

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Jin, 2022 BCSECCOM 89

Date: 20220322

Weiqing Jane Jin

Panel Marion Shaw Commissioner
Deborah Armour, Q.C. Commissioner

Direction Date March 22, 2022

Direction

I. Introduction

- [1] In its October 27, 2014 decision *Re Jin*, 2014 BCSECCOM 424 (2014 Order), the commission made an order pursuant to section 161(1)(g) of the *Securities Act*, RSBC 1996, c. 418 (Act) that, among other things, Weiqing Jane Jin pay to the commission \$4,280, being the amount obtained, directly or indirectly, as a result of her contravention of the Act.
- [2] On February 23, 2015, Jin paid \$4,280 (Recovered Funds) to the commission in full satisfaction of that requirement in the 2014 Order.
- [3] This is our direction with respect to the retention and disbursement of the Recovered Funds by the commission.

II. Background

- [4] In a memorandum dated August 11, 2021, the executive director submitted that the commission could retain the Recovered Funds, plus accrued interest, and disburse them in accordance with section 15 of the Act.
- [5] The executive director provided affidavit evidence, which we accepted, to establish that:
- (a) in August 2015, the commission issued a news release and posted a notice on its website notifying the public that it had received the Recovered Funds in satisfaction of the 2014 Order and that investors who lost money as a result of Jin's misconduct might be eligible to make claims to recover losses,
 - (b) no applications with respect to the Recovered Funds have been received by the commission under section 15.1 of the Act, and
 - (c) the executive director is not aware of any potentially eligible applicants with respect to the Recovered Funds.

III. Analysis

- [6] This matter is the first of its kind. There is not an “application” before the commission, as there is no applicant. Rather, we are considering the executive director’s submission that in the absence of any applications under section 15.1 of the Act for any portion of the Recovered Funds, the commission can retain the Recovered Funds and disburse them in accordance with section 15 of the Act.
- [7] In *Re Alexander*, 2017 BCSECCOM 78, the commission set out guidance for future applicants under section 15.1 of the Act. Although the present matter does not involve an application, we find the following language from paragraphs 25 and 26 of *Re Alexander* to be useful guidance:
- [25] We agree with the submissions of the executive director on these questions, and adopt the following guidelines for future applications under section 15.1 of the Act:
1. although a duty of fairness applies in any administrative proceeding, in this case, if the procedural requirements set out in the Act and the regulations are met, the duty of fairness is fulfilled;
- ...
- [26] In general, our role, as a Commission panel, is similar to that of a judge in a bankruptcy proceeding. In that role, we must:
- ensure that the procedural requirements of the Act have been met...
- [8] The question we must answer is whether the procedural requirements of the Act have been met for the retention and disbursement of the Recovered Funds by the commission.
- [9] Section 15.1 of the Act sets out the procedure for claims applications. That section was amended effective March 27, 2020. The executive director has submitted that given that the 2014 Order, the receipt of the Recovered Funds, and the three-year time period for bringing claims all occurred before that date, the law relating to the claims process, as it existed before March 27, 2020, applies to this matter. We agree. Even if the current language in section 15.1 applies, we are satisfied that the claims process followed in this case meets the requirements in the Act as they exist now, post-amendment.
- [10] Prior to the 2020 amendments, section 15.1 stated, in part:
- 15.1 (1) The commission must notify the public in accordance with the regulations if the commission receives money from an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g).
- (2) A person may make a claim to money referred to in subsection (1) by submitting an application in accordance with the regulations within 3 years from the date of the first notification made under subsection (1).
- (3) If the commission receives an application under subsection (2), the commission may, in accordance with the regulations, pay to the applicant all or a part of the amount claimed.

...
(5) After 3 years from the date of the first notification made under subsection (1), and after adjudicating all claims in accordance with the regulations, the commission may retain any money not paid or payable under subsection (3).

[11] In this case, the commission gave a three-year notice period from August 6, 2015 to August 6, 2018 for parties to make applications in respect of the Recovered Funds, satisfying the minimum time period in section 15.1(2).

[12] No applications in respect of the Recovered Funds were received by the commission. With no claims to adjudicate, it is clear that the commission is entitled under section 15.1(5) of the Act to retain the funds now that the time period has expired.

[13] Section 15 of the Act addresses revenue and expenditure, and it states, in part:

(3) Money received by the commission

(a) under an order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12,

...

may, subject to the regulations, be expended for the purpose of

(d) educating securities market participants and members of the public about investing, financial matters or the operation or regulation of securities markets,

(e) benefiting a third party the commission considers appropriate,

(f) enforcing

(i) the order or notice, or

(ii) this Act, including, for greater certainty, the enforcement of another order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12 or a notice given under section 162.01, or

(g) exercising a power or performing a duty under section 15.1.

(3.1) Despite subsection (3) of this section, the commission may not expend money received under section 155.1 (b), 157 (1) (b) or 161 (1) (g) for a purpose referred to in subsection (3) (d), (e) or (f) (ii) of this section unless the period set out in the notice published under section 15.1 (1) has expired.

[14] The Recovered Funds were received by the commission under an order made under section 161(1)(g) of the Act. As the three-year time period for the claims process has expired, the restrictions in section 15(3.1) do not apply to this matter.

IV. Direction

[15] Having determined that the procedural requirements of the Act have been met for the retention and disbursement of the Recovered Funds by the commission, we direct that the commission may:

(a) retain the Recovered Funds plus accrued interest pursuant to section 15.1(5) of the Act, and

(b) expend the Recovered Funds plus accrued interest pursuant to section 15(3)(d) to (g) of the Act.

[16] March 22, 2022

For the Commission

Marion Shaw
Commissioner

Deborah Armour, Q.C.
Commissioner