Anderson Owais Ahmed	For the Respondents

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 on liability made on July 16, 2014 (2014 BCSECCOM 286) are part of this decision.

¶ 2 The panel found that:

- Rashida Samji (Samji) perpetrated a fraud contrary to section 57(b) of the Act when she traded securities to not fewer than 200 investors for proceeds of not less than $100 million; and

- Rashida Samji Notary Corporation and Samji & Assoc. Holdings Inc. participated in the fraud because the funds raised by, and distributed under, the fraud flowed through bank accounts in the names of these corporate respondents. The corporate respondents were owned and exclusively controlled by Samji and did not engage in any conduct distinct from Samji's.

II Positions of the Parties

¶ 3 The executive director seeks orders under sections 161(1) and 162 of the Act:

- permanently prohibiting the respondents from trading in or purchasing securities,

- permanently prohibiting Samji from becoming or acting as a registrant or promoter, acting in a management or consultative capacity in connection with activities in the securities market, engaging in investor relations activities and being or acting as a director or officer of any issuer, and

- requiring the respondents to disgorge not less than $100 million and pay an administrative penalty of $100 million.

¶ 4 The respondents agree to the permanent trading and market bans proposed by the executive director except that they submit Samji should be permitted to trade through a registered dealer in her own RRSP and cash accounts and act as a director or officer of any issuer of which she is the sole shareholder.

¶ 5 The respondents also submit:

- no administrative penalty should be ordered, but if it is, it should be for no more than $1 million, and no disgorgement order should be made, but if it is, it should be for an amount equal to the monies obtained by Samji less any monies which may be received by investors from related bankruptcy, civil and/or criminal proceedings. We note that none of these proceedings has concluded and it is uncertain as to what monetary or other awards, if any, will be made against the respondents.

III Analysis

A. Factors

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

¶ 7 In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified the 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; damage to integrity of capital markets

¶ 8 The Commission has consistently held that fraud is the most serious misconduct prohibited by the Act. In *Manna Trading Corp Ltd.*, 2009 BCSECCOM 595, the Commission, at paragraph 18 said: "Nothing strikes more viciously at the integrity of our capital markets than fraud".

¶ 9 It is obvious that a fraud of not less than $100 million dollars involving no fewer than 200 investors is serious and the respondents have acknowledged as much. What makes it even more egregious is that the fraud involved a Ponzi scheme in which the entire investment was premised on a lie. Samji created and controlled this scheme over a period of more than nine years. This misconduct is at the highest end of the scale of seriousness.

Harm to investors

¶ 10 The panel found that there was clear and cogent evidence that Samji took not less than $100 million from over 200 investors and that all of the money she took she put at risk. While the panel made no finding as to the exact amount of the investors' losses, it concluded it was certain that some investors will lose all of their investment and while others may see some return of funds through civil proceedings, this group of investors will also suffer significant losses.

Enrichment

¶ 11 The executive director stated that, based on a forensic accounting analysis of the respondents' bank accounts conducted by Royal Bank of Canada staff, Samji had a "windfall" of approximately $11 million from the fraud. This is the difference between $110 million in investor deposits and $99 million in investor payouts.

¶ 12 The respondents disputed the RBC numbers. They argued that the amount Samji took from investors was no more than $102 million, and that she paid out $98 million. They said that, at most, Samji retained significantly less than $3,796,181 which amount does not reflect all of the cash payments made to investors.

¶ 13 Both parties relied on their written submissions on liability in making these submissions. In the Findings, the panel said that it was premature to make findings as to the precise amount Samji took from investors, the amount she paid out or the amount she took for her own use. The panel invited the parties to enter appropriate evidence at the time of the sanctions submissions should it be relevant for the purposes of determining sanctions. Neither party elected to do so.

Specific and general deterrence

¶ 14 The sanctions we impose must be sufficiently severe to ensure that the respondents and others will be deterred from engaging in similar misconduct in the future.

Past misconduct; mitigating factors

¶ 15 The executive director submitted that there are no mitigating factors relating to the respondents' misconduct, but that there are significant aggravating factors. He said that Samji showed no remorse when first confronted with the fraud by Commission staff and that she lied to and mislead Commission staff during the course of the investigation.

¶ 16 Samji said her co-operation in the receivership and bankruptcy proceedings and related civil litigation, as well as her conduct in the executive director's investigation and the Commission proceedings, are mitigating factors. Co-operation in other proceedings is not a mitigating factor in considering sanctions. We do not consider Samji's conduct in the executive director's investigation and the Commission proceedings to be a mitigating factor when balanced against the seriousness of her misconduct.

¶ 17 We do not find any aggravating factors. Statements made by Samji, which were incorrect were subsequently corrected by her counsel and the executive director has not shown that his investigation or these proceedings were significantly hindered as a result of these misstatements. Failure to show remorse is not an aggravating factor.

¶ 18 Samji has no history of regulatory misconduct.

Previous orders

¶ 19 We considered the following past decisions of the Commission cited by the parties.

¶ 20 *Manna* involved a Ponzi scheme into which more than 800 investors deposited about US$16 million. The respondents were found to have perpetrated a fraud on investors and, in doing so, illegally distributed securities and made misrepresentations to investors. A permanent cease trade order was issued against the corporate respondents and permanent market bans issued against all of the individual respondents. Disgorgement orders and an administrative penalty in the amounts described below were also imposed.

¶ 21 One of the challenges faced by the panel in *Manna* was accounting for all of the US$16 million fraudulently taken from the investors. Commission staff had difficultly tracing over one-half of investor funds to identified recipients and, even when a recipient was identified, the reason for the payment or its ultimate destination was often unclear.

¶ 22 The panel found that it was not necessary, in making orders under section 161(1)(g), to trace investor funds into the hands of the respondents. What was relevant was that the respondents had obtained US$16 million as a result of a fraud in contravention of the Act and none of that money was used in the manner they told investors it would be used. Disgorgement orders in the total amount obtained by the fraud, being US$16 million, were made against all of the respondents.

¶ 23 In determining the appropriate administrative penalties under section 162 of the Act, the panel found that each of the respondents had contravened four sections of the Act. The respondents were also found to have contravened all of those sections in their dealing with hundreds of clients and multiple times in their dealings with many clients. The panel concluded there were, therefore, hundreds, if not thousands, of contraventions for which it could order an administrative penalty. Rather than deal with each of the respondents' contraventions separately, the panel considered the respondents' conduct globally. Administrative penalties of $6 million or $8 million were imposed against the individual respondents for all of their respective contraventions.

¶ 24 *Brian David Anderson*, 2007 BCSECCOM 350 involved a fraud relating to the promotion and sale by Anderson of $14.7 million of securities to 352 investors. Anderson also was found to have engaged in unregistered advising, illegally distributed securities and made misrepresentations to investors in the course of perpetrating the fraud. A permanent cease trade order was issued against Anderson as well as a permanent order prohibiting him from being or acting as a director or officer (with exceptions) and engaging in investor relations activities. Anderson submitted that, as he was facing bankruptcy, he would be unable to pay an administrative penalty. The panel found that for the purposes of general deterrence it was appropriate to impose a penalty to deter other market participants from similar wrongdoing. An administrative penalty in the maximum amount available at the time was imposed.

¶ 25 The executive director cited the Ontario Securities Commission' decision in *Limelight Entertainment Inc.* (2008), 31 O.S.C.B. and the Supreme Court of Canada's decision in *AIC Limited v. Fischer*, 2013 SCC 69 (Can LII) in connection with his submissions regarding the purpose of section 161(1)(g) orders.

¶ 26 Both of these decisions were considered in *David Michael Michaels et al.*, 2014 BCSECCOM 457, a decision of the Commission issued after written submissions in this case. The panel in *Michaels* accepted the determinations made in these Ontario decisions regarding principles imbedded in the Ontario equivalent of our section 161(1)(g) which are discussed below.

¶ 27 *Michaels* involved a fraud in which David Michael Michaels sold $65 million of exempt market securities to 484 clients. Michaels was also found to have illegally distributed these securities and made misrepresentations to investors in the course of perpetrating the fraud. All but $5.8 million of the amount obtained by Michaels was retained by third parties in accordance with the intentions of the investors. Permanent trading and market bans were issued against Michaels. A section 161(1)(g) order was made against him in the amount of $5.8 million and he was required to pay an administrative penalty of $17.5 million.

¶ 28 In determining the amount of the 161(1)(g) order, the panel said they had authority to make an order for any amount up to $65 million, being the amount obtained as a result of Michaels' contraventions of the Act. However, the panel found that all but $5.8 million of these funds were retained by third parties. The panel said that, in the circumstances, an order in excess of the $5.8 million would be punitive and inappropriate.

C. Appropriate Orders

Market and trading bans

¶ 29 In the past, the Commission has consistently ordered permanent bans under section 161(1) of the Act for fraud. In this case, permanent bans against the respondents from all market activity are appropriate to protect the investors and our capital markets. The executive director and the respondents agree that such bans are appropriate. We agree and order that the respondents be permanently prohibited from trading and participating in the markets except that Samji may trade or purchase securities for one RRSP account in her own name and one cash account in her own name through a registrant if she gives the registrant a copy of this decision.

¶ 30 We do not agree with Samji that she should be allowed to act as a director or officer of an issuer of which she is the sole shareholder. Samji used companies owned and controlled by her to facilitate her fraud and, as a result, it is not in the public interest that she be allowed in the future to act as a director and officer of any issuer.

Section 161(1)(g) order

¶ 31 Under section 161(1)(g) of the Act, if a person has not complied with a provision of the Act, the Commission may order that person to pay to the Commission "any amount obtained…directly or indirectly, as a result of the failure to comply or the contravention."

¶ 32 In *Michaels*, the Commission discussed the principles relevant to section 161(1)(g) orders at paragraphs 42 and 43:

> "¶ 42 To summarize, these are the principles that are relevant under section 161(1)(g):
>
> a) the focus of the sanction should be on compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;
> b) the sanction does not focus on compensation or restitution or act as a punitive or deterrent measure over and above

compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;

c) the section should be read broadly to achieve the purposes set out above and should not be read narrowly to either limit orders:
   (i) to amounts obtained, directly or indirectly, *by that respondent*; or
   (ii) to a narrower concept of "benefits" or "profits", although that may be the nature of the order in individual circumstances.

¶ 43 Principles that apply to all sanction orders are applicable to section 161(1)(g) orders, including:
   a) a sanction is discretionary and may be applied where the panel determines it to be in the public interest; and
   b) a sanction is an equitable remedy and must be applied in the individual circumstances of each case."

¶ 33 The executive director seeks an order against the respondents under section 161(1)(g) in an amount of at least $100 million. He submitted that the "amount obtained" by the respondents is the amount fraudulently raised by them.

¶ 34 The respondents submitted that the panel should decline to exercise its discretion to make an order under section 161(1)(g) against the respondents based on the following factors:

- Samji's voluntary and cooperative conduct with respect to the executive director's investigation and her reasonable conduct in this proceeding,
- the evidence that Samji retained substantially less than $3.8 million from investors,
- the respondents' bankruptcy proceedings and the fact that, after secured creditors are paid, all of the remaining assets will be distributed to the investors,
- related civil and criminal proceedings against Samji are better suited to resolve the issues of disgorgement and general and specific deterrence than monetary sanctions under the Act, and
- Samji has no current or future ability to pay a monetary penalty given her age and the multiplicity of claims against her.

¶ 35 We have already found that Samji's conduct in the executive director's investigation and this proceeding is not a mitigating factor. Similarly, we find it is not a factor relevant to the exercise of our discretion to issue a section 161(1)(g) order.

¶ 36 The actual amount retained by Samji from investors funds is not relevant to the determination of whether to exercise our discretion to issue a section 161(1)(g) order. It is clear from *Michaels* and *Manna* that the focus of a section 161(1)(g) order should be on compelling the respondents to pay any amounts obtained from contraventions of the Act. It is also clear from *Manna* that it is not necessary in making an order under section 161(1)(g) to trace investor funds into the hands of recipients.

¶ 37 The nature and potential outcomes of concurrent bankruptcy, civil and criminal proceedings against the respondents are not determinative of our decision to issue a section 161(1)(g) order.

¶ 38 The objectives of bankruptcy, civil and criminal proceedings are different than securities commission proceedings. In *Asbestos*, the Supreme Court of Canada said at paragraph 42:

> "…the purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets."

¶ 39 The fact that the investors may receive monies pursuant to other proceedings is not relevant. As stated in *Michaels*, the focus of a section 161(1)(g) order is not compensation or restitution.

¶ 40 The respondents have also submitted that our discretion to make a section 161(1)(g) order should be influenced by their ability to pay. The Commission has determined in past decisions that the ability to pay is not a factor to be considered in determining whether to make a section 161(1)(g) order and we find it is not a factor in this case.

¶ 41 Given the broad interpretation of section 161(1)(g) in *Michaels* and other Commission decisions, it is clear we have the discretionary authority to make an order for any amount up to $100 million. This was the minimum amount found to have been obtained as a result of the respondents' contraventions of the Act. However, an order in this amount would be punitive and inappropriate given its magnitude and the fact that a significant amount of these monies were paid out to investors.

¶ 42 Equally, regardless of the magnitude of the misconduct, respondents always bear responsibility for any uncertainty with respect to the amount retained by them. It is not in the public interest that they benefit from any such uncertainty. In the circumstances, it is appropriate to order under section 161(1)(g) that the respondents pay to the Commission $10,811,799. This is the amount determined pursuant to the RBC forensic accounting analysis to be the difference between the monies deposited by the investors pursuant to the fraud and the monies paid out to them. In the absence of conclusive evidence, we find this to be a reasonable amount to order be disgorged by the respondents as a result of their contravention of the Act.

Administrative penalty

¶ 43 Under section 162 of the Act, the panel may, if it finds the respondent has contravened the Act and considers it to be in the public interest, make an order for an administrative penalty of not more than $1million for each contravention of the Act.

¶ 44 The executive director seeks an administrative penalty of $100 million. He said that in recent fraud cases, the Commission has almost invariably ordered an administrative penalty larger than the amount raised fraudulently. He argued that an administrative penalty of $100 million is proportionate to the harm done and is sufficient to address the other factors relevant to sanction.

¶ 45 The respondents submitted that, but for the bankruptcy and related civil and criminal proceedings, a maximum administrative penalty of $1 million against the respondents, on a joint and several basis, would have been appropriate. They also submit that their ability to pay should be considered in the determination of whether to issue an administrative penalty.

¶ 46 We found no basis for declining to issue a section 161(1)(g) order against the respondents based on the existence of the other legal proceedings or their ability to pay and we make the same finding with respect to the imposition of an administrative penalty.

¶ 47 The respondents argued that the panel's finding was that Samji committed a single contravention of the Act and that, consequently, the largest administrative penalty that can be imposed is $1 million.

¶ 48 The executive director argued that, based on *Manna*, the respondents committed multiple contraventions of the Act for which the panel could order an administrative penalty. He submitted, however, that the panel should look at the conduct globally and order an appropriate penalty based on all of the circumstances.

¶ 49 The respondents submitted that the panel in *Manna* gave no theory or rationalization to support its finding and that the analysis is probably out of step with other Commission decisions. They did not cite any authorities to support this argument.

¶ 50 We agree with the executive director. The Findings state that:

> "Samji perpetrated a fraud, contrary to section 57(b) of the Act, when she traded securities to not fewer than 200 investors for proceeds of not less than $100 million."

¶ 51 Samji perpetrated a fraud each time she traded securities to an investor. As in *Manna*, Samji contravened section 57(b) many times in her dealings with hundreds of clients. There are, therefore, at a minimum, hundreds of contraventions for which we could order an administrative penalty.

¶ 52 The respondents also argued that they had no notice of allegations of multiple breaches of section 57(b) of the Act. They said that the amended notice of hearing set out a single allegation of fraud against Samji.

¶ 53 Given the facts set out in the amended notice of hearing, which include the number of investors involved, and the evidence introduced at the liability hearing, the respondents had ample notice that it was alleged there were multiple allegations of fraud involving over 200 investors. We cannot see how the respondents were disadvantaged by the wording of the allegation in the amended notice of hearing. We find the respondents' submission fails.

¶ 54 We do not agree with the executive director's submissions regarding the quantum of the appropriate administrative penalty. While the number of contraventions under the Act could support an administrative penalty in the amount proposed by the executive director, we do not think it is in the public interest to do so. Even though the amount suggested by the executive director does not exceed the amount raised by the respondents, an administrative penalty of $100 million goes beyond any meaningful bounds of deterrence for the respondents or others.

¶ 55 We do not agree with the respondents' submission that an administrative penalty of $1 million is appropriate in the circumstances. The magnitude and duration of the fraudulent investment scheme and the number of investors affected justify a significant penalty. A significant penalty also is warranted both as a specific deterrent to the respondents and as a general deterrent to others who would engage in similar fraudulent schemes.

¶ 56 In the circumstances, an administrative penalty of $33 million is appropriate. It reflects the seriousness of the respondents' misconduct and the other factors relevant to sanctions, making it appropriate for the respondents personally. It also serves as a meaningful and substantial general deterrent to others who would engage in similar misconduct.

IV Orders

¶ 57 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), the respondents be permanently prohibited from trading in, or purchasing securities except Samji may trade or purchase securities for one RRSP account in her own name and one cash account in her own name through a registrant if she gives the registrant a copy of this decision;

2. under section 161(1)(d)(i), Samji resign any position she holds as a director or officer of an issuer;

3. under section 161(1)(d)(ii), Samji is permanently prohibited from becoming or acting as a director or officer of any issuer;

4. under section 161(1)(d)(iii), Samji is permanently prohibited from becoming or acting as a registrant or promoter;

5. under section 161(1)(d)(iv), Samji is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

6. under section 161(1)(d)(v), Samji is permanently prohibited from engaging in investor relations activities;

7. under section 161(1)(g), the respondents pay to the Commission $10,811,799;

8. under section 162, the respondents pay the Commission an administrative penalty of $33 million; and

9. the respondents are jointly and severally liable to pay the amounts in paragraphs 7 and 8.

¶ 58 January 16, 2015

¶ 59 **For the Commission**

Judith Downes
Commissioner

Gordon L. Holloway
Commissioner