



British Columbia
Securities Commission

REPLY TO:
Deborah W. Flood
T: 604-899-6623 / F: 604-899-6633
Email: dflood@bcsc.bc.ca

By Regular Mail

June 3, 2022

Dear Mr. Dean:

**Faiyaz A. Dean
Reciprocal Order Application**

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director is applying for orders against you under sections 161(6)(b) and 161(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act). The Executive Director is not seeking a financial penalty.

The Executive Director is making this application based on the decision in the *Securities and Exchange Commission (SEC) v. Faiyaz Dean and others*, No. 18-cv-4309, where you were found to have contravened section 17(a) of the *Securities Act of 1933* [15 U.S.C. § 77a] (Securities Act 1933), section 10(b) of the *Securities Exchange Act of 1934* [15 U.S.C. § 78a] (Exchange Act), and section 5 of the Securities Act [15 U.S.C. § 77e] (U.S. Securities Act).

BACKGROUND

1. On May 15, 2018, the SEC filed a complaint in the United States District Court, Southern District of New York, naming you as a defendant (Complaint). The Complaint alleged that you and others engaged in a fraudulent scheme to effect illegal and unregistered sales of Biozoom Inc. stock and manipulate the market for shares of Biozoom, contrary to U.S. securities laws.

Complaint

2. You did not enter an appearance in the proceeding, and did not participate in the proceeding.

Declaration of Jennie Krasner

3. On November 19, 2018, a certificate of default was filed.

Certificate of Default



4. On November 25, 2019, the SEC filed a motion for default judgment against you. You failed to respond to the motion.

SEC Motion for default judgment

5. On November 25, 2019, the court found you had violated:
 - a. section 10(b) of the Exchange Act (fraud in the connection with the purchase or sale of securities),
 - b. Rule 10b-5 of the Exchange Act (employment of manipulative and deceptive devices),
 - c. section 17(a) of the Securities Act 1933 (fraud in the offer or sale of securities);, and
 - d. section 5 of the U.S. Securities Act (unregistered securities offerings).

Final Judgment

6. The court ordered:
 - i. You are permanently restrained from violating section 10(b) of the Exchange Act, Rule 10b-5, sections 5 and 17(a) of the Securities Act;
 - ii. You are permanently restrained from participating in an offering of penny stock (any security that has a price of less than five dollars); and
 - iii. You shall pay a civil penalty of \$160,000 to the SEC.

Final Judgment

THIS PROCEEDING

Applicable Law

7. With this letter, the Executive Director is applying to the Commission for orders against you under section 161 of the Act. I have enclosed a copy of section 161 of the Act for your reference.
8. Under section 161(6)(b) of the Act, the Commission or the Executive Director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives.
9. The court granted default judgment against you. It is well-established under U.S. and Canadian law that a default judgment conclusively establishes the liability of a defendant and any allegations relating to liability are considered true.¹ As a consequence of default, defendants are deemed to have admitted the allegations of

¹ *Domanus v. Lewicki*, 742 F.3d 290, 303 (7th Cir. 2014) at p.9, para. 3, [*E. Sands and Associates Inc. v. Dextras Engineering & Construction Ltd.*](#), 2009 BCSC 42 at para 23



the complaint.² It is widely held that a court, when faced with a default judgment, is required to accept all of the factual allegations as true.³ A commission panel in [*Durante \(Re\)*](#), 2004 BCSECCOM 634 stated the following at paragraphs 9 and 26:

Under U.S. law, a default judgment is an admission of the facts alleged in the complaint.

Under U.S. law, the effect of the default judgments is that *Durante* is taken to have admitted the allegations in the SEC complaints.

10. Recently in [*Re Skerry*](#), 2021 BCSECCOM 30, a panel of the Commission made an order against a respondent after the executive director made an application pursuant to section 161(6)(b) of the Act. The Commission relied on the U.S. default judgment in *Skerry*'s SEC proceedings. Similar to *Skerry*, you also received a default judgment from a U.S. court for contravening U.S. securities law.

Summary of Findings

11. The facts of your misconduct are contained in the Complaint, the SEC's Motion for Default Judgment, the Plaintiff's memorandum in support of default judgment, and the Final Judgment:

- (a) At the time of the SEC proceeding in 2018, you were 40 years of age, and a Canadian citizen residing in Vancouver, British Columbia. You were licensed to practice law in British Columbia and Washington State.

Complaint, para. 16

- (b) You, along with your co-defendants, Francisco Abellan Villena (Abellan), Guillermo Ciupiak (Ciupiak), and James B. Panther, Jr. (Panther) all participated in a fraudulent scheme to manipulate the shares of Biozoom Inc., as well as sell illegal, unregistered Biozoom shares.

Complaint, para. 1

- (c) You had significant involvement preparing the scheme's groundwork. Months before Abellan and Ciupiak artificially created the appearance of demand for Biozoom stock, you arranged for them to:

- i. acquire all of the shares of an inactive shell company; and

² *SEC v. Berkshire Resources, LLC*, 2009 U.S. Dist. LEXIS 109534, 2009 WL 4260219, para 4

³ *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009), *SEC v. Cole*, 661 Fed. Appx. 52, p. 2, para. 3 (2nd Cir.2016) citing *Finkel*



- ii. hide their control of these shares by placing them in the names of Argentine nationals as nominees.

Complaint, paras. 4, 30-44

- (d) You also falsified the transaction documents to hide the fact that the acquired shares could not be freely re-sold.

Complaint, para. 4

- (e) Having obtained all the shares, Abellan and Ciupiak, with significant involvement from Panther, merged a subsidiary of the shell company with a German biomedical company, resulting in the creation of Biozoom. As a result, the shell company shares became Biozoom shares.

Complaint, para. 4

Plaintiff's memorandum in support of default judgment
p.3, para. 4

- (f) You furthered the scheme by helping Panther create brokerage accounts in the names of nominees into which the Biozoom shares were deposited and from which they were sold. With Panther's assistance, Abellan and Ciupiak secretly directed the trading in those accounts, as well as the trading in the account of other nominees.

Complaint, p. 17, paras. 4, 62-81

- (g) Biozoom was quoted on the Over-the-Counter Bulletin Board (OTCBB) in the U.S. Biozoom's stock was a "penny stock" as defined by the Exchange Act.

Complaint, paras. 17 and 18

- (h) Beginning on May 16, 2013, the other defendants made Biozoom stock price move upward through, among other things:

- i. trading at ever-increasing prices among the Argentine nominees and the defendants' network of brokers and traders; and
- ii. organizing an elaborate online, print, and radio promotional campaign that coincided with the manipulative trading.

Complaint, para. 5

- (i) This activity created the false appearance that Biozoom shares were legally available for sale to the general public, and the price and trading



volume of Biozoom shares were determined by the natural interplay of market supply and demand, instead of artificially created by manipulative trading.

Plaintiff's memorandum in support of default judgment
p. 2, para. 3

- (j) Prior to the manipulative trading, Biozoom's stock never publicly traded. After manipulative trading started on May 16, 2013, at \$1.10 per share, the stock peaked at \$4.50 per share on June 19, 2013.

Complaint, para. 6

- (k) By selling to retail investors at artificially inflated prices, Abellan, Ciupiak, and Panther generated approximately \$34 million in illicit proceeds from sales of shares deposited in the accounts they set up and controlled.

Complaint, para. 6

- (l) You played an essential role in the fraud. You found the shell company, concealed the true nature of the shell company's stock, and then once it had become Biozoom stock, you ensured that the other defendants, through nominee accounts, could trade what should have been restricted shares. In summary, you knowingly laid the foundation for the fraud.

Plaintiff's memorandum in support of default judgment,
4, para. 4, p. 5-6

- (m) Your misconduct violated numerous provisions for fraud and unregistered trading under U.S. securities laws.

Final Judgment

ANALYSIS

- 12. Given the default judgment, the Commission can accept and rely upon the allegations in the Complaint as findings of fact. These findings of fact are also recited in the Plaintiff's Motion for Default Judgment and Final Judgment.
- 13. It is evident from the facts that your conviction under U.S. securities laws falls within the scope of section 161(6)(b) of the Act, in that you have:
 - ...been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives
- 14. As your misconduct falls within the scope of section 161(6)(b) of the Act, the Commission may issue orders under section 161(1) of the Act.



15. In making orders under section 161 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities.
16. Orders under section 161(1) of the Act are protective, preventative and intended to be exercised to prevent future harm.

Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission), [2001] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39, and 56

17. In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining orders under section 161(1).
18. The following factors from *Re Eron* are relevant in this proceeding:
 - (a) the seriousness of the respondent's conduct,
 - (b) the harm suffered by investors as a result of the respondent's conduct,
 - (c) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
 - (d) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
 - (e) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
 - (f) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
 - (g) orders made by the Commission in similar circumstances in the past.

Re Eron Mortgage Corporation, [2000] 7 BCSC Weekly Summary 22

Application of the Factors

Seriousness of the Conduct

19. A market manipulation is one of the most serious misconduct contemplated by the Act as it requires a finding of intent on the part of the respondent and some element of deceit (i.e. creating a misleading appearance of trading activity in, or an artificial price for, a security).

Re Lim, 2017 BCSECCOM 319, para. 12

20. In *Poonian (Re)*, 2015 BCSECCOM 96, at paragraph 15, the panel found:

Market manipulation compromises the integrity of the entire market. Its impact extends beyond the victims who lost money to the investing



public as a whole. In *De Gouveia, Re*, 2013 ABASC 249 the Alberta Securities Commission concluded that manipulative trading “undermines the integrity of the capital market. It is unfair to investors, and jeopardizes the confidence in the capital market on which legitimate investor interest and capital formation depend”.

21. The Commission has recognized that market manipulation may cause grave harm to both investors and issuers and calls into question the public’s confidence in the integrity of the securities markets.

[*Re Mawji*](#), 2020 BCSECCOM 59, para. 26

22. As described in the summary of findings, you were an integral participant in a covert and orchestrated manipulation of the market price of Biozoom’s shares.
23. Your conduct was egregious as it was not isolated, but was carefully planned and executed, and involved a high degree of intent. It involved numerous deceptions, and unfolded over a period of months.

Plaintiff’s memorandum in support of default judgment,
p. 10, para. 5, p. 13, para. 4

24. You knowingly executed a serious of deceptions about the nature and control of Bizoom stock, including the repeated use of sham documentation and transactions.

Plaintiff’s memorandum in support of default judgment,
p.10, para. 5

Harm suffered by investors

25. In the case of market manipulation, panels have consistently held that harm to investors can be inferred in the absence of evidence.

[*Nuttall \(Re\)*](#), 2012 BCSECCOM 97, para. 17

26. By the very nature of the misconduct (market manipulation), members of the investing public were deceived as to the value of the shares that were sold by the respondent. While courts and tribunals are unable to attach a specific figure to the harm suffered by investors as a consequence, previous panels have found the harm to investors caused by market manipulation is significant because investors were trading the shares based upon false information.

[*Re Hable*](#), 2017 BCSECCOM 340, para. 13

27. In this case, the market manipulation resulted in rapid increases of the price of Biozoom shares, followed by the sale of the shares by your co-defendants for a



massive profit. Your co-defendants made this illicit profit from sales of Biozoom shares to retail investors and others at artificially inflated prices.

Complaint, p. 1-2, summary

Enrichment

28. Your co-defendants became enriched in the amount of USD\$34 million USD.

Complaint, para. 6

29. You received almost USD\$120,000 for your efforts.

Plaintiff's memorandum in support of default judgment,
p.12, para. 1

Mitigating Factors

30. There are no mitigating factors.

Risk to investors and the capital markets

31. Fraud violates the fundamental investor-protection objectives of the Act. Investors must be confident that the markets are properly regulated and free from manipulation by individuals like you.

[*Mesidor \(Re\)*](#), 2014 BCSECCOM 6, paras. 13 and 14

32. Those who commit fraud, because of the *mens rea* associated with the misconduct, represent a significant risk to our capital markets.

[*Re DominionGrand*](#), 2019 BCSECCOM 335, para. 15

33. The type, size, scope and duration of the misconduct demonstrates that you pose a significant risk to our capital markets.

34. Your failure to take responsibility for the consequences of misconduct demonstrates a threat to our capital markets.

[*Mesidor \(Re\)*](#), 2014 BCSECCOM 6, para. 31

35. You presently reside in British Columbia. By playing a significant role in a large scale market manipulation, you have demonstrated that you have little or no concern for legitimate market participants in the B.C. capital markets.

Participation in our capital markets

36. Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating, individuals and



companies must comply with securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets.

37. You have shown to have flagrant disregard for securities law in the U.S, and have no place in British Columbia's capital markets in any capacity.

Fitness to be a registrant or a director or officer

38. Honesty is a critical part of being a registrant or a director or an officer of an issuer. In fact, it is part of the basic duties of those positions.

[Re SBC Financial Group Inc.](#), 2018 BCSECCOM 267,
para. 34

39. Your misconduct falls far short of that expected of participants in our capital markets. You pose a great risk to our markets and are ill-suited to act as a registrant, director or officer or as an advisor to any private or public issuers going forward.

Deterrence

40. You refused to appear or take part in the SEC proceedings, and have not accepted any responsibility for your misconduct. The need for specific deterrence is strong.

Plaintiff's memorandum in support of default judgment,
p. 11, para. 1

41. Through the orders we are seeking, we intend to demonstrate the consequences of your conduct, to deter you from future misconduct, and to create an appropriate general deterrent. In your case, permanent bans are proportionate to your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future. Permanent bans are also proportionate to the gravity of your misconduct.

Previous orders

42. We refer to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market bans in the three decisions below. The decisions involve respondents engaging in market manipulation.

- [Re Deyrmenjian](#), 2019 BCSECCOM 93
 - The respondents engaged in a market manipulation resulting in enrichment in the amount of approximately \$8 million.
- [Re Lim](#), 2017 BCSECCOM 319
 - The respondents engaged in a market manipulation resulting in enrichment in the amount of US\$4.8 million



- [Poonian \(Re\)](#), 2015 BCSECCOM 96
 - The respondents engaged in market manipulation resulting in enrichment in the amount of approximately \$7 million.
43. Despite all these decisions involving serious market manipulations, none of them involve the significant enrichment that was accrued in your case. Notably, you obtained far less enrichment than your co-defendants. Despite that, your misconduct is equally as serious as the respondents in the decisions above as you played an integral part in a large market manipulation. Your misconduct is undoubtedly deserving of permanent market bans.

The Davis Consideration

44. In the Court of Appeal decision in [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149, the Court identified that it is incumbent upon a tribunal to consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public where a person's livelihood is at stake.
45. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

46. Although there is no limitation on the Commission from imposing market sanctions that are different to sanctions in the U.S., the Commission needs to consider:
- (a) what sanctions are available under the Act;
 - (b) what is reasonable based on the evidence known to it, and
 - (c) what is in the public interest.
47. In seeking permanent market orders under 161(1) of the Act, the Executive Director has taken the following factors into consideration when applying for orders in this proceeding:
- (a) the circumstances of your misconduct;
 - (b) the factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above; and
 - (d) the public interest.
48. The Executive Director is seeking the following orders pursuant to section 161(1) of the Act:
- (a) under section 161(1)(d)(i), you resign any position you hold as a director or officer of an issuer or registrant;



(b) you are permanently prohibited:

- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that you may trade and purchase securities or derivatives for your own RRSP account, TFSA account and RESP account, through a registered dealer, if you first give the registered dealer a copy of this decision;
- (ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;
- (iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
- (iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
- (v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities market; and
- (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity; and
- (vii) under section 161(1)(vi) from engaging in promotional activities on your own behalf in respect of circumstances that would reasonably be expected to benefit you.

49. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

50. In making this application, the Executive Director relies on the following, copies of which are enclosed:

- (a) Complaint
- (b) Declaration of Jennie Krasner
- (c) Certificate of Default
- (d) SEC Motion for Default Judgment
- (e) Final Judgment
- (f) *Domanus v. Lewicki*, 742 F.3d 290, 303 (7th Cir. 2014)



- (g) *E. Sands and Associates Inc. v. Dextras Engineering & Construction Ltd.*, 2009 BCSC 42
- (h) *SEC v. Berkshire Resources, LLC*, 2009 U.S. Dist. LEXIS 109534, 2009 WL 4260219
- (i) *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009)
- (j) *SEC v. Cole*, 661 Fed. Appx. 52, p. 2, para. 3 (2nd Cir.2016) citing *Finkel*
- (k) *Durante (Re)*, 2004 BCSECCOM 634
- (l) *Re Skerry*, 2021 BCSECCOM 30
- (m) Plaintiff's memorandum in support of default judgment
- (n) *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (o) *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22
- (p) *Re Lim*, 2017 BCSECCOM 319
- (q) *Poonian (Re)*, 2015 BCSECCOM 96
- (r) *Re Mawji*, 2020 BCSECCOM 59
- (s) *Nuttall (Re)*, 2012 BCSECCOM 97
- (t) *Re Hable*, 2017 BCSECCOM 340
- (u) *Mesidor (Re)*, 2014 BCSECCOM 6
- (v) *Re DominionGrand*, 2019 BCSECCOM 335
- (w) *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267
- (x) *Re Deyrmenjian*, 2019 BCSECCOM 93
- (y) *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149

YOUR RESPONSE

- 51. You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Commission Hearing Office by **Monday, July 11, 2022**.
- 52. The contact information for the Commission Hearing Office is:
 - Hearing Office
 - British Columbia Securities Commission
 - PO Box 10142, Pacific Centre
 - 12th Floor, 701 West Georgia Street
 - Vancouver, BC V7Y 1L2
 - E-mail: hearingoffice@bcsc.bc.ca
 - Telephone: 604-899-6500
- 53. If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice.
- 54. The Commission will send you a copy of its decision.



Faiyaz A. Dean
June 3, 2022
Page 13

55. **If you have any questions regarding this application, please contact Ms. Deborah Flood, at 604-899-6623, or dflood@bcsc.bc.ca**

Yours truly,

Douglas B. Muir
Director, Enforcement

DWF/crc
Enclosures

cc: Hearing Office (by email to hearingoffice@bcsc.bc.ca)