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

Citation: Re Bezzaz Holdings, 2020 BCSECCOM 263 Date: 20200716

Bezzaz Holdings Group Ltd. dba BGI Canada and BGI Investment, Nexus Global Trading Ltd. dba Nexus Distribution Group, Todd Norman John Bezzasso, Wei Kai Liao, also known as Kevin Liao

Panel	George C. Glover, Jr.	Commissioner
	Audrey T. Ho	Commissioner
Hearing date	June 19, 2020	
Decision date	July 16, 2020	
Appearing		
Deborah Flood Mila Pivnenko Isaac Filate	For the Executive Director	
Leah Shepherd	For Wei Kai Liao	

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, 1996, c. 418[1] (Act). The findings (Findings) of the panel[2] on liability made on November 21, 2019 (2019 BCSECCOM 415) are part of this Decision.

[2] We found that:

(a) each of Todd Bezzasso (Bezzasso), Bezzaz Holdings Group Ltd. (Holdings) and Nexus Global Trading Ltd. (Nexus) contravened section 57(b) of the Act with respect to 158 investments by 85 investors for aggregate proceeds of $5,020,781;

(b) Wei Kai Liao (Liao) contravened section 57(b) of the Act with respect to one investment by one investor for aggregate proceeds of US$37,887.73 (equivalent to approximately Cdn$50,000);

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[1] The Findings in this matter were issued on November 19, 2019, prior to the proclamation of the *Securities Amendment Act, 2019*. In this matter, the panel did not find it necessary to consider the application of the amendments to the sanctions provisions in sections 161(1) and 162 of the Act enacted by the *Securities Amendment Act, 2019* and we have imposed sanctions based on the Act as it was on the date of the issuance of the Findings.

[2] Vice Chair Nigel Cave was an original member of the panel but left the Commission before the hearing on sanctions commenced. He took no part in the sanctions decision.

(c) Liao contravened section 34(a) of the Act with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059;

(d) Liao contravened section 34(b) of the Act with respect to 12 investors who made a total of 22 trades in securities for aggregate proceeds of $998,388; and

(e) Bezzasso was liable under section 168.2 of the Act with respect to each of Holdings' and Nexus' contraventions of section 57(b).

[3] The executive director and Liao provided written and oral submissions on the appropriate sanctions in this case. Bezzasso, Holdings and Nexus did not make any submissions on sanctions and did not attend the oral hearing on sanctions.

II. Position of the parties

[4] The executive director sought the following sanctions in this case:

(a) permanent orders under sections 161(1)(b)(ii) and 161(1)(d)(i), (ii), (iii), (iv) and (v) against Bezzasso, permanent orders under sections 161(1)(b)(ii) and 161(1)(d)(iii), (iv) and (v) against Liao, and permanent orders under sections 161(1)(b)(ii) and 161(1)(d)(v) against Holdings and Nexus;

(b) a $1,619,463 order under section 161(1)(g) against Bezzasso, Holdings and Nexus, jointly and severally, and a $68,530 order under section 161(1)(g) against Liao; and

(c) administrative penalties under section 162 in the amount of $5.5 million against Bezzasso and $200,000 against Liao.

[5] Liao submitted that the sanctions proposed by the executive director regarding his misconduct were grossly disproportionate and unduly punitive. Liao submitted that a range of possible market bans, administrative penalties and section 161(1)(g) orders ranging up to a five year market ban, an administrative penalty of $20,000 to $40,000 and a section 161(1)(g) order between $0 and $5,000 were appropriate. Liao further submitted, in the alternative, that permanent market bans would be appropriate if the administrative penalty imposed by the Commission is in the range of $10,000 to $20,000. Finally, Liao requested that any market bans include a carve out to allow him to trade and purchase securities for his own account through a registrant.

III. Analysis

A. Factors

[6] 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.

[7] 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:
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> - 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 to Bezzasso, Holdings and Nexus

Seriousness of the conduct

[8] This Commission has repeatedly found that fraud is the most serious misconduct under the Act. As noted in *Manna Trading Corp Ltd. (Re)*, 2009 BCSECCOM 595, "nothing strikes more viciously at the integrity of our capital markets than fraud". Bezzasso, Holdings and Nexus have been found liable for that misconduct.

[9] The fraud in this case was a Ponzi scheme which raised over $5 million from 85 investors who made a total of 158 investments. The scope of the fraudulent conduct of Bezzasso, Holdings and Nexus in terms of the number of investors, the amount of money raised from investors and the extent of the deceit visited on investors was broad and substantial.

[10] While some of the funds raised from investors were likely used to fund various businesses promoted by Bezzasso and some revenue from the various businesses and product sales may have flowed back to investors, the failure of Bezzasso, Holdings and Nexus to maintain proper or indeed any financial records, the co-mingling of investor and other funds and multiple transfers among various bank accounts made it impossible to trace the exact flow of investor funds and business revenues.

[11] Bezzasso, Holdings and Nexus, both directly and through finders such as Liao, provided false information to existing and prospective investors about the use of investor funds, the financial and development status of their various businesses and products and their prospects for future revenues and profits. Bezzasso also lied repeatedly about the reasons for non-payments and delayed payments of amounts owing to investors.

[12] As set out in the Findings, Bezzasso, Holdings and Nexus were involved in a common enterprise controlled by Bezzasso, and Holdings and Nexus served as alter egos of Bezzasso. Bezzasso was the controlling mind and management of Holdings and Nexus and, as a result, under section 168.2 of the Act, Bezzasso was also found to have committed the frauds of Holdings and Nexus.

Enrichment and Harm to investors

[13] The harm to investors in this case is significant.

[14] Like all Ponzi schemes, some of the money raised from investors was paid to the investors as purported returns on their investments. The financial harm was suffered disproportionately by later investors, many of whom lost all of their invested funds. Of the total of approximately $5 million invested, approximately $3.4 million was repaid to the investors. The net amount of the enrichment of Bezzasso, Holdings and Nexus was $1,619,463.

[15] In addition to the direct financial loss of their investments, we heard testimony from a number of investors who were persuaded to withdraw funds from other investments and for other purposes to invest in Bezzasso's fraudulent scheme. For many investors, much or all of these funds were lost. Other investors testified to the trauma of their experience and their ongoing distrust of investing and reluctance to trust advisors.

Damage done to the integrity of the market

[16] Fraud violates the fundamental investor protection objective of the Act. Fraud deters investors from reliance on the honesty and integrity of the markets. Investors fear that their investments will not be used in accordance with promises made to them. The fraud of any person who raises capital from investors impacts on the trust that potential investors may have in other honest and credible capital raisers. The blatant and extensive fraud committed by Bezzasso, Holdings and Nexus damaged the integrity of the capital markets well beyond their immediate victims.

Aggravating and mitigating factors

[17] There are no mitigating factors with respect to Bezzasso, Holdings or Nexus.

[18] An aggravating factor regarding Bezzasso, Holdings and Nexus is their wholesale disregard of their obligation to make and retain proper business records. As has been reinforced by new provisions in the *Securities Amendment Act, 2019*, proper record keeping is a necessity for those who raise funds in the capital markets. If proper records had been made and retained, it would have been obvious that revenues from the businesses and products within the Bezzasso group of companies would have fallen far

short of amounts needed to meet the promised returns to investors. This shortfall would have made it obvious that additional funds would be essential to meet promised returns to investors. Bezzasso, Holdings and Nexus maintained their fraudulent scheme for many months by diverting new investments to fund returns to existing investors - a classic Ponzi scheme.

General and specific deterrence

[19] It is a well-established principle when considering what sanctions are appropriate and in the public interest, that the specific sanctions ordered under the Act must be sufficient to deter both the respondents and others from perpetrating or repeating breaches of securities regulation. This is an essential element of protecting the public interest.

[20] The fraudulent misconduct of Bezzasso, Holdings and Nexus was deliberate, blatant and unrepentant. Further, these respondents took no material part in the proceedings leading up to this sanctions phase.

[21] While the imposition of permanent bans must be proportionate and take into consideration the impact on the respondents in their specific circumstances, in this case, permanent bans are appropriate for both specific and general deterrence. They are also proportionate to the gravity of the misconduct of Bezzasso, Holdings and Nexus.

Previous orders

[22] The executive director directed us to two previous decisions of this Commission for guidance on the appropriate sanctions against Bezzasso, Holdings and Nexus for their fraudulent misconduct.

[23] In *Re Oei*, 2018 BCSECCOM 231 (*Oei*), the respondent raised approximately $5 million from investors in a fraudulent scheme. The panel in that case considered the seriousness of the misconduct, the enrichment of the respondent, significant harm to investors and to the integrity of the markets and failure to keep proper records. In the *Oei* matter, the panel ordered against the respondent permanent market bans, an administrative penalty of $4.5 million and a section 161(1)(g) payment to the Commission of approximately $3 million, being the difference between the amounts fraudulently raised from investors and the amounts repaid to investors.

[24] In *Re Williams*, 2016 BCSECCOM 283 (*Williams*), the respondent raised approximately $12 million in a fraudulent Ponzi scheme. A portion of these funds was paid over to persons with a history of serious securities regulatory or criminal misconduct. The respondent was a former registrant and was also found to have breached sections 34 and 61 of the Act. The panel in that case ordered permanent market bans against the respondent, an administrative penalty of $15 million and a section 161(1)(g) payment to the Commission of $6.8 million, being approximately the difference between the amounts fraudulently raised from investors and the amounts repaid to investors.

C. Appropriate Orders Regarding Bezzasso, Holdings and Nexus

Market prohibitions

[25] Bezzasso, directly and through his alter egos, Holdings and Nexus, was the mastermind of a $5 million fraudulent Ponzi scheme. Bezzasso perpetuated the duration and scope of the scheme by lying to investors about the use of the proceeds of their investments, making false promises regarding repayments of principal and interest and fabricating excuses for non-payment or delayed payment of amounts owing to investors. The failure of Bezzasso, Holdings and Nexus to make and maintain financial records also contributed to the lack of meaningful communication to investors of the real status of the businesses and products and obfuscated the diversion of a significant proportion of investors' funds to make payments to other investors.

[26] Bezzasso presents a serious threat to the integrity of the capital markets. It is in the public interest to prohibit permanently Bezzasso's ability to continue to trade in or purchase securities or exchange contracts, including reliance on any exemptions as outlined in section 161(1)(c), to act as a registrant or promoter, to act in a management or consultative capacity in connection with activities in the capital markets or to engage in investor relations activities. Bezzasso's fraudulent conduct and disregard for the interests of investors make him wholly unqualified to act as a director or officer of any issuer or registrant.

[27] Bezzasso was at all relevant times the sole officer and director of Holdings and Nexus, was their mind and management and they are his alter egos. Bezzasso authorized, permitted and acquiesced in the fraudulent conduct of Holdings and Nexus. As such, permanent market bans must be ordered against Holdings and Nexus to protect the public interest.

[28] Following the direction of the British Columbia Court of Appeal in *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149 (*Davis*), the panel has considered whether permanent market bans are appropriate after considering Bezzasso's personal circumstances. Bezzasso has never been registered under the Act and has not provided any submissions or evidence that anything other than permanent market bans would be appropriate, given his circumstances. His misconduct was egregious and the public interest warrants permanent market bans. As a result, we find that permanent bans are appropriate and proportionate in this case.

Section 161(1)(g) Orders

[29] Section 161(1)(g) states that the Commission, after a hearing, may order:

> if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.

[30] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207 (*Poonian*), adopted a two-step approach from *Re SPYru Inc.*, 2015 BCSECCOM 452, to considering orders under section 161(1)(g):

> [144] I agree with and adopt the two-step approach identified by Vice Chair Cave in *SPYru* at paras. 131-32:
>
> > [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
> >
> > [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[31] The Court of Appeal in *Poonian* summarized the following principles that are relevant to section 161(1)(g) orders:

1. The purpose of s. 161(1)(g) is to deter persons from contravening the *Act* by removing the incentive to contravene, i.e., by ensuring the person does not retain the "benefit" of their wrongdoing.

2. The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the *Act*, such as the claims process set up under Part 3 of the *Securities Regulation* or the s. 157 compliance proceedings in the *Act*.

3. There is no "profit" notion, and the "amount obtained" does not require the Commission to allow for deductions of expenses, costs, or amounts other persons paid to the Commission. It does, however, permit deductions for amounts returned to the victim(s).

4. The "amount obtained" must be obtained *by that respondent, directly or indirectly*, as a result of the failure to comply with or contravention of the *Act*. This generally prohibits the making of a joint and several order because such an order would require someone to pay an amount that person did not obtain as a result of that person's contravention.

5. However, a joint and several order may be made where the parties being held jointly and severally liable are under the direction and control of the contravener such that, in fact, the contravener obtained those amounts *indirectly*. Non-exhaustive examples include use of a corporate *alter ego*, use of other persons' accounts, or use of other persons as nominee recipients.

[32] Finally, the Court of Appeal in *Poonian* approved an approach to determining the amounts obtained, directly or indirectly, by a respondent that requires the executive director to provide evidence of an "approximate" amount, following which the burden of proof switches to the respondent to disprove the reasonableness of this number.

[33] The executive director sought a section 161(1)(g) order against Bezzasso, Bezzaz and Nexus in the amount of $1,619,463, on a joint and several basis. This amount is the total of investors' funds raised for Bezzasso, Holdings and Nexus during the relevant period less the amounts repaid to investors.

[34] The first issue is whether a section 161(1)(g) order can be made.

[35] The purpose of section 161(1)(g) orders is to ensure that wrongdoers do not retain the "benefit" of their wrongdoing. The amount must have been obtained by that person, directly or indirectly.

[36] In the Findings, the panel found that investors invested $5,005,781 during the relevant period, which went directly from the investors into the accounts of Holdings and Nexus. It was then co-mingled and numerous transfers were made within and between various bank accounts of Holdings and Nexus. At all times, Bezzasso controlled transfers within and from the accounts of Holdings and Nexus.

[37] Due to the failure of Bezzasso, Holdings and Nexus to make and retain proper records of what was done with each investor's money and the multiple transfers of funds between and out of the bank accounts of Holdings and Nexus, it is not possible to apportion the $5,005,781 amount of investors' funds among Bezzasso, Holdings and Nexus, and to determine how much each of Bezzasso, Bezzaz and Nexus received "directly".

[38] However, as the panel found, Holdings and Nexus were Bezzasso's alter egos. Bezzasso controlled all the bank accounts of Holdings and Nexus and intermingled funds in those accounts. As for Holdings and Nexus, they co-mingled investors' funds and transferred funds back and forth between each other's bank accounts. Each company had the use of investors' funds transferred into their bank accounts even if those investors' funds were initially paid to the other company.

[39] Thus, Bezzasso, Holdings and Nexus benefitted jointly from invested funds flowing through the accounts of Holdings and Nexus, and jointly obtained the $5,005,781 directly or indirectly as a result of their fraudulent misconduct.

[40] The panel found that $3,401,318 was repaid to investors during the relevant period, thereby reducing the benefit obtained from the fraudulent misconduct of Bezzasso, Holdings and Nexus by that amount. The difference of $1,619,463 is the amount of benefit that Bezzasso, Holdings and Nexus obtained from their misconduct. Therefore, a joint and several section 161(1)(g) order against Bezzasso, Holdings and Nexus in the amount of $1,619,463 is available in this case.

[41] The second issue is whether it is the public interest to issue section 161(1)(g) orders against Bezzasso, Holdings and Nexus, taking into account specific and general deterrence.

[42] Bezzasso, Holdings and Nexus engaged in a deliberate and extensive fraud which deprived investors of a large portion of their invested funds. Their conduct was marked by multiple deceits, false promises, obfuscations and failures to make and retain proper records. There are no mitigating factors that would militate against issuing section 161(1)(g) orders against Bezzasso, Holdings and Nexus. The public interest requires as both specific and general deterrence that Bezzasso, Holdings and Nexus be required jointly and severally to pay to the Commission under section 161(1)(g) the full amount of the funds invested pursuant to their fraud less the amounts repaid to investors - i.e. $1,619,463. These orders are not punitive but rather are proportionate to the egregious fraud perpetrated.

Administrative Penalties

[43] The executive director submitted that the appropriate administrative penalty to be imposed on Bezzasso under section 162 is $5.5 million, being somewhat more than the amount of investors' funds obtained by Bezzasso, Holdings and Nexus during the relevant period.

[44] Although Bezzasso made no submissions and there are no mitigating factors in his favour, the executive director also relied on the aggravating factors of Bezzasso's poor record keeping and his masterminding of a Ponzi scheme.

[45] The executive director cited two previous cases which he says are comparable: in *Oei*, the respondent perpetrated a $5 million fraud and the panel in that case ordered a $4.5 million administrative penalty; in *Williams*, the respondent perpetrated a $12 million fraud and the panel in that case ordered a $15 million administrative penalty.

[46] In both *Oei* and *Williams*, there were serious aggravating factors. In *Williams*, the respondent also breached sections 34 and 61, was a former registrant and redirected a substantial portion of investors' funds to entities controlled by persons with a significant history of serious securities and criminal misconduct. The circumstances in *Oei* were more similar to those in the present matter even though there were no breaches of section 34. In *Oei*, the respondent's fraud was in a similar range as that of Bezzasso (approximately $5 million) and an aggravating factor was Oei's failure to keep proper records. Oei returned approximately $3 million to investors, a similar amount to that returned to investors by Bezzasso, Holdings and Nexus.

[47] Taking all of the factors specific to Bezzasso, the public interest in specific and general deterrence and section 162 orders in comparable cases, we find that an order under section 162 against Bezzasso in the amount of $4.5 million is appropriate, proportionate and meets the need to send a clear message of specific and general deterrence.

[48] The executive director did not seek section 162 administrative penalties against Holdings or Nexus. The evidence before the panel was that both companies were either dissolved or in the process of dissolution, had no assets and no operations. They were alter egos of Bezzasso who was the mind and management of both companies. We agree with the submission of the executive director that there is little public interest in issuing section

162 orders to Holdings and Nexus and we decline to make section 162 orders against them.

D. Appropriate Orders Regarding Liao

Market prohibitions

[49] In the amended notice of hearing in this matter, the executive director alleged that Liao had contravened section 57(b) with respect to 14 investors who made a total of 15 trades in securities for aggregate proceeds of $382,000 and alleged that Liao had breached sections 34(a) and 34(b) with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059.

[50] We found that Liao contravened section 57(b) with respect to one investment by one investor for aggregate proceeds of US$37,888 (equivalent to approximately Cdn$50,000.) He also contravened section 34(a) (unregistered trading) with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059 and section 34(b) (unregistered advising) with respect to 12 investors who made a total of 22 trades in securities for aggregate proceeds of $998,388.

[51] While Liao's fraud finding was established for only one of the 14 investors and in respect of only one of the 15 investments alleged by the executive director, the panel found that, during the period of June 2015 to December 2, 2015, Liao had actual knowledge of Holdings' cash flow issues and investor repayment problems. Non-disclosure of important facts may constitute fraud "by other fraudulent means" (*Re Lathigee*, 2014 BCSECCOM 264) (*Lathigee*). In *Lathigee*, the panel set out a three part test for determining whether the non-disclosure of certain facts constitutes a prohibited act. Those tests are:

(a) whether the non- disclosed information is an important fact (one that would affect a reasonable investor's investment decision);

(b) whether the respondent failed to disclose the important information; and

(c) if the respondent failed to disclose the important fact, whether that was dishonest.

[52] As we stated in the Findings (at paras. 203 and 216), the first two elements in *Lathigee* were, in essence, acknowledged by Liao and were not in dispute. The non-disclosures of the cash-flow issues and problems Holdings was having paying investors were clearly misrepresentations to investors. However, the panel found that the third element of fraud by non-disclosure of important facts - i.e. was the non-disclosure dishonest - was only proven on a balance of probabilities for one investment by one investor after November 3, 2015. On that date, Liao knew that payments promised to investors who invested after that date would not receive timely returns promised on their investments. Liao knew of the risk of investor deprivation which resulted in actual deprivation.

[53] While there were neither allegations nor findings of liability for misrepresentations against Liao, Liao's failure to disclose important facts to investors over an extended period of time is part of the factual circumstances relevant to our analysis of the appropriate sanctions for his contraventions of the Act.

[54] Liao submitted that the permanent market bans suggested by the executive director were unnecessary in the public interest and were disproportionate to Liao's misconduct. Liao suggested that five year market bans would be sufficient to meet the goals of general and specific deterrence. He pointed to his cooperation in the Commission's investigation, absence of past misconduct, raising no significant risk to the capital markets, his inexperience in securities markets and the impact that the finding of fraud will have on his future livelihood.

[55] Liao also focused on the fact that fraud was only proven with respect to a single investment of a single investor, that the basis of his fraud differed and was less serious than that of Bezzasso, his belief that the businesses and products of Bezzasso and his companies would ultimately be successful, his success in obtaining repayments for some investors, his personal investments in Holdings along with his father's investment and the fact that he did not misappropriate investors' funds.

[56] Liao also submitted that his fraud contravention as a finder who failed to disclose important information to investors would in itself send a strong message to other finders as a matter of general deterrence.

[57] The executive director submitted that permanent market bans are appropriate against Liao. The finding of fraud against even one investor and even a relatively small deprivation due to fraud warrant permanent bans. Liao solicited and advised numerous investors over a significant period of time without fulfilling the fundament requirements of either registration or exemption. Many of those whom he solicited and advised were insurance clients of Liao and trusted and relied on him. Liao promoted himself as a "financial advisor". Several investors who testified referred to Liao as their "financial advisor".

[58] The executive director referred to three previous decisions of this Commission involving relatively small frauds and, in some cases, breaches of section 34[3]. In each of these cases, permanent bans were imposed. There were aggravating factors in each of these cases including conflicts of interest, history of regulatory misconduct and misappropriating investors' funds for personal purposes. The executive director also referred to *Re SBC Financial Group Inc*., 2018 BCSECCOM 267 (*Bakshi*), a case involving breaches of sections 34 and 61 but not section 57(b). A 10 year ban was imposed on Bakshi in that case.

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[3] *Re Zhong*, 2015 BCSECCOM 383 (*Zhong*)
Re Rush, 2016 BCSECCOM 55 (*Rush*)
Re Lau, 2016 BCSECCOM 320 (*Lau*)

[59] In this case, Liao committed a serious act of fraud on an investor who was an insurance client. Liao solicited this investor to reinvest in Holdings while he knew that Bezzasso did not intend to make the promised payments in a timely manner. He did not advise her, as he did to other investors, that Bezzasso intended not to make any payments to investors until at least the end of 2015. In addition, Liao, despite being a registered insurance agent and acknowledging that he was aware of securities regulations, failed to make any attempt to become registered for trading or advising - or find available exemptions from registration.

[60] In previous cases, this Commission has imposed permanent market bans on respondents who have engaged in similar misconduct to that of Liao. This is unsurprising, given that fraud is the most serious misconduct under the Act. We agree with Liao, however, that his misconduct was less serious than that of Bezzasso, for the reasons stated in paragraph 55.

[61] Liao was a finder: he did not directly benefit from the misappropriation of investors' funds but rather received commissions and other compensation as a finder. He had no knowledge during the relevant time of the Ponzi scheme perpetrated by Bezzasso. Liao testified that he believed that the businesses and products promoted by Bezzasso would ultimately be successful and that cash flow shortfalls were normal for start-up, developmental businesses. We have also considered, as required by *Davis*, the personal circumstances of Liao. Liao is a relatively young man who has demonstrated the ability to provide insurance services to his clients. He is not at present engaged in and, according to his counsel, has no intention to engage in securities market activities in the future.

[62] Taking all of these factors and circumstances into account, and in the public interest, we find it appropriate to order broad market bans against Liao, including reliance on any exemptions as outlined in section 161(1)(c), for the later of 15 years and when he has paid the full amounts of the monetary sanctions ordered under sections 161(1)(g) and 162.

[63] As requested by Liao, we permit him to purchase securities or exchange contracts for his own account through a registered dealer, provided that a copy of this Decision is provided to the registered dealer.

Section 161(1)(g) Order

[64] The executive director has submitted that Liao be ordered to pay to the Commission $68,530 under section 161(1)(g).

[65] Liao did not receive directly any of the funds invested by investors in Holdings and Nexus. Liao was entitled to receive commissions (ranging from 3% to 10%) on amounts invested by investors introduced to Bezzasso and his companies by Liao. He agreed to defer certain amounts of commissions at the request of Bezzasso. Liao also received bonuses and "liver" fees, being funds to "wine and dine" investors and prospective investors. Liao was also repaid $25,250 as returns on his $30,000 investment in

Bezzasso's companies. He also made a further investment of $20,000 in Bezzasso's companies and made a $30,000 loan to Bezzasso.

[66] In total, during the relevant period, Liao was paid $123,280 from the bank accounts of Holdings and Nexus.

[67] As noted, the failure of Bezzasso, Holdings and Nexus to make or retain any proper financial records forced the executive director to rely almost entirely on bank records which did not specify the purpose of many of the deposits, withdrawals and transfers in and from the accounts.

[68] Liao did not dispute that he received commissions, bonuses and "liver fees" for finding investors for Bezzasso's scheme. We have found that in doing so, Liao contravened multiple sections of the Act. Therefore, the commissions, bonuses and "liver fees" that Liao received from Bezzasso and his companies were amounts Liao obtained as a result of his contraventions of the Act.

[69] An estimate of the commissions earned by Liao by his unregistered trading would be a minimum of 3% of $1,616,059, i.e. $48,000. The evidence showed that amounts obtained by Liao were $123,280; much greater than $48,000 as the commission rate was up to 10% and Liao was paid bonuses and "liver fees" in addition to his commissions.

[70] The section 161(1)(g) order sought by the executive director was calculated by deducting from the $123,280 received by Liao from Bezzasso and his companies the amount of $4,750 owed to Liao before the start of the relevant period, Liao's $20,000 investment and $30,000 loan to come up with $68,530 as the net amount obtained by Liao through his misconduct. These deductions were most favourable to Liao.

[71] This calculation and the principles behind it follow the guidelines in *Poonian* and are reasonable in the circumstances and in the public interest.

[72] Liao submitted that a section 161(1)(g) order for payment of $68,530 would be disproportionate as it would be unduly harsh and unnecessary to protect the public interest. Liao submitted that the executive director's calculation was based on unproven assumptions. He suggested that any section 161(1)(g) order should be limited to the commission that he was entitled to under the $50,000 investment for which he was found to have acted fraudulently.

[73] In *Poonian*, the Court of Appeal approved an approach to determine the amounts obtained directly or indirectly by the misconduct of a respondent which requires the executive director to provide evidence of the approximate amount whereupon the burden of proof shifts to the respondent who, presumably, has direct knowledge of their enrichment, to disprove the reasonableness of the executive director's calculation.

[74] Liao did not provide any credible alternative calculation of the amount for an appropriate order under section 161(1)(g). Certainly, limiting the calculation to the investment that led to the finding of fraud against Liao would be wholly inappropriate as it would ignore the amounts obtained by Liao through his unregistered trading and advising. Liao also did not provide any evidence to show that the amount he obtained as a result of his misconduct was less than $68,530.

[75] We find that the appropriate order in the public interest under section 161(1)(g) against Liao is $68,530.

Administrative Penalty

[76] The executive director seeks a $200,000 administrative penalty under section 162 against Liao.

[77] The executive director submitted that *Zhong*, *Rush*, *Lau* and *Bakshi* provide guidance from previous decisions of this Commission in comparable but not identical circumstances. The panel in *Zhong* ordered a $250,000 administrative penalty in a case where the panel found section 50(1)(a), section 57(b) and section 34 misconduct. The amount of the fraud in *Zhong* was $400,000. In *Rush*, the panel ordered a $200,000 administrative penalty in a case where the panel found both section 57(b) and section 34 misconduct. The amount of the fraud in *Rush* was $73,000 ($60,000 after deducting repayments to investors). In *Lau*, the panel ordered a $85,000 administrative penalty in a case where the panel found section 57(b) and section 168.1 misconduct. The amount of the fraud in *Lau* was $50,000 ($37,000 after deducting repayments to investors). In *Bakshi*, the panel ordered a $100,000 administrative penalty where it found section 34 misconduct of $2.6 million and section 61 misconduct of $1.5 million. There was no fraud finding in that case because the panel found that the conduct alleged to constitute fraud did not involve a "security" under the Act, but the panel made it clear that Bakshi engaged in a sophisticated level of deceit against several clients, and Bakshi was personally enriched by $380,000. In each of these cases there were other factors not present in this case, as, indeed, there are factors in the present case that differentiate it from those previous cases.

[78] Liao submitted that any administrative penalty should be much lower than $200,000, suggesting that a $10,000 to $20,000 administrative penalty would be reasonable. Liao says that the $250,000 administrative penalty in *Zhong* is not comparable as Zhong carried out a deliberate scheme to deceive investors and made prohibited representations and concealed risks. Liao says *Rush* is not comparable to the present case as the respondents in that case engaged in multiple acts of deceit over a significant period of time and engaged in impersonating one of the respondents to cover up a deceit. Liao says *Rush* is also not comparable to the present case as the respondents in that case used investor funds to pay personal expenses. Liao says that *Lau* is not comparable to the present case as Lau took advantage of a vulnerable senior and diverted the investor's funds to pay a personal debt. Liao says that *Bakshi* is not comparable to the present case as Bakshi engaged in multiple section 34 and 61 contraventions over a four year period and funds raised were used for Bakshi's personal purposes.

[79] Liao also relies on *Re Waters*, 2014 BCSECCOM 369 (*Waters*), a case that involved contraventions of sections 34(a) (unregistered trading) and 61(1)(a) (failure to provide a prospectus) with respect to 45 investors and proceeds of $313,000. The panel in that case imposed a $20,000 administrative penalty. We note that there was no fraud finding in *Waters* and no finding of unregistered advising. The respondent in *Waters* was a former registrant and had a history of past securities misconduct.

[80] We find that the $20,000 administrative penalty in *Waters* and the $85,000 administrative penalty in *Lau* are not analogous with the conduct before us in this matter, as there was no finding of fraud in *Waters* and no finding of unregistered trading or advising in *Lau*. We also find that the administrative penalties of $200,000 and $250,000 in *Zhong* and *Rush* are inappropriate for the conduct in this matter, as the misconduct in those cases (including diverting investors' funds to personal uses) was more serious than in the present case. We find *Bakshi* to be the most comparable of all the cases cited as it involved deceit (even though there was no finding of fraud), and the amounts raised through the other misconduct were of sufficiently proximate magnitude to be comparable.

[81] We have found that Liao engaged in unregistered trading and advising, and engaged in fraudulent conduct. While he might not have been aware of Bezzasso's scheme during the relevant period, and appeared to have the naïve belief that Holdings and Nexus would ultimately be successful, Liao was at the same time aware of significant important information that was not disclosed to investors or prospective investors. Further, unlike some circumstances before other panels, Liao did not use investor funds for personal use. Considering all these factors, the submissions of the parties, as well as Liao's personal circumstances, we find it appropriate and in the public interest to order a $100,000 administrative penalty against Liao under section 162 of the Act.

IV. Orders

[82] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

Bezzasso

1. under section 161(1)(d)(i), Bezzasso resign any position he holds as a director or officer of an issuer or registrant;

2. Bezzasso is permanently prohibited:

   (a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

   (b) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;

   (c) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

   (d) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

(e) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

(f) under section 161(1)(d)(v), from engaging in investor relations activities;

3. Bezzasso pay to the Commission $1,619,563, jointly and severally with Holdings and Nexus, pursuant to section 161(1)(g) of the Act; and

4. Bezzasso pay to the Commission an administrative penalty of $4.5 million under section 162 of the Act;

Holdings and Nexus

6. Holdings and Nexus are permanently prohibited:

(a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts; and

(b) under section 161(1)(d)(v), from engaging in investor relations activities; and

7. Holdings and Nexus pay to the Commission $1,619,563, jointly and severally with each other and with Bezzasso, pursuant to section 161(1)(g) of the Act;

Liao

8. Liao is prohibited under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision, until the later of 15 years from the date of this Decision and the date upon which Liao has made the payments to the Commission as set out in sub-paragraphs 10 and 11 below; and

9. Liao is prohibited:

(a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of this Decision;

(b) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

(c) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

(d) under section 161(1)(d)(v), from engaging in investor relations activities;

until the later of 15 years from the date of this Decision and the date upon which Liao has made the payments to the Commission as set out in sub-paragraphs 10 and 11 below.

10. Liao pay to the Commission $68,530, pursuant to section 161(1)(g) of the Act; and

11. Liao pay to the Commission an administrative penalty of $100,000 under section 162 of the Act.

July 16, 2020

For the Commission

George C. Glover, Jr.
Commissioner

Audrey T. Ho
Commissioner