

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

Citation: Re Amir Beiklik, 2020 BCSECCOM 261

Date: 20200714

Reciprocal Order

Amir Beiklik

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

I. Introduction

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418.
- [2] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities and the courts. The executive director of the Commission has applied for an order imposing sanctions on Amir Beiklik based on his misconduct and the sanctions imposed by the Honourable Mr. Justice Low of the Provincial Court of British Columbia in the Reasons for Sentence (Reasons for Sentence) and Conditional Sentence Order (Conditional Sentence Order) dated February 16, 2015 in *R. v. Beiklik*, Vancouver Registry, File No. 224733-2-C.
- [3] The Commission makes reciprocal orders under section 161(6) when such an order will, in the public interest, protect investors and the capital markets in British Columbia.
- [4] The executive director tendered as evidence the Reasons for Sentence and Conditional Sentence Order and made written submissions to the Commission.
- [5] Beiklik tendered evidence and made written submissions to the Commission.

II. Background

Fraud conviction

- [6] On September 30, 2014, Beiklik pled guilty to and was convicted of:
 - defrauding investor L of approximately \$256,000 between October 1, 2004 and June 30, 2009, and
 - defrauding investors C and S of approximately \$45,400 between February 1, 2007 and February 28, 2010all contrary to section 380(1)(a) of the *Criminal Code*.
- [7] On February 16, 2015, the Court sentenced Beiklik to the following:
 - a conditional sentence of two years, less a day
 - restitution in the amount of \$301,400, and
 - upon the expiry of the conditional sentence, three years' probation including orders:
 - not to seek, obtain or continue any employment, or volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, and

- not to possess any financial documents other than assets in Beiklik's own name.

[8] In our decision, we have relied on the facts set out in the Reasons for Sentence.

Additional information

[9] Beiklik tendered a statement setting out the following:

- (a) The impact of his misconduct and criminal conviction have been substantial. His marriage ended after criminal charges were filed against him. He suffered personal embarrassment when information regarding his arrest and conviction was published. He lost many friends, business contacts and social relationships.
- (b) Prior to his conviction, he had no criminal record or regulatory history.
- (c) He has a young son with special needs. Living separately from his wife has made co-parenting more difficult. He has significantly modified his work schedule to accommodate his son's needs.
- (d) Since 2014, he has been employed in various supervisory or management positions at a drug store in the Vancouver area.
- (e) He is remorseful for his misconduct and is making significant efforts to repair his life and reputation.
- (f) He has complied with the terms of his conditional sentence and probation and is committed to continuing to satisfy his obligations to his investors under the restitution order.
- (g) He has not been involved in the capital markets since his conviction and has no intention of re-entering the markets in any material capacity.

[10] Beiklik's counsel advised that Beiklik is currently employed by a non-reporting issuer, M Co. (Current Employer), that is an associate owner of a drug store that includes a post office and pharmacy. His position is night supervisor in the store. He is in the process of being trained for the role of assistant manager. Beiklik understands this will lead to the role of store manager which he said is akin to general manager. His current duties involve supervising/managing the store with the exception of the pharmacy and post office. His responsibilities include supervising employees, inventory, shipping/receiving, damage and loss control and cash.

III. Positions of the parties

[11] The executive director is seeking orders under section 161 imposing broad permanent market bans against Beiklik.

[12] Beiklik does not oppose the imposition of broad permanent market bans, but has requested the following exceptions:

- an exception to the ban against becoming or acting as a director or officer of an issuer to permit him to act as a general manager of an issuer. Beiklik said this would allow him to continue in his current retail management position,
- an exception to the ban against trading in or purchasing securities to permit Beiklik to trade or purchase securities for retirement savings purposes through a registered dealer to whom a copy of this decision has been provided, and
- this decision only be published on the public website of the Commission.

[13] Beiklik submitted that these variations will permit him to continue to repair his reputation and his relationships, to ensure his family is cared for and to continue to make restitutionary payments to his victims.

[14] The executive director does not oppose the exception to the trading ban requested by Beiklik or an exception permitting Beiklik from becoming a director or officer as long as the exception is limited to his present employer. The executive director took no position on restricting the publication of this decision.

IV. Analysis and decision

[15] Beiklik has been convicted of fraud under section 380(1)(a) of the *Criminal Code*. Beiklik's fraud was in relation to securities as defined under the Act. The panel must determine whether it is in the public interest to make the orders sought by the executive director under section 161(1) of the Act.

[16] Orders under section 161(1) are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Ontario Securities Commission)*, 2001 SCC 37.

[17] Taken together, sections 161(6)(a) and 161, allow a panel to “piggy-back” on a criminal conviction to avoid the need for duplicative proceedings. However, the Commission cannot abrogate its responsibility to make its own determination as to whether making the order is in the public interest. See *MacLean v. British Columbia (Securities Commission)*, 2013 SCC 67.

[18] 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 the 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.

[18] The Commission must also consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public when a person's livelihood is at stake. See *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

A. Application of factors

Seriousness of conduct

[19] There is no question that Beiklik's misconduct was serious. The Commission has repeatedly found that fraud is the most serious misconduct under the Act. See *Manna Trading Corp. Ltd. et al.*, 2009 BCSECCOM 595.

[20] Beiklik's misconduct was exacerbated by repeated deceptions and the length of time over which the fraud was perpetrated. As noted in the Reasons for Sentence, the court found the fraud was not the result of a momentary lack of judgement but was committed over a period of years. The means of deception employed by Beiklik were sophisticated, involving the use of banking institutions, limited companies and fraudulent documents.

Harm suffered by investors

[21] Beiklik's misconduct resulted in substantial harm to the investors. Beiklik was convicted of defrauding investor L of \$256,000 and investors C and S of \$45,400.

[22] The loss of funds was compounded by the fact that the victims were of modest financial means. The court found that Beiklik had effectively made off with the bulk of their savings and the losses had forced the victims to make significant adjustments in their living standards.

[23] In addition, the court stated that investor L was held responsible by her husband for the financial losses incurred by investor L and by her father and her marriage was in trouble as a result. Investor L's father was relying on the funds he invested to provide for his elderly and ailing wife. Due to the loss of his investment, investor L's father was forced to sell his home. At the date of the Reasons for Sentence, he shared a bedroom with his teenage grandson at investor L's home.

[24] The court stated that investors C and S were left with loans that they could ill afford to service.

Damage to integrity of markets

[25] Public confidence in our capital markets is dependent on the honesty and integrity of those who participate in them.

[26] 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 such as Beiklik. See *Mesidor(Re)*, 2014 BCSECCOM 6 (CanLII).

Participation in our capital markets and fitness to be a director, officer or adviser to issuers

[27] The seriousness of Beiklik's misconduct and, in particular, the length and sophistication of his deceptions make him a serious risk to investors and generally unfit to be a registrant or a director or officer of, or an adviser to, an issuer or registrant.

Enrichment

[28] Evidence was not before the court as to the amount of Beiklik's enrichment but the court noted that in his letter of apology to his victims, he acknowledged that he took his victims' money and used it to try to save bad deals in which he was personally involved.

Mitigating/aggravating factors

[29] Beiklik's admission of guilt is a mitigating factor as it saved the investors from having to testify at trial. The court found that by entering a guilty plea, Beiklik accepted responsibility for his actions and expressed his remorse.

[30] The court found it to be a mitigating factor that Beiklik did not initially solicit the business of his victims but that they approached him.

[31] Beiklik submitted that there were a number of additional mitigating factors:

- (a) He had no criminal record or regulatory history prior to his fraud convictions. While a history of criminal or regulatory misconduct is an aggravating factor, the absence of such a history is not a mitigating factor. See *Re Davis*, 2016 BCSECCOM 375 and *Re Poonian*, 2015 BCSECCOM 96.
- (b) He was not a licensed or accredited financial professional and did not hold himself out as such to his victims. While it would be an aggravating factor if Beiklik were a financial professional, a lack of such status is not a mitigating factor. We also note that in the Reasons for Sentence, the court found the investors had assumed Beiklik was a qualified investment manager and he took no steps to disabuse them of this.
- (c) He has suffered significant personal consequences as a result of his misconduct. These consequences were a result of his criminal conduct and are not a mitigating factor.
- (d) He has not participated in the capital markets in any way since his conviction and has no intention of resuming any such participation. Beiklik's conditional sentence order included terms that greatly restricted his ability to participate in the capital markets, including a prohibition against seeking employment or volunteering in any capacity that involved having authority over money or valuable security of another person and from possessing financial documents other than assets in his own name. As these restrictions only very recently expired, Beiklik's abstention from participation in the capital markets is not a mitigating factor.

- (e) He has and continues to make restitutionary payments to his victims. These payments are a term of his conditional sentence order and cannot be considered to be a mitigating factor. The court noted that Beiklik had not made any payments to his victims prior to the criminal proceedings.

Deterrence

- [32] The sanctions we impose must be sufficient to establish that Beiklik and others will be deterred from misconduct.
- [33] Our orders must also be proportionate to misconduct in issue (and the circumstances surrounding it).

Previous orders

- [34] The executive director directed us to three previous decisions of the Commission as helpful guidance in determining appropriate sanctions in these circumstances: *Re Furman*, 2019 BCSECCOM 214, *Re Castano*, 2018 BCSECCOM 338 and *Re Davis*, 2018 BCSECCOM 284.
- [35] The circumstances in *Re Furman* are the most analogous to the case before us. The Commission found Furman committed fraud in an aggregate amount of at least \$452,000 when between April 2012 and June 2014, he induced 10 investors to provide funds for investments in his day trading activities. Furman falsely represented that he was a successful day trader with a long history in the capital markets and a proven track record of generating excellent returns. Almost one half of the funds raised were used for purposes unrelated to Furman's day trading in securities, mainly on his personal living expenses and loan repayments. Furman provided fraudulent documents to the investors which purported to be account statements showing significant returns on the investors' investments. Furman, in fact, lost almost all the monies deposited in the trading accounts. The sanctions imposed by the Commission included permanent market bans against Furman.
- [36] We did not consider either of the other two cited cases. While *Re Castano* involved a reciprocal order issued by the Commission in connection with a criminal conviction for fraud, the magnitude of the fraud in that case was considerably greater than in the case before us and the duration of the fraud considerably less. Castano also admitted to breaches of sections 34 and 61 of the Act. In *Re Davis*, the fraud involved a single investor. The amount of the fraud and its duration were significantly less than in this case.
- [37] Beiklik submitted that *Re Furman* can be distinguished from the case before us. He stated that the conduct of Furman was serious and involved a large number of victims. He said this suggested the respondent posed a significant ongoing risk to investors and the capital markets justifying the impositions of broad permanent market bans.
- [38] While *Re Furman* may differ from the case before us as to the number of victims, it involved circumstances where the fraudulent misconduct was exacerbated by the duration and complexity of the fraud. The circumstances in this case are analogous. The sophistication and duration of the fraud are material considerations in determining whether permanent market bans are appropriate.

B. Decision

- [39] Beiklik's fraud was in relation to securities as defined in the Act. His conduct was egregious. He knowingly deceived investors. Public confidence in our capital markets is dependent upon the honesty and integrity of those who participate in them. Beiklik's participation in the capital markets, given the misconduct which he has admitted, raise concerns for the protection of the investing public.
- [40] Beiklik carried out sophisticated frauds. His deceitful conduct was ongoing over a period of years. In the case of investor L, it continued for five years and in the case of investors C and S, three years. The complexity of the fraud and its duration show that Beiklik poses a significant ongoing risk to investors and the capital markets in British Columbia. He is ill suited to act as a director or officer of, or as an advisor to, any public or private issuers going forward. Permanent bans are necessary to ensure he does not engage in similar conduct in the future.
- [41] We will grant an exception to the trading ban to permit Beiklik to trade or purchase securities for his own account for retirement savings purposes through a registrant if he gives the registrant a copy of the decision. We do not believe that Beiklik's involvement in such limited trading activities will pose a risk to investors or the capital markets.
- [42] Beiklik has requested an exception to the director and officer ban to permit him to act as a general manager of an issuer. Having considered Beiklik's circumstances, we will grant an exception to the director and officer ban to permit Beiklik to act as an assistant manager and store manager of the drug store owned by his Current Employer.
- [43] However, we are not prepared to grant a general exemption to permit him to act as a general manager of an issuer. The authority and duties associated with the position of general manager can vary greatly and will depend upon a variety of factors including the type of issuer, its size and its organizational structure. Should Beiklik receive an offer of employment to act as a general manager of another issuer, he will need to apply under section 171 of the Act, for a variation to this order.
- [44] Beiklik has also asked that this order only be published on the Commission website.
- [45] It is well established that general deterrence has a proper role to play in determining whether to make orders in the public interest. See *Re Cartaway Resource Corp.* 2004 SCC 26. Sanctions serve as a general deterrent by demonstrating to potential wrongdoers the consequences of misconduct. Publication of Commission sanction decisions furthers their impact as a general deterrent. Reciprocal orders are generally published on the Commission website and distributed by the Commission through various legal reporting services. Beiklik has not made any submissions as to why, in this case, the public interest in general deterrence is outweighed by other considerations. In these circumstances, we will not restrict the publication of this order.
- [46] Considering the evidence in this case and applying the various *Eron* factors, we find that permanent market prohibitions against Beiklik with the exceptions noted above are appropriate and required in the public interest.

VI. Orders

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

1. under section 161(1)(d)(i), Beiklik resign from any position he holds as a director or officer of an issuer or registrant except that he may act as an assistant manager and store manager of the drug store owned by his Current Employer;
2. Beiklik is permanently prohibited:
 - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except Beiklik may trade and purchase securities or exchange contracts in one RRSP account through a registered dealer, if he gives the registered dealer a copy of this decision;
 - (ii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant, except that he may act as an assistant manager and store manager of the drug store owned by his Current Employer;
 - (iii) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
 - (iv) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and
 - (v) under section 161(1)(d)(v), from engaging in investor relations activities.

July 14, 2020

For the Commission:

Judith Downes
Commissioner

Deborah Abbey
Commissioner