

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Pasquill, 2020 BCSECCOM 457

Date: 20201105

Earle Douglas Pasquill

Panel	George C. Glover, Jr.	Commissioner
	Deborah Armour, QC	Commissioner
	Marion Shaw	Commissioner

Submissions Completed July 27, 2020

Decision date November 5, 2020

Appearing

William Roberts For the Executive Director
Laura Bevan

Daniel Yaverbaum For Earle Douglas Pasquill
John Sullivan

Decision

I. Introduction

- [1] Earle Pasquill (Applicant) applies under section 171 of the *Securities Act*, RSBC 1996, c. 418 (Act), for an order to revoke the Commission’s preservation order COR #2020/028 (Preservation Order).
- [2] The Preservation Order relates to property held by the Applicant in two life income accounts (LIF Accounts) at a Canadian wealth management firm (Applicant’s Wealth Management Firm).
- [3] The executive director opposes this application.
- [4] The Applicant and executive director agreed to proceed by way of written submissions.

II. Background

- [5] In a notice of hearing issued March 1, 2012 (2012 BCSECCOM 66), the executive director alleged that the Applicant, Michael Patrick Lathigee, FIC Real Estate Projects Ltd., FIC Foreclosure Fund Ltd. (FIC Foreclosure), and WBIC Canada Ltd. (collectively Respondents) contravened the Act by perpetrating a fraud, contrary to section 57(b) of the Act.

- [6] The Applicant and Lathigee were the acting and directing minds of a group of companies called the Freedom Investment Club (FIC Group).
- [7] In 2014, a panel of the commission (Panel) found (*Lathigee (Re)*, 2014 BCSECCOM 264 (Liability Decision)) that the Respondents perpetrated frauds, contrary to section 57(b) of the Act, when they:
- a) raised \$21.7 million from 698 investors without disclosing to those investors the important fact of FIC Group's financial condition; and
 - b) raised \$9.9 million from 331 investors in FIC Foreclosure for the purpose of investing in foreclosure properties and instead used most of the funds to make unsecured loans to other FIC Group companies.
- [8] The Panel issued the sanctions decision in this matter in 2015 (*Lathigee, Pasquill and others*, 2015 BCSECCOM 78 (Sanctions Decision)).
- [9] In paragraph 58 of the Sanctions Decision, the Panel ordered that the Applicant be permanently banned from participating in the capital markets of British Columbia and ordered him to pay to the Commission:
- a) under section 161(1)(g) of the Act, jointly and severally with the other Respondents, \$21.7 million, being the total amount obtained, directly or indirectly, as a result of his contraventions of the Act; and
 - b) under section 162 of the Act, an administrative penalty of \$15 million.
- [10] The Applicant appealed the Commission order set out in paragraph 9(a) above to the British Columbia Court of Appeal. That appeal was dismissed in a decision which also considered another appeal from a Commission decision (*Poonian v. British Columbia Securities Commission*, 2017 BCCA 207).
- [11] On April 1, 2015, the Commission registered the Sanctions Decision with the Supreme Court of British Columbia pursuant to section 163 of the Act (Collections Proceeding).
- [12] The Commission conducted an examination in aid of execution of the Applicant in the Collections Proceeding on November 5, 2019. During that examination, the Applicant provided the Commission with copies of his statements from the LIF Accounts.
- [13] The LIF Accounts, the funds in which were originally derived from the Applicant's pension benefits, are a type of registered retirement income fund. The balance in the LIF Accounts as at April 30, 2020 was \$644,951.13.
- [14] According to an affidavit of the Applicant made May 25, 2020 (Applicant Affidavit), in 2020, the Applicant was receiving monthly draws from the LIF Accounts of \$6,575.94 before taxes.

[15] The Applicant Affidavit states that the Applicant's gross annual income is around \$95,000 and he pays around \$23,000 in income tax annually, resulting in net annual income of around \$72,000 derived from his LIF Accounts, the Canada Pension Plan and Old Age Security.

[16] The Applicant Affidavit states that his basic living expenses are around \$4,430 per month.

[17] The Applicant has not paid any amounts pursuant to the Sanctions Decision or the Collections Proceeding.

[18] The executive director applied, without notice to the Applicant, under section 164.04(4)(a) of the Act for the Preservation Order, restraining from disposition or transmission the property held by the Applicant in the LIF Accounts.

[19] The Preservation Order, granted on March 27, 2020, reads in part as follows:

The Commission, considering it to be in the public interest, orders under section 164.04(4)(a) of the Act that:

1. [The Applicant's Wealth Management Firm] is restrained from making dispositions or transmissions from the [LIF] Accounts or from any other accounts held in the name of Earle Pasquill, either singly or jointly with any other persons, and
2. Pasquill is restrained from making dispositions or transmissions from the [LIF] Accounts or from any other accounts held in his name at [the Applicant's Wealth Management Firm], either singly or jointly with any other persons.

[20] The executive director provided the Applicant with notice of the Preservation Order on the day it was granted, and with supporting materials on March 31, 2020.

[21] The findings of the Panel in the Liability Decision and the Sanctions Decision are not at issue.

III. Law

[22] At issue before the panel is the application of various sections of the Act, the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 (*COEA*), the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30 (*PBSA*) and the *Pension Benefits Standards Regulations*, B.C. Reg. 71/ 215 (*PBSR*) outlined below.

[23] The relevant provisions of the Act fall under Part 18.1 - Preservation Orders and Additional Collection Remedies. Section 164.03 in that part of the Act provides:

164.03 A remedy exercised under this Part does not limit any remedy otherwise available to the commission by law.

[24] Section 164.04 of the Act addresses preservation orders:

164.04

....

(2) The commission may make an order under subsection (4) in respect of a person if any of the following apply:

....

(c) the commission or the executive director proposes to make or has made an order under section 161, 162 or 162.04 in respect of the person;

....

(4) In the circumstances set out in subsection (2) or (3), the commission may make one or more of the following orders relating to the preservation, management or disposition of property or the whole or a portion of an interest in property:

(a) an order restraining the disposition or transmission of the property or the whole or the portion of the interest in property;

....

[25] Section 164.05 of the Act allows a preservation order to be made without notice:

164.05 (1) Subject to subsection (2), the commission may make a preservation order without notice to any person.

Subparagraph (2) deals with preservation orders in respect of a family member or third-party recipient and is therefore not relevant.

[26] Section 164.06 of the Act specifies notification requirements:

164.06 (1) Subject to subsection (3) of this section, if the commission makes a preservation order under section 164.05 (1) in respect of property of any person, the commission must, as soon as practicable, notify the person that an order has been made and provide the person with a copy of the order.

[27] Section 171 of the Act provides discretion to the Commission to revoke or vary a decision to issue a preservation order:

171 If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act,

another enactment or a former enactment, whether or not the decision has been filed under section 163.

[28] Section 163(1) of the Act provides:

163 (1) If the commission has made a decision under section 161 or 162 . . . the commission . . . may file the decision at any time in a Supreme Court registry by filing a certified copy of the decision.

[29] Section 71.3 of the *COEA* deals with enforcement against registered plans:

(1) In this section:

. . .

“enforcement process” means

- (a) attachment,
- (b) garnishment,
- (c) execution,
- (d) seizure, or
- (e) any other remedy or legal process to enforce payment of a debt;

. . . .

(2) Despite any other enactment, all property in a registered plan is exempt from any enforcement process.

(3) Subsection (2) does not apply

. . . .

(e) to an enforcement process arising from an order made under the *Securities Act*.

. . . .

(5) Subject to subsection (6), if a provision of this section is inconsistent or in conflict with a provision of another Act, the provision of this section prevails unless the other Act expressly provides that it, or a provision of it, applies despite this section.

(6) Nothing in this section makes any property in a registered plan subject to an enforcement process if that property would not, but for this section, be subject to an enforcement process.

[30] Section 70 of the *PBSA* prohibits the disposition or attachment of benefits, pension funds and money transferred under the *PBSA* except in certain circumstances:

70 (1) Subject to subsections (3) to (6), the following must not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment:

- (a) benefits;

(b) all or any portion of the pension fund;

(c) money transferred under [various sections of the *PBSA*]

....

[31] Section 4 of Schedule 2 of the *PBSR* addresses limitations on payments and transfers from life income funds:

4 (1) Money in this life income fund, including investment earnings, is for use in the provision of retirement income.

(2) Despite subsection (1), money may be paid or transferred from this life income fund in the following circumstances:

- (a) by way of a transfer to another life income fund on the applicable conditions set out in this addendum;
- (b) by way of a transfer to a locked-in retirement account;
- (c) by way of a transfer to an insurance company to purchase an annuity in accordance with section 7;
- (d) by way of a transfer to a pension plan if the plan text document of the plan allows the transfer;
- (e) in accordance with Part 4 of this addendum.

(3) Without limiting subsections (1) and (2) of this section and in accordance with section 70 of the Act, money in this life income fund must not be assigned, charged, alienated or anticipated and is exempt from execution, seizure or attachment.

IV. Position of the Parties, Analysis and Decision

[32] The Applicant takes the position that the Commission was barred from making the Preservation Order, since section 71.3(2) of the *COEA* provides that all property in a registered plan is exempt from any “enforcement process,” which, in his submission, includes a preservation order made under the Act.

[33] The Applicant also asserts that the Commission was barred from making the Preservation Order by operation of section 70 of the *PBSA* and section 4(3) of Schedule 2 to the *PBSR*, which provide that money in a LIF account is exempt from “execution, seizure or attachment.” In the Applicant’s submission, the Preservation Order – by executing on or seizing the LIF Accounts – contravenes those provisions. The Applicant says that for either or both of those reasons, the Preservation Order at issue before us is illegal.

A. Is a Preservation Order under the Act Barred by the COEA?

- [34] After considering the submissions of the parties, the first matter we must consider is whether a preservation order under the Act constitutes an “enforcement process,” as defined in section 71.3(1) of the *COEA*. In particular, we must determine whether a preservation order constitutes an attachment, garnishment, execution or seizure, such that a registered plan is exempt from it under section 71.3(2).
- [35] The only one of those terms defined in the *COEA* is execution. At section 47 of the *COEA* it states that the term execution “includes an order for sale of land under this Part”. As an inclusive definition dealing with the sale of land, this section is not helpful for our analysis.
- [36] While not specifically addressed by the parties in their submissions before us, it is established by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, that words in legislation are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the legislation, and with the intention of the legislature.
- [37] In order to find the grammatical and ordinary sense of the words “attachment”, “garnishment”, “execution” and “seizure”, we have made reference to the Oxford dictionary. For comparison purposes, we have used the same source for the definition of “preservation,” as it forms part of this analysis. *The Oxford English Reference Dictionary*, 2nd ed (1996) provides, in part, the following definitions of those words:
- Execution – “seizure of the property or person of debtor in default of payment, a judicial writ enforcing a judgment”
 - Seizure – “the act or an instance of [taking possession of by warrant or legal right, confiscate, impound]”
 - Attachment – “legal seizure”
 - Garnishment – “service notice on a person for the purpose of legally seizing money belonging to a debtor”
 - Preservation – “the act of [maintaining (a thing) in its existing state]”.
- [38] We find that in their grammatical and ordinary sense, there is implicit in each of the first four terms above, that constitute an “enforcement process” under the *COEA*, an action taken for the purpose of realizing on a judgment or similar instrument. In other words, each of those terms includes an action or step beyond the maintenance of the status quo. All of those processes provide for outcomes that are substantially different from a preservation order under the Act, which is intended specifically to preserve the existing state of affairs.
- [39] We find that the Preservation Order in and of itself does not constitute an “enforcement process” as contemplated by section 71.3(1) of the *COEA*. It merely restrains “dispositions or transmissions from the [LIF] Accounts or from any other accounts” held in the name of the Applicant at the Applicant’s Wealth Management Firm. The accounts remain the same. The beneficiaries remain the same, and the property held in the accounts remains the same. The Preservation Order does not purport to take any

enforcement steps, but rather preserves assets for future legitimate claimants. As a result, section 71.3(2) of the COEA, which would prohibit an enforcement process taken against property in a registered plan, is not engaged.

- [40] We turn next to consider whether, if the Preservation Order constitutes an “enforcement process”, it is saved by section 71.3(3)(e) of the *COEA*, which exempts from that prohibition, enforcement processes “arising under an order made under the *Securities Act*”.
- [41] On a plain reading of the *COEA*, applying the ordinary sense of the words in the context of the legislation, it is clear that any enforcement processes taken by the Commission are specifically exempted from the general prohibition in the *COEA* regarding enforcement against registered plans.
- [42] That interpretation of the *COEA* is supported by the context and circumstances of the recent amendments to that legislation. Section 71.3(3)(e) came into force on March 27, 2020 as part of a package of legislative amendments intended to strengthen the Commission’s powers (Bill 33-2019, *Securities Amendment Act, 2019*). The Applicant argues that one must resort to the *Hansard* record of the legislature’s proceedings with caution when engaging in statutory analysis. We agree. Nevertheless, a review of its contents can still be informative.
- [43] We reviewed relevant portions of the *Hansard*¹ record of the legislature’s debate surrounding the implementation of those amendments at the second reading of the bill. A review of that material confirms our conclusion that the clear legislative intent of the amendments to the *COEA* was to strengthen the Commission’s powers, including by specifically legislating that any enforcement process arising from an order issued under the Act falls outside the scope of the *COEA* and is effective against a registered plan.
- [44] The Applicant argued that because of the special status of registered plans containing assets derived from pensions, the legislature cannot have intended that such plans, including the LIF Accounts, would be subject to enforcement processes taken under the Act. We see no basis to make that distinction.
- [45] The Applicant submits that the provisions of the *PBSA* and the *PBSR* that prohibit execution, seizure or attachment of registered plans stand apart from the *COEA*, but section 71.3(5) of the *COEA* provides that, subject to subsection (6), section 71.3 prevails if it is inconsistent with another act, unless that other act expressly provides that it applies despite section 71.3. There is no reference to section 71.3 of the *COEA* in the provisions of the *PBSA* or *PBSR* cited by the Applicant. Accordingly, we find that the *COEA* prevails as intended by the legislature.

¹ British Columbia, Legislative Assembly, Hansard, Fourth Session, 41st Leg, 4th Sess, (28 October 2019)

- [46] The Applicant also argues that, in the case of conflict between the *COEA* and the *PBSA*, we should resort to the specific provision over the general. We agree. We find that section 71.3(3) of the *COEA* is the more specific provision, in that it speaks specifically to enforcement processes arising from an order made under the Act.
- [47] The final stopping point on the analysis under section 71.3 of the *COEA* is the application of subsection (6) of section 71.3. That provision states that nothing in section 71.3 makes property in a registered plan subject to an enforcement process if that property would not otherwise be so subject. The Applicant says that means the Commission cannot rely on section 71.3(3)(e). We reject this interpretation. It does not make sense that the legislature would generally prohibit enforcement processes against registered accounts in subsection (2) only to specifically exempt the Commission from that prohibition in subsection (3), and then negate those powers by way of subsection (6). Such an interpretation of the legislation renders subsection (3) meaningless and would be contrary to the principles of statutory interpretation that require reading a legislative provision in its entire context and harmoniously with the rest of the legislation.
- [48] We agree with the executive director's submission that section 71.3(6) of the *COEA* simply ensures that nothing in section 71.3 "creates" an enforcement process where none would otherwise exist.
- [49] For all those reasons, we find that *if* the Preservation Order constitutes an enforcement process taken under the Act, it is expressly permitted by section 71.3(3)(e) of the *COEA*, which prevails over the provisions of the *PBSA* and the *PBSR*.

B. Is a Preservation Order under the Act Prohibited by the *PBSA* and *PBSR*?

- [50] If we are incorrect in our conclusion that the provisions of the *PBSA* and *PBSR* do not bar the Preservation Order in the face of section 71.3(3)(e) of the *COEA*, we nevertheless find that the provisions in the *PBSA* and *PBSR* do not apply in this matter for the reasons that follow.
- [51] The Applicant correctly points out that the *PBSA* and *PBSR* provisions prohibit execution, seizure and attachment of registered plans. What is at issue is whether the Preservation Order, which restrained the Applicant's Wealth Management Firm and the Applicant from making dispositions or transfers out of the LIF Accounts, constitutes execution against, seizure of or attachment of the LIF Accounts.
- [52] We have outlined above the plain meaning of the relevant words. In our view, the prohibitions against "execution", "seizure" and "attachment" in the *PBSA* and *PBSR* are intended to prevent a party from taking possession of specific types of property for the purpose of realizing on a judgment or similar instrument. All of those words suggest an action that is of a nature different from the maintenance of the property *in situ*.
- [53] Nothing in the quote that the Applicant relies on in the case of *Re Overseas Aviation Engineering (G.B.) Ltd.*, [1962] 3 All E.R. (C.A.) detracts from that view. Lord Denning states that:

‘Execution’ means quite simply, the process for enforcing or giving effect to the judgment of the court: and it is ‘completed’ when the judgment creditor gets the money or other thing awarded to him by the judgment.

Execution “gives effect” to a judgment. Nowhere in those words does it suggest that a preservation order is an “execution”.

- [54] The Applicant also cites *K(C.M.) v. Young*, 1996 Carswell BC 1484 (SC), for the proposition that pension benefits cannot be diverted. A careful reading of the paragraph quoted shows that the court was considering the diversion of funds through execution, seizure or attachment. The Preservation Order does not have the effect of diverting funds. To the contrary, any funds subject to the Preservation Order remain *in situ*.
- [55] In support of his argument that the Preservation Order is a form of execution, the Applicant submits that the Preservation Order is akin to a *Mareva* injunction. We reject that characterization. A *Mareva* injunction is a prejudgment process in a civil action. The Preservation Order was made based on previous orders made in the Sanctions Decision. The underlying orders were made after a full hearing process and those that were appealed were subsequently upheld by the Court of Appeal.
- [56] For all those reasons, we find that the Preservation Order does not constitute an execution against, seizure of or attachment of the LIF Accounts. Accordingly, it is not barred by the provisions of the *PBSA* and the *PBSR* that would prohibit such actions to be taken against registered plans.

C. Was the Issuance of the Preservation Order Without Notice to the Applicant Improper?

- [57] The Applicant submits that the Commission breached its obligations of procedural fairness and natural justice by obtaining the Preservation Order without notice to the Applicant.
- [58] The Commission has express power under section 164.05(1) of the Act to make a preservation order without notice. Where the Commission does so, the only notice requirement is that found in section 164.06(1), namely, to notify the affected party “as soon as practicable” that the order has been made. That procedure was followed in this case.
- [59] We agree with the Applicant that the Commission must exercise its discretion in furtherance of the policy and objects of the Act when making a preservation order. We also agree that that discretion must be exercised after considering and weighing the relevant circumstances of the case.

- [60] We find that the Commission exercised its discretion appropriately. It is clear from the Preservation Order that it considered the evidence set out in the Commission investigator's affidavits and the Sanctions Decision. It also considered the fact that, five years later, the Applicant had not made any payment toward the orders in the Sanctions Decision, such that the full amounts and interest remain owing.
- [61] The Applicant has taken the position that the Commission's power to issue a preservation order without notice must be in furtherance of one of two objects in the Act. One relates to the need to preserve property in the course of an investigation and the other is where a risk of dissipation exists.
- [62] We find no authority for the proposition that the Commission's power to issue a preservation order without notice is limited to the two narrow situations identified by the Applicant.
- [63] Notwithstanding that the Commission is not required to have evidence of risk of dissipation in order to make a preservation order, we have such evidence from the Applicant himself. He has said that he draws amounts monthly from the LIF Accounts. We find that such withdrawals amount to dissipation of the LIF Accounts, regardless of their intended purpose. Absent the Preservation Order, the amounts in the LIF Accounts could continue to be diminished, and eventually be fully dissipated and not available to be paid to victims of the fraud committed by the Applicant and others.
- [64] We also know from the Applicant's evidence that he previously transferred his LIF Accounts from a British Columbia-based investment firm to a large national bank and then to the Applicant's Wealth Management Firm. The *PBSA* and *PBSR* allow him to do so. If the Applicant had received notice of the Application, he could have transferred the LIF Accounts elsewhere, frustrating the application for a preservation order.
- [65] The Applicant says that the failure to provide him with notice meant that the Commission was unaware, at the time the Preservation Order was issued, of the *PBSA* and *PBSR* provisions which he says prevent execution, seizure and attachment of the LIF Accounts. We find this submission has no merit. The Applicant has now had the opportunity to bring those provisions to the attention of this panel. We have carefully considered and determined that those provisions do not bar the issuance of the Preservation Order.

D. Is the Commission Otherwise Barred from Issuing a Preservation Order?

Is the Commission *functus officio*?

- [66] The Applicant takes the position that, as a general rule, once a tribunal has reached a final decision, that decision cannot be revisited, nor can the tribunal make collateral orders to implement the decision. The Applicant argues that, given that general rule, once the Sanctions Decision was made, the Commission could not issue the Preservation Order because the Commission was *functus officio*.

[67] The doctrine of *functus officio* is a doctrine developed at common law. In this case, however, there is a specific legislative provision in section 164.04(2)(c) of the Act which expressly provides jurisdiction to issue a preservation order in the manner in which it was issued in this case. Accordingly, the doctrine of *functus officio* is not engaged.

Does the Commission continue to have jurisdiction after it files a decision with the BC Supreme Court under section 163 of the Act?

[68] The Applicant further submits that because section 164.04(2) of the Act does not specifically refer to the filing of a decision of the Commission with the BC Supreme Court under section 163, the Commission is not able to issue a preservation order under section 164.04(2).

[69] We reject this argument. In the absence of a specific provision barring the Commission from issuing a preservation order after registering a decision with the BC Supreme Court, we find that the Commission is at liberty to do so. Further support for this finding is found within the Act at section 164.03, which states:

A remedy exercised under this Part does not limit any remedy otherwise available to the commission by law.

[emphasis added]

This section clearly provides the Commission with the authority to issue a preservation order under Part 18.1 of the Act and to pursue any remedy otherwise available under the Act, including registering a decision with a Supreme Court registry under section 163 of the Act.

Is there a reasonable apprehension of bias?

[70] The Applicant takes the position that the Commission exhibited bias or breached natural justice by issuing the Preservation Order from which it stands to benefit.

[71] This position misconceives the role of the Commission, which does not take steps such as the issuance of the Preservation Order for its own pecuniary benefit but rather to maintain the status quo to ensure that assets will be available for the benefit of those harmed by wrongdoers' actions, if subsequent enforcement proceedings so determine. Also, as the executive director points out, revenue collected pursuant to orders made under sections 161 and 162 may only be distributed in accordance with sections 15 and 15.1 of the Act.

E. Is the Applicant Entitled to Revocation or Variance of the Preservation Order to Provide Him with Funds for Living Expenses?

[72] In order for the Commission to vary or revoke the Preservation Order, the Applicant must show that it would not be prejudicial to the public interest to do so.

[73] The Applicant has cited *Re Pegasus Pharmaceuticals*, 2019 BCSECCOM 453 (*Pegasus*) for the proposition that the public interest is broader than considerations of investor protection, and the prejudice to the Applicant must be considered. We agree.

- [74] In *Pegasus*, the applicant was a company involved in the development and production of natural healthcare products. It had two mortgages registered against properties where it carried on its business. The subject freeze orders were registered against bank accounts owned by the applicant. The applicant was able to demonstrate that failure to revoke the subject freeze orders would render the applicant unable to make mortgage payments, resulting in foreclosure proceedings on its properties which, in turn, would likely have led to the applicant's inability to fulfill purchase orders that could generate large revenues. All of this would have occurred before a hearing on the merits or any determination made by the Commission on liability. The Commission determined that the significant harm that the applicant would likely experience without a variation of the freeze orders outweighed the risk of investors being in a worse position if the orders were varied.
- [75] In this case, the Applicant submits he requires the entirety of approximately \$95,000 a year for living and legal expenses. In support of his Application he has provided us with less than a page outline of his living expenses. Many of those expenses require information not provided by the Applicant's materials, such as:
- a. the combined household income of the Applicant and his wife,
 - b. the rationale behind the Applicant paying for property taxes, home insurance, utilities and gardening services on property he does not own,
 - c. evidence to support the Applicant's claim that he requires \$1,000 a month for medical expenses, and
 - d. the rationale to support expenses declared by the Applicant as necessary, including expenses for automobile, travel and entertainment.
- [76] We find that the Applicant has not provided sufficient evidence regarding his living expenses to establish that he would suffer hardship if the Preservation Order were not revoked or varied. He has not provided any information relating to his legal fees.
- [77] For these reasons, we find that *Pegasus* is distinguishable from this case. The Applicant has not established prejudice. *Pegasus* is also distinguishable on the basis that, in that case, revoking the freeze orders resulted in a commensurate increase in the equity in the properties over which the Commission had a charge. Here, the Applicant has not proposed any alternative to the Preservation Order, nor any plan for paying the amounts outstanding.
- [78] The Applicant has also cited *Samji (Re)*, 2012 BCSECCOM 91 (*Samji*) for the proposition that the Applicant is entitled to funds for legal fees as well as for living expenses. We also find that *Samji* is distinguishable from this case. While the panel in that case did find that the applicant was entitled to "some funds" for legal fees and living expenses, we do not have the benefit of the evidence that was led to establish that need. We do know that the applicant had sought to have the freeze order revoked on two accounts. The panel revoked it on only one account, noting that in addition to the other account, the Commission still had charges against five properties owned by the applicant.

- [79] A final implication of the Applicant's submissions is that he should be shown some leniency from the panel, as he only benefitted personally by gaining \$400,000 through his fraudulent actions. In dismissing this suggestion, we note that the Applicant has not paid any part of even the \$400,000 from which he says he personally benefitted. Further, through the fraudulent acts of the Applicant and others, members of the investing public lost \$21.7 million.
- [80] The Applicant has failed to establish that it would not be prejudicial to the public interest to revoke or vary the Preservation Order. Accordingly, we dismiss the application.

November 5, 2020

For the Commission:

George C. Glover, Jr.
Commissioner

Deborah Armour, QC
Commissioner

Marion Shaw
Commissioner

**On December 9, 2020, the panel issued a correction to the Decision. The revisions are incorporated in paragraphs 39 and 45.*