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

Citation: Re Sand, Achs, Gulston, 2022 BCSECCOM 473 Date: 20221206

John Sand, Karol Achs, Jolyon Charles Christopher Gulston

Panel	Gordon Johnson	Vice Chair
	Audrey T. Ho	Commissioner
	James Kershaw	Commissioner

Submissions completed September 30, 2022

Decision date December 6, 2022

Parties

Chris Cairns	For the Executive Director
John Sand	For himself
Karol Achs	For himself
Jolyon Charles Christopher Gulston	For himself

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of this panel on liability made on August 8, 2022, reported at 2022 BCSECCOM 332, are part of this decision.

[2] We found that:

(a) Sand, Achs and Gulston participated in conduct which they knew perpetrated a fraud in breach of section 57(b) of the Act, by both inducing Investors P and K (through their corporation) to invest $600,000 based on false statements and by diverting invested funds from their intended uses to other uses; and

(b) Gulston breached s. 50(1)(d) of the Act by knowingly making untrue statements of material facts while engaged in investor relations activities to promote the sale of securities.

[3] The executive director made written submissions on what sanctions are appropriate in this case. Achs made written submissions. Neither Sand nor Gulston made submissions.

II. Position of the parties

[4] The executive director submitted it is in the public interest that we impose the following sanctions:

(a) permanent prohibitions restricting all respondents from participating in capital markets;

(b) administrative penalties of $500,000 each against Sand and Achs and $515,000 against Gulston;

(c) an order for payment of $300,000 against Sand and Achs, payable jointly and severally, under section 161(1)(g) of the Act; and

(d) an order for payment of $100,000 against Gulston under section 161(1)(g) of the Act.

[5] Achs submitted that a significant proportion of the funds collected from investors was used for proper purposes. Achs' submissions contradict the findings expressed in our liability decision.

III. Analysis

A. Factors

[6] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> 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 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.

B. Application of the factors

[7] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

Seriousness of the conduct

[8] Panels of the Commission have repeatedly found that fraud is the most serious misconduct under the Act. To give one example, the panel in *Re Bai*, 2018 BCSECCOM 156, held at para. 9 that fraud "is the most serious misconduct owing to the deceit that will have been perpetrated upon investors and fraud requires that the respondent have had the requisite mental intent (or *mens rea*) with respect to his or her misconduct."

[9] In this case, the respondents' scheme was premised on deception of two investors. This deception caused the investors deprivation when the investors, through their corporation, advanced their funds and placed their funds at risk of loss. Later, after the respondents received the investors' money, they spent much of the investors' money for their own benefit, not on building a production facility.

[10] Fraud does immeasurable harm to the reputation and integrity of the capital markets and public confidence in those markets. As such, its impact extends beyond the investors in this matter to the investing public as a whole.

[11] In addition to his fraudulent conduct, Gulston made misrepresentations to two potential investors. The Commission has found misrepresentation to be a serious misconduct, not far behind fraud. The point was made this way in *Re Michaels*, 2014 BCSECCOM 457, at para. 8:

> Those who operate and profit in the capital markets by misstating material facts (through commission or omission), undermine the confidence of the public in one of the cornerstones of capital markets regulation, the provision of accurate and complete information for investors to make informed investment decisions.

Harm to investors

[12] As was noted above, all investors were harmed by the conduct of the respondents because the breaches in question tend to harm the reputation and integrity of capital markets, and public confidence in such markets. In addition, in this case, there were two specific investors who placed $600,000 at risk based on the fraudulent misconduct of the respondents. The investors were repaid $200,000 of their investment, so their eventual loss was reduced by that amount.

Enrichment of the respondents

[13] We found that the amount which the respondents spent improperly was at least $360,000. $100,000 of that amount was paid, at Gulston's request, to a company in which Gulston had an interest. The balance of the improperly directed funds went to purposes such as repaying an investment by a girlfriend of Sand ($120,000), payment of a debt owed by Achs ($63,485), payment of credit card obligations of Achs and a relative of Achs

($36,762.99) and various amounts for expenses which had no apparent connection to the intended investment purpose.

[14] It is beyond dispute that all of the respondents were enriched by their own misconduct to a significant degree.

Aggravating factors

[15] The respondents did not keep accurate records of how they spent the investors' funds. Lack of proper record keeping to document the use of the investors' funds has been found to be an aggravating factor.

[16] In *Re Schouw*, 2017 BCSECCOM 168, at para. 24 the panel stated:

> One of the most troubling aspects of this case was the complete lack of proper record keeping to document the use of the investor's funds. The standard of record keeping of the respondents falls so far short of what we would expect of those who wish to participate in our capital markets that we find this to be an aggravating factor in this case. Schouw was the controlling mind and management (as both a director and officer) of Hornby and several other companies in his corporate group. His failure to maintain or produce any semblance of proper records in support of the use of proceeds of funds raised from the investor makes him a significant risk to our capital markets.

[17] In this matter we found, at para. 78 of the findings, that the investment was mostly undocumented:

> ...whatever funds were expended on the intended purpose were limited and, in most cases, if made at all, undocumented despite the need of any legitimate business to document expenses for income tax purposes.

[18] The standard of record keeping demonstrated by the respondents falls far short of what should be expected of those who wish to participate in the capital markets. We agree with the executive director that this is an aggravating factor.

Mitigating factors

[19] There are no mitigating factors.

Past misconduct

[20] There is no evidence of prior misconduct by any of the respondents.

Risk to our capital markets; fitness to be a registrant or director or officer of an issuer

[21] Public confidence in the capital markets is dependent on participants being honest and having integrity. In particular, directors and officers of issuers must act with honesty, integrity, and with a view to the best interests of the issuer.

[22] The respondents committed fraud, and Gulston made misrepresentations, and therefore they did not act with honesty, integrity, or with a view to the best interests of those who placed their trust in them. The respondents are not fit to act as a registrant, director, officer or advisor.

Specific and general deterrence

[23] The panel in *Re Smith*, 2021 BCSECCOM 486, at para. 22 described specific and general deterrence as follows:

> Specific deterrence and general deterrence are related but not identical concepts. Specific deterrence discourages this respondent from participating in future misconduct. General deterrence discourages others from participating in misconduct similar to that in the subject case. Both goals are legitimate in the crafting of a sanction which properly balances all of the factors which are relevant in any particular case.

[24] In *Cartaway Resources Corp. (Re)*, 2004 SCC 26, (CanLII), at para. 60 the Supreme Court stated that "...it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative."

[25] An appropriately severe administrative penalty provides general deterrence to like-minded individuals and the respondent. As the Commission stated in *Alexander (Re)*, 2007 BCSECCOM 773 at para. 46:

> Part of the Commission's mandate is to deter future misconduct by those against whom orders have been made. Any penalty which will effectively speak to all participants in the capital markets must be relatively severe to be meaningful. As the Alberta Securities Commission said in *Re Capital Alternatives Inc.*, 2007 ABASC 482 (at paras 29-30):
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> > ... Stated simply, an administrative penalty sends the message to the particular respondent and to other market participants, that future misconduct similar to the one being sanctioned will not be tolerated and will come at a direct financial cost **...**

[26] In *Re QcX Gold Corp.*, 2022 BCSECCOM 422 at para. 43, a panel of the Commission adopted a party's submission that:

> 19. Specific and general deterrence are factors in determining appropriate sanctions; however, the weight given to each will vary with the circumstances in a given case. As a unanimous division of the Court of Appeal wrote in *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273, leave to appeal ref'd [2014] S.C.C.A. No. 476:
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> > 154 ... [Specific and general deterrence] are legitimate considerations, but at the end of the day the sanction must be proportionate and reasonable for each appellant. The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual appellant.
> > …
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> > 156 … [A]ny further administrative penalty must still be proportionate to the offence, and fit and proper for the individual offender. An administrative penalty focused purely on general deterrence of an

> unidentified and amorphous sector of the public could easily become disproportionate to the circumstances of the individual involved.

[27] In this case, we saw no evidence of circumstances specific to any of the respondents that would lead us to conclude that the sanctions we order will be disproportionate or unreasonable for any of them.

Prior orders in similar cases

[28] The executive director submits that the following four cases are most relevant to the present case in assessing the appropriate sanctions for fraud:

- *Re Furman*, 2019 BCSECCOM 214;
- *Re Nickford*, 2018 BCSECCOM 57;
- *Re Braun*, 2019 BCSECCOM 65; and
- *Re The Falls Capital Corp.*, 2015 BCSECCOM 422.

[29] *Furman* involved a fraud regarding 12 investments of at least $452,000. Furman also created and used fraudulent documents. The panel ordered Furman:

(a) be permanently prohibited from the capital markets;

(b) disgorge $410,847.97 pursuant to section 161(1)(g); and

(c) pay an administrative penalty of $350,000.

[30] *Nickford* involved a fraud on 13 investors of at least $318,141. Nickford's conduct was aggravated by poor record keeping. The panel ordered Nickford:

(a) be permanently prohibited from the capital markets;

(b) disgorge $318,141 pursuant to section 161(1)(g); and

(c) pay an administrative penalty of $300,000.

[31] *Braun* involved a fraud by six respondents on two investors. Alan Braun was found to have defrauded the investors of $450,000. This fraud was exacerbated by the predatory nature of his interactions with one of the investors who was extremely vulnerable. The panel ordered Braun:

(a) be permanently barred from the capital markets;

(b) disgorge $323,500 pursuant to section 161(1)(g), jointly and severally with certain other respondents; and

(c) pay an administrative penalty of $450,000.

[32] *The Falls* involved a fraud by multiple respondents including Rodney Jack Wharram who took $534,000 that was invested in three companies that he controlled and used most of it for his personal expenses. He also made false statements to Commission investigators. The panel ordered Wharram:

(a) be permanently barred from the capital markets;

(b) disgorge $517,500 pursuant to section 161(1)(g), jointly and severally with the three companies that he was president and CEO of; and

(c) pay an administrative penalty of $500,000.

[33] The executive director submits that the following two cases are more relevant to the present case in assessing the appropriate administrative penalty for misrepresentation:

- *Re ecoTECH*, 2019 BCSECCOM 399; and
- *Re Oriens Travel & Hotel Management Corp*, 2014 BCSECCOM 91.

[34] In *ecoTECH*, Colin Hall, Anne Sanders, and Rolf Eugster were found responsible for misrepresentations to 16 investors involving $55,100 and breach of a cease trade order. Hall and Sanders were ordered to pay an administrative penalty of $20,000 and received a five year capital market ban. Eugster was ordered to pay an administrative penalty of $15,000 and received a four year capital market ban because his role was less than that of Hall and Sanders and he did not contravene the cease trade order.

[35] In *Oriens*, Ken Chua and Alexander Anderson made misrepresentations to investors when they failed to advise of a cease trade order. The panel ordered a six year capital market ban and a $35,000 administrative penalty against Chua, and a two year capital market ban and a $15,000 administrative penalty against Anderson who was not found to have contravened the cease trade order.

[36] All of the precedents regarding fraud suggest that broad and permanent prohibitions are appropriate in a case such as this. Those precedents regarding fraud suggest that the range of administrative penalties in similar cases is $300,000 to $500,000.

[37] The duration of prohibitions and amount of administrative penalties for misrepresentation are frequently much lower than would be imposed in fraud cases, although there may be circumstances where it would be appropriate to impose very similar sanctions depending on factors such as the intention for and effect of a misrepresentation. In this case, the precedents relied upon by the executive director suggest a range of administrative penalties from $15,000 to $35,000.

[38] The identification of penalty ranges from similar cases is an important step in our analysis. However, our final decision regarding sanctions must be based on a careful

balancing of all factors and how they interact with one another. We discuss the interaction of the most relevant factors below where we summarize our conclusions.

IV. Appropriate sanctions

A. Administrative penalties

[39] These respondents committed fraud. That has caused harm to capital markets generally and to two investors specifically. The respondents shared in the effort of convincing the investors to advance $600,000 based upon false statements. After those funds were received, Gulston requested and quickly received repayment of his own investment in the zinc based battery business. Achs and Sand made all decisions regarding the use of funds, including the payments for their own benefit. On that basis, Gulston's conduct was slightly less serious than the conduct of Achs and Sands.

[40] However, only Gulston was found to have made misrepresentations in addition to committing fraud. On that basis, an argument was made by the executive director that Gulston deserved a slightly more significant administrative penalty than should be ordered against Sand and Achs.

[41] We are obligated to consider every factor relevant to sanctions and we have carefully considered and weighed all factors in context. For example, although Gulston was the only one found liable for misrepresentations, we also found him less culpable than Sand and Achs in directing the improper use of the investors' funds. In the end, we did not find sufficiently meaningful distinction between Gulston's misconduct and that of Sand and Achs to merit imposing different administrative penalties between them.

[42] The level of seriousness of the fraud here was significant. The dishonesty was intentional and planned and included the creation of false documents and a failure to keep the types of records which would allow the flow of funds to be accurately tracked. The respondents directly benefited from their misconduct. As a result, the administrative penalty should not fall at the bottom of the precedent range. At the same time, the number of investors defrauded was lower than in some precedent cases, the respondents' conduct was less egregious than in at least one precedent case, and some of the invested funds were repaid to the investors. As a result, we do not put the administrative penalty at the top of the precedent range.

[43] We find that an administrative penalty of $380,000 is appropriate for each respondent.

B. Order under Section 161(1)(g)

[44] Section 161(1)(g) of the Act reads:

> 161(1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:
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> (g) 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;

[45] The BC Court of Appeal summarized the following principles regarding section 161(1)(g) in *Poonian v. British Columbia Securities Commission,* 2017 BCCA 207, at para. 143:

> 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.
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> 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.
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> 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).
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> 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.
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> 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.

[46] For a joint and several order to be appropriate in section 161(1)(g) orders, the Court in *Poonian* held at para. 134 that the critical element "is that the wrongdoer and the person with whom he or she is held jointly and severally liable were, in effect, acting as one person."

[47] The Court in *Poonian* recognized that the Commission has the expertise to determine section 161(1)(g) joint and several orders and that it was not imposing "rigid rules" on how to identify illicit transactions. The Court noted at para. 137:

> - it is for the Commission to inquire into and determine, as a matter of fact, whether there is sufficient direction and control between, or of, the two or more persons or entities, such that a joint and several order is essentially only requiring the person who failed to comply to pay amounts he or she obtained, albeit indirectly. [emphasis in original]

[48] The Court applied the principles listed above, and then adopted the two-step approach from *Re SPYru Inc.*, 2015 BCSECCOM 452, to determine appropriate orders under section 161(1)(g) of the Act:

> [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).
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> [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.

First Step: did the respondents obtain amounts from their contraventions of the Act?

[49] All three of the respondents were found responsible for the fraud against the investors. As a result of that fraud, $600,000 was initially paid into an account over which Sand and Achs exercised control collaboratively. Almost immediately $100,000 of the $600,000 was paid, at Gulston's insistence, to an account of a company in which Gulston had an interest and therefore to Gulston's benefit.

[50] In reaching our conclusions regarding how much was obtained by the respondents, we are mindful of the following statements in *Poonian*:

> [150] The scheme in question involved controlling and directing trading in a number of accounts to realize the aggregate net trading gain. It involved making payments to others to facilitate some of those sales.
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> [151] The Commission has before it the trading records of all the relevant accounts. Some accounts belong to the Sihotas or the Poonians. It is clear that portions of the aggregate net trading gain in those accounts were "obtained" by those account holders. The issue is, what portions of the aggregate net trading gain in accounts of *other* persons can be properly found to have been obtained directly or indirectly by any of the Poonians or Sihotas?
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> [152] In my view, the Commission must determine whether amounts in those other accounts were, effectively, obtained *indirectly* by one or more of the appellants in that one or all of the Poonians and Sihotas had control and direction over those accounts. If such control and direction were established, there would then be a finding that the portion of the aggregate net trading gain in those accounts was obtained *indirectly* by that person. Therefore, that person could be properly held liable for those amounts. Again, this answers the Commission's concerns expressed in *Wong* (at para. 90), as quoted in para. 105 above. This is a factual finding this Court cannot and should not make.
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> [153] The Executive Director argues such apportionment is problematic because "[i]f such a determination can be made, it may well be only within the specific and unique knowledge of the respondents themselves." In my view, the fact-finding exercise falls within the Commission's province, and as explained above, the Commission does not have to determine the proportions to a certainty. The amount each person obtained directly or indirectly just needs to be "reasonably approximate". The onus is then on that person to show why such an amount (or apportionment) is not reasonable. Any uncertainty in the calculations is resolved in favour of the Executive Director, since a wrongdoer should not benefit from any ambiguity arising from his or her misconduct. Although not at issue in these appeals, I think it clear that such determinations are factually-driven, within the Commission's expertise, and would attract deference on review: *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 23.

[51] In this case, Sand was the sole director and officer of Marketwise, the company into whose account the $600,000 of investors' funds were paid. Sand was the sole signing officer for Marketwise's bank account until May 29, 2015, when Achs was added. Achs said that Sand and he "would make spending decisions mutually, after discussion." On that basis, it is proper to conclude that regardless of when Achs' formal signing authority was created, he shared control over the invested funds at all relevant times. We have previously found that both Sand and Achs approved all improper expenditures.

[52] Achs and Sand together controlled the $600,000 which they received by their fraudulent conduct and together they had discretion about how to spend those funds. As a result, and subject to the public interest analysis which follows, it is correct to say that they jointly obtained $600,000.

[53] Gulston did not control the $600,000 of invested funds, but he did obtain $100,000 of the funds.

[54] Accordingly, we have the jurisdiction to make the s. 161(1)(g) orders sought by the executive director.

Second Step: Is it in the public interest to make a section 161(1)(g) order?

[55] As we have expressed above, Sand and Achs obtained $600,000 and Gulston obtained $100,000 for the purpose of s. 161(1)(g) of the Act. What remains to be determined is whether it is in the public interest that any of the $600,000 and $100,000 be the subject of s. 161(1)(g) orders and if so, how much.

[56] Firstly, in keeping with the policy intent behind s. 161(1)(g), which is to remove from respondents the financial benefits they obtained from their wrongdoings, the disgorgement orders we make should not exceed $600,000 in the aggregate.

[57] We concluded that it is not in the public interest to order the respondents to make payments exceeding $400,000 in total, because $200,000 of the $600,000 benefit they obtained from their wrongdoing has already been removed when they repaid that amount to the two investors.

[58] Secondly, we considered if the orders we make should be joint and several. As articulated by the Court of Appeal in the *Poonian* decision, there are circumstances in which the imposition of joint and several liability is appropriate in the public interest. In this case, although the respondents' actions (especially those of Sand and Achs) could invite joint and several orders, we have sufficient evidence on how much each respondent personally benefited from the investors' funds. We find that making an order which reflects how each respondent individually benefited from the funds obtained best serves the public interest.

[59] We have reached our decision with full awareness of the *Poonian* decision, in this instance to paras. 102 and 103 which address a decision of the Alberta Securities Commission and an academic text, *Canadian Securities Regulation*:

…

> [37] This Commission discussed the underlying principles of disgorgement in *Re Planned Legacies Inc.*, 2011 ABASC 278 at paras. 71-75, referring there to several other cases. As noted in *Planned Legacies*, disgorgement is another tool that may be used to achieve specific and general deterrence. The Commission stated there (at para. 71) that disgorgement "reflects the equitable policy designed to remove all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Act. It is not a compensation mechanism for victims of the wrongdoing." In *Planned Legacies*, the Commission accepted the principle from the Ontario Securities Commission's decision in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 at para. 53 that Staff bear the initial burden of proving the amount obtained by a respondent through its non-compliance with the Act, with the burden then shifting to the respondent to disprove the reasonableness of that amount. We also note that the relevant amount is that "obtained", not the amount retained, the profit, or any other amount calculated by considering expenses or other possible deductions.
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> …
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> ¶14.31 This power is intended to prevent a person or company from retaining financial benefits that were received by contravening securities laws.
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> ¶14.32 The legislative provisions refer to "amounts obtained". Therefore, the relevant amount is what a respondent obtained through misconduct, not what the respondent retained or spent inappropriately. … [emphasis in original]

[60] As Gulston obtained the benefit of $100,000 from his wrongdoing, we concluded that it is in the public interest to order him to pay $100,000 under s. 161(1)(g) to ensure that he does not keep that benefit.

[61] We also concluded that it is not in the public interest to order Sand and Achs to pay the same $100,000 which we will order Gulston to pay. Although that amount was also obtained by Sand and Achs in that the entire $600,000 was initially under their control, the evidence is clear that it was Gulston (and not Sand and Achs) who got the financial benefit of that $100,000. In keeping with the policy intent of s. 161(1)(g), it is appropriate to require disgorgement of that amount from Gulston alone.

[62] Lastly, we considered what s. 161(1)(g) orders are appropriate with respect to Sand and Achs. Although it is not clear how the entire $600,000 was spent, the record is clear that four payments totaling $185,000 were directed to the account of a company for which Achs was the sole director and signing officer. In addition, two payments totaling $120,000 were made to Sand's girlfriend. Accordingly, Achs obtained a financial benefit of $185,000 and Sands obtained a financial benefit of $120,000. Similar to the reasons set out above with respect to Gulston, it is not appropriate to make a joint and several disgorgement order against Sand and Achs when we have clear evidence of the different amounts by which each of them financially benefited from their wrongdoings.

[63] To avoid exceeding $300,000, the total amount obtained by the respondents less the $100,000 which benefitted Gulston and the $200,000 which had been given back to

investors, we concluded that the public interest is best served by reducing the amount of the section 161(1)(1)(g) order against Achs from $185,000 to $180,000.

[64] For the reasons set out above, it is in the public interest that we make section 161(1)(g) orders against Gulston for $100,000, against Sand for $120,000 and against Achs for $180,000. The total of these orders, $400,000, results in taking away from each respondent the specific amount by which he financially benefited from his wrongdoing, and from the respondents collectively the entire amount that they had obtained from their wrongdoings (after including the $200,000 that they had already given back).

C. Market prohibitions

[65] As we have noted above, we find that the conduct of all three respondents establishes that they are unfit to act as a registrant, director, officer, or advisor. As a result, we agree with the executive director's submission that broad and permanent prohibitions are appropriate and we set those out below.

V. Orders

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

Sand

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

2. Sand is permanently prohibited:

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

    b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision, other than to carry out a trade or purchase that is permitted under subparagraph a;

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

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

    e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity;

g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and

3. Sand pay to the Commission:

a) $120,000 under section 161(1)(g) of the Act; and

b) an administrative penalty of $380,000 under section 162 of the Act;

Achs

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

5. Achs is permanently prohibited:

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

b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision, other than to carry out a trade or purchase that is permitted under subparagraph a;

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

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

e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity;

g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and

6. Achs pay to the Commission:

   a) $180,000 under section 161(1)(g) of the Act; and

   b) an administrative penalty of $380,000 under section 162 of the Act;

Gulston

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

8. Gulston is permanently prohibited:

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

   b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision, other than to carry out a trade or purchase that is permitted under subparagraph a;

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

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

   e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;

   f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity;

   g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him; and

9. Gulston pay to the Commission:

    a) $100,000 under section 161(1)(g) of the Act; and

    b) an administrative penalty of $380,000 under section 162 of the Act;

December 6, 2022

For the Commission

Gordon Johnson
Vice Chair

Audrey T. Ho
Commissioner

James Kershaw
Commissioner

NOTICE: The orders made against John Sand, Karol Achs and Jolyon Charles Christopher Gulston in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to them.