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

Citation: Re White, 2024 BCSECCOM 21 Date: 20240115

Cherie Evangeline White and KingdomInvestments2015 Inc.
(formerly KingdomRealty Inc. and Kingdom Investments Inc.)

Panel	James Kershaw Deborah Armour, KC Jason Milne	Commissioner Commissioner Commissioner
Hearing date	March 20-22 and 24, 2023	
Submissions completed	September 12, 2023	
Date of findings	January 15, 2024	

Appearing

Deborah Flood Karin Blok Aneka Jiwaji	For the Executive Director
Cherie Evangeline White	Cherie Evangeline White and KingdomInvestments2015 Inc. (formerly KingdomRealty Inc. and Kingdom Investments Inc.)

Findings

I. Introduction

[1] This is the liability portion of a hearing under sections 161, 162 and 174 of the *Securities Act*, 1996, c. 418 (Act).

[2] In a notice of hearing issued June 8, 2022 (2022 BCSECCOM 204), the executive director alleged, among other things, that:

a) KingdomInvestments 2015 Inc. (Kingdom) and Cherie Evangeline White (White) (collectively, Respondents) illegally distributed Kingdom securities;

b) the Respondents committed fraud when they used investors' funds to repay other investors and a personal loan, and when they continued to raise funds when they knew that Kingdom was defaulting on payments to investors;

c) White obstructed justice when she refused to provide documents and information reasonably required for an investigation; and

d) White authorized, permitted or acquiesced in Kingdom's contraventions of the Act and therefore also contravened such provisions.

[3] Six witnesses testified at the liability hearing. A commission investigator (Investigator), testified along with five investors in Kingdom (collectively, Testifying Investors) referred to in this

decision individually as investor C, investor S, investor P, investor B and investor J. The executive director also tendered documentary evidence.

[4] The Respondents were self-represented in the liability hearing and elected to participate in some portions of the hearing and chose not to participate in other portions, without explanation.

[5] The Respondents adduced no evidence.

[6] After the liability hearing, the parties had the opportunity to make written submissions. The executive director made written submissions to the panel. The Respondents did not make written submissions.

[7] Following the close of written submissions, the executive director made oral submissions on liability on September 12, 2023. The Respondents did not participate in oral submissions on liability.

II. Background

A. White

[8] White was a British Columbia resident during the relevant period. Kingdom's website described White as its owner and CEO.

[9] White started soliciting investments for Kingdom in the summer of 2016.

[10] Throughout the period of time relevant to the matters at issue in this hearing, White was the sole director, officer and shareholder of Kingdom.

B. Kingdom and its business

Overview

[11] Kingdom was founded by White in 2015 and incorporated federally as a non-distributing corporation on January 18, 2016. Kingdom changed its name to KingdomRealty Inc. on October 5, 2017, then to KingdomInvestments Inc. on October 19, 2017, and then back to KingdomRealty Inc. on March 18, 2018. We refer to that entity as "Kingdom" regardless of its actual name at any particular point in time.

[12] Kingdom offered investment opportunities relating to the purchase, renovation and resale of residential properties in British Columbia. During the time relevant to the allegations in the Notice of Hearing, the "Our Story" section of Kingdom's Facebook page stated:

> Kingdom Investments was founded in 2015 by Cherie White out of the frustration for inadequate housing for those coming out of an addiction and/or in recovery. The name Kingdom Investments comes from a faith perspective of an "Upside-down Kingdom". Kingdom Investments strongly believes in building relationships in the community and through the power of real estate – empower individuals.
>
> Investments you can feel good about. Receive the best deals and acquire the highest return on your investments. For $10 000 you receive $12 000/year and extra $2000 with an return on investment (ROI) of 20% per year. Amounts $100k or above receive 15% semi-annually or 30% annually. Joint venture (Fix and flip) and long term Cash Flow (buy and hold) opportunities are available at 50% returns, We also offer negotiable rate of returns.

[13] Throughout the relevant time period, Kingdom prepared and distributed materials promoting its investment opportunities. A March 9, 2019 Facebook post announced that Kingdom was "looking to close on our first land buy this week in Victoria" and stated it was a "huge opportunity to invest and get a great return on your capital".

[14] A Craigslist ad posted April 27, 2017 and titled "20,000 Kingdom Realty Investment Opportunity! 10%-15% ROI's/Every 6" included the following statement:

> Guarantee and lucrative investment opportunity with Kingdom Realty, we make sure you get the best deals and acquire the highest return on your investments.

[15] At the bottom of the ad there was a photograph of White and the statement "talk to Cherie White" along with her contact information.

[16] White communicated to investors that Kingdom was a real estate company. Among other things, she:

a) told investors that there were two options they could choose, "fix and flip" or "buy and hold" properties;

b) provided some investors with documents and marketing materials about Kingdom and its activities (Investor Package);

c) maintained a company website that offered opportunities to invest in B.C. real estate;

d) circulated online advertisements for real estate investment opportunities; and

e) provided personal tours of properties located in Abbotsford, B.C.

Investor Packages and business plans

[17] White arranged for the preparation of different versions of the Investor Package. The Investor Package included a business plan about Kingdom. The business plan varied in size, between eight and twenty-eight pages long, and advised potential investors:

a) about Kingdom's objective to gain capital by "purchasing, fixing and flipping, and selling homes," and included this information:

> Currently, I am using profits from deals to reinvest, private money, joint venture money, and lines of credit. I plan on turning the purchase of the property into a profit by purchasing the property at a low and very affordable price, doing renovations at a low price, and reselling at high price. The difference is my profit.

b) that Kingdom was seeking investors for a private lending deal;

c) that Kingdom was seeking investors to enter into a passive investment, and included this information:

> STRATEGY
> Cherie White bought her first home back in January 2016. Since then, she has bought 10 properties, sold 3, and now has 4 on the go. (Bought first home for someone in recovery that will move in on May 1st. Reaching that goal, to the ones

who needed it the most. My friend will move into his forever home). Cherie goes into a home and completely fix-and-flips the inside to bring more life and light into the town house. She also carefully chooses the materials that go into the unit so she can get a jaw dropping reaction from her buyers! Everything is planned accordingly so there is no concern for the investor. Kingdom Realty prides itself by accommodating the needs of the investor and the potential buyers. For example, we send out bi-weekly investor progress reports to keep the investor up to date and engaged in the projects, any requested legal documents pertaining to the property that the investor is dealing with, and any requested documentation. We believe that being up front and honest with our investors and buyers leaves no room for confusion or concerns.

CRITERIA

- CASH FLOW REQUIREMENTS: There will be no cash flow – but rather there will be a return after 6 months and 10% of the investment.
- MAX PURCHASE AMOUNT: First 6 months would be up to $100,000. To build trust and reliability.
- MAX TIME FRAME: 1 YEAR
- MINIMUM OF $10,000

TEAMS AND SYSTEMS

I have a large list of professionals on my team. I have a lawyer, accountant, realtor, 1 subtrades team, 1 professional team.

- Professional team:
  - Lawyer
  - Notary
  - Mortgage Broker
  - Real Estate Agent
  - Accountant
  - Stager
  - Photographer
  - Administrator
  - Executive Director Analyst

  [names of professionals have been deleted]

d) about returns on investments, and included these statements:

i. If you invest $50,000, we will return the initial investment and give you a 10 to 12% ROI; and

ii. If you invest $100,000, we will return the initial investment and give you a 15% ROI.

e) about then-current projects, and included this information:

CURRENT PROJECTS					
Project names	Bought For	Reno Cost	Realtors Commission	Closing Costs	Sold For
GLADWIN #2	$ 134,000	$ 40,000	$ 12,495.00	$ 10,000.00	$ 243,000.00
GLADWIN #22	$ 190,000	$ 40,000	$ 12,329.63	$ 10,000.00	$ 296,000.00
BOURQUIN	$ 174,000.00	$ 30,000.00	$ 11,025.00	$ 10,000.00	$ 247,000.00
TRAFALGAR #25	$ 186,000.00	$ 40,000.00	$ 12,000.00	$ 10,000.00	$ 265,000.00

f) about testimonials from previous investors, and included this information:

> TESTIMONIALS
> INVESTORS
> "My brother and I got a cheque back with our initial investment plus 35% ROI!!! This return is unheard of! We're currently in a second project with them and looking into a third."

g) about a sample private lending agreement (Agreement).

[18] White, and her employee, DE, provided investors with the Investor Package. Some Testifying Investors provided Commission staff with a copy of the Investor Package they received from White, and other Testifying Investors confirmed they received or were shown the Investor Packages containing the business plan.

Structure, banking and control

[19] The general structure of the Kingdom investment was:

a) the Respondents solicited investments from investors;

b) investors made investments by executing the Agreement, which set out a promise by the Respondents to pay interest on the investors' principal, and return to the Respondents the principal amount of their investment;

c) investors were passive participants in the business of Kingdom; and

d) after a period of time (usually 6 months), investors were promised that they would receive their principal and returns of between 10% and 30%.

[20] The Respondents offered some investors the option of keeping their investment in Kingdom after the expiry of the initial investment. If renewed, investors typically entered into another Agreement and the returns from the first investment were added to their principal.

[21] White was the mind and management of Kingdom and its sole officer and director. She was the only one who signed Agreements on behalf of Kingdom.

[22] White approved all the materials contained in the Investor Package.

[23] White had control over Kingdom's financial accounts, including accounts at Vancity, Royal Bank of Canada (RBC) and TD Bank. Although some Kingdom accounts had other signatories, the evidence established that White had and exercised control over the accounts.

[24] The Respondents used funds from seven investors to repay other investors and a personal loan during July 2017, August 2017, February 2018, March to April 2018, and December 2018. White issued payments from Kingdom's accounts to investors and, in one instance, to her step-father, using other investors' funds.

[25] Most of the Agreements reflected Kingdom, and in some cases, White, as the borrower. Most of the Agreements were signed by White, on behalf of Kingdom or herself, although three agreements had no signature.

C. The Investors

[26] Between August 2016 and October 2019, Kingdom distributed securities to 24 investors, most of them residents of British Columbia. Those investors made 27 investments totaling $1,186,860. The investors received various documents relating to their investments including Agreements, emails and verbal representations.

[27] The Investigator analyzed various pieces of evidence to identify investor payments and repayments in the relevant period. This was difficult due to the Respondents' failure to keep accounting records for Kingdom. The Respondents did not provide any financial statements or other financial records to Commission staff.

[28] The financial analysis prepared by the Investigator from the bank records is the only accounting record for Kingdom during the relevant period.

[29] The Investigator analyzed the evidence gathered, including bank deposits, bank records, Agreements, information from investors, and information from the Respondents. For the majority of investors, there are at least two pieces of corroborating evidence available to establish that the person was, in fact, an investor in Kingdom. The evidence also established that funds flowed from investors to the Respondents in respect of the three unsigned Agreements.

[30] All Testifying Investors stated that White told them that their money would be used for the purchase, renovation and sale of properties in British Columbia.

[31] The Testifying Investors were provided with Agreements. Investor C's Agreement identified a specific property while other Testifying Investors received more general representations about how their funds would be invested. Some of the Agreements were between investors and White personally. The balance were between the investors and Kingdom. The Testifying Investors said that they expected White or Kingdom to use their investments funds to invest in real estate in British Columbia and to provide returns consistent with the Agreements they signed. The oral representations they received from the Respondents about their investments were consistent with the representations set out in the business plan.

[32] There were a number of investors who did not testify but who were interviewed under oath, or through emails, or phone interviews by the Investigator. In addition, one investor submitted a questionnaire, in which he described his investment. The evidence provided by those investors was consistent with the evidence of the Testifying Investors and with the representations set out in various versions of the Investor Package prepared by White.

D. White's evidence

[33] White attended two compelled interviews under oath with Commission staff. At the interviews, White admitted that:

a) she was the key decision maker and the mind and management of Kingdom;

b) she was the sole officer, owner, CEO and founder of Kingdom;

c) she solicited investors;

d) she provided investors with an Investor Package;

e) she was responsible for taking investors' money and dealing with investors;

f) she was not aware of securities rules and laws when she was raising money;

g) she advertised for investors on social media;

h) investor returns were generated by Kingdom's business activities;

i) she represented to investors that, at their option, their funds would be used to "fix and flip" properties;

j) 80% of investors invested in the "fix and flip" of properties that Kingdom operated;

k) investors put in the money and she would do the work;

l) she used investors' funds to pay returns to other investors; and

m) she agreed that it looks like she repaid investors with other investors' money.

III. Applicable Law

A. Standard of proof

[34] The onus of proof lies with the executive director. The standard of proof is proof on a balance of probabilities as stated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53. The British Columbia Court of Appeal in *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2023 BCCA 70, summarized the test in McDougall as:

> [162] In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada put to rest any debate that a heightened standard of proof applies in civil cases involving criminal or morally blameworthy conduct. The Court stated clearly that "there is only one civil standard of proof at common law and that is proof on a balance of probabilities": *F.H.* at para. 40. A judge's task is to determine "whether it is more likely than not" that the event at issue occurred: at para. 44. The level of scrutiny applied in the fact-finding exercise does not change with the seriousness of the case. In all cases, "evidence must be scrutinized with care by the trial judge" and "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test": at paras. 45–46.
>
> [163] Nevertheless, context remains critical. In assessing the evidence "a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *F.H.* at para. 40. The quality of

> evidence required to meet the balance of probabilities standard "will depend upon the nature of the claim and of the evidence capable of being adduced": *Nelson (City) v. Mowatt*, 2017 SCC 8 at para. 40.

B. Best Evidence

[35] As set out in *BC Policy 15-601 - Hearings*, the Commission generally expects parties to rely on the best evidence. The evidence provided by the executive director in respect of investors other than the Testifying Investors was of course hearsay. However, we have concluded that it is appropriate to give some weight to that evidence because it was consistent with that given by the Testifying Investors and included evidence given under oath in interviews. We have, however, given more weight to the evidence provided directly by the Testifying Investors.

C. Illegal distribution

Prospectus requirement

[36] Section 61 of the Act states in part:

> (1) Unless exempted under this Act, a person must not distribute a security unless
>
> (a) a preliminary prospectus and a prospectus respecting the security have been filed with the executive director, and
>
> (b) the executive director has issued receipts for the preliminary prospectus and prospectus.

[37] The definition of "distribute" includes, if used in relation to trading in securities, "a trade in a security of an issuer that has not been previously issued".

[38] The definition of "trade" under the Act is extremely broad and includes "a disposition of a security for valuable consideration".

Definition of a security

[39] Section 1(1) of the Act defines "security" to include:

> (c) … other evidence of indebtedness…
> …
> (l) an investment contract

[40] In *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, 1977 CanLII 37 (SCC), [1978] 2 S.C.R. 112, de Grandpré J. for the majority, at page 127 quoted with approval from *Tcherepnin v. Knight*, 389 U.S. 332 (1967), as follows:

> …in searching for the meaning and scope of the word 'security' in the Act, form should be disregarded for substance and the emphasis should be on economic reality.

[41] In *Re FS Financial Strategies*, 2017 BCSECCOM 238, the panel considered whether a loan agreement was a "security" as defined in the Act. It noted that the loan agreements at issue clearly qualified as "evidence of indebtedness" but that not all debtor/creditor agreements are "securities". Determining whether an agreement is a security requires consideration of the context in which the agreement occurs and the context in which the issuer is raising capital.

[42] The panel in *FS Financial* applied four factors adopted by the British Columbia Court of Appeal in *British Columbia (Securities Commission) v. Gill*, 2003 BCCA 169, from the US Supreme

Court decision in *Reves v. Ernst & Young*, 49 US 56 (1990), to assess whether the agreements at issue were securities:

a) the motivation of the parties: if the seller's purpose is to raise money for general business purposes and the buyer's purpose is to profit from the returns the instrument is expected to generate, the instrument is likely a security;

b) the intended distribution: if it is one in which there will be "common trading for speculation or investment" it is likely a security;

c) public expectation: the more the public expects that an instrument will be a security and thereby regulated by the securities laws, the more likely it is a security; and

d) another regulatory regime: if there is no other regulatory regime that significantly reduces the risk of the instrument, thereby rendering securities regulation necessary, the more likely it is a security.

[43] The term "investment contract" is not defined in the Act. In *Re Nickford*, 2017 BCSECCOM 272, the Commission noted that common law had developed a definition of an investment contract as "an investment of money in a common enterprise with profits to come from the efforts of others".

[44] The "efforts of others" and "common enterprise" aspects of the test were defined in *Re Braun*, 2018 BCSECCOM 332, at paragraph 91, as follows:

> All of that suggests that the "significant efforts of others" aspect of the test must focus on how material the decisions and efforts of others are to failure or success and not on the quantum or length of those efforts. Further, that the "common enterprise" aspect of the test must focus on how interwoven and dependent the investor's returns are on the success or failure of the efforts of a third party. We do not see a requirement that there must be a long-term relationship between the investor and the third party to meet the "common enterprise" aspect of the test.

Prospectus exemptions

[45] Section 2.3(1) *of National Instrument 45-106 – Prospectus Exemptions* (NI 45-106) states that the prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an "accredited investor".

[46] An accredited investor is a defined term in section 1.1 of NI 45-106. It requires a purchaser to meet certain income or asset tests in order for securities to be sold in reliance on the exemption including the following:

a) $1 million financial asset test in section (j): an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;

b) $5 million net asset test in section (l): an individual who, either alone or with a spouse, has net assets of at least $5,000,000; and

c) Net income test in section (k): an individual whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of

the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year.

[47] Section 2.5(1) of NI 45-106 states that the prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as a principal and is, among other exemptions:

a) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer; … or

b) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer.

[48] Companion policy to *NI 45-106 – Prospectus Exemptions* (NI 45-106 CP) gives guidance on the steps a person relying on a prospectus exemption can take to determine whether an exemption is available. Companion policies do not have the force of law. Their function is to inform market participants of the regulator's interpretation of certain aspects of securities law.

[49] Section 2.7 of NI 45-106 CP defines a close personal friend of a director, executive officer, … or control person of an issuer as "an individual who knows the director, executive officer, … or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment".

[50] The section further provides a list of factors relevant to the determination of whether an individual qualifies as a close personal friend including:

a) the length of time the individual has known the director, executive officer,... or control person;

b) the nature of the relationship between the individual and the director, executive officer... or control person including such matters as the frequency of contacts between them and the level of trust and reliance in the other circumstances; and

c) the number of "close personal friends" of the director, executive officer... or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

[51] The section also confirms that an individual is not a close personal friend solely because they are a member of the same club, organization, association or religious group or because they are a mere acquaintance.

[52] In *Solara Technologies Inc. (Re)*, 2010 BCSECCOM 163, the panel stressed, at paragraph 36, that exemptions are not claimed by an investor because an investor is not the one who requires an exemption to trade; it is the issuer who requires the exemption, and so must satisfy itself that an exemption on which it wishes to rely is available. The panel in *Solara* also made the following observations about the close personal friend exemption:

a) the exemption is not available unless certain facts, often known only to the investor, exist;

b) the issuer must reasonably believe that the facts relied on to justify the exemption are true;

c) a representation that merely asserts that the investor is a close personal friend is not sufficient; and

d) a representation by a representative of the issuer may not be sufficient because representatives are not necessarily disinterested parties so corroborating evidence may be necessary.

[53] Section 2.8 of NI 45-106 CP defines a close business associate as "an individual who has had sufficient prior business dealings with a director, executive officer, … or control person of the issuer to be in a position to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment".

[54] The section further provides a list of factors relevant to the determination of whether an individual qualifies as a close business associate including:

a) the length of time the individual has known the director, executive officer,... or control person;

b) the nature of any specific business relationships between the individual and the director, executive officer,... or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in the other circumstances;

c) the nature and number of any business dealings between the individual and the director, executive officer,... or control person, the length of the period during which they occurred, and the nature and date of the most recent business dealing; and

d) the number of "close personal associates" of the director, executive officer,... or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

[55] The section also confirms that an individual is not a close business associate solely because they are a member of the same club, organization, association or religious group or because they are a mere acquaintance.

[56] Section 1.9 of NI 45-106 CP states that the person distributing the securities is responsible for determining whether an exemption is available. In accordance with the companion policy, the Commission has consistently noted that it is the responsibility of the person trading in a security to ensure that the trade complies with the Act. Consistent with the analysis from *Solara* above, the person trading in the security bears the onus of establishing that an exemption applies.

Commission of fraud

[57] Before amendments that expanded the statutory prohibition came into effect on March 27, 2020, and for the relevant period, section 57(b) of the Act stated:

> A person must not, directly or indirectly, engage in or participate in conduct relating to securities…if the person knows, or reasonably should know, that the conduct
> …
> (b) perpetrates a fraud on any person.

[58] In *Anderson v. British Columbia* (Securities Commission), 2004 BCCA 7, at paragraph 27, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Théroux*, [1993] 2 SCR 5:

> …the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. The prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> 2. Deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interest at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. Subjective knowledge of the prohibited act; and
> 2. Subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[59] The Supreme Court of Canada provided guidance for the analysis of "other fraudulent means" in *Théroux*, and *R. v. Zlatic*, 1993 CanLII 135 (SCC), [1993] 2 SCR 29.

[60] Both cases make it clear that "other fraudulent means" encompasses all means, other than deceit or falsehood, which can properly be characterized as dishonest, and is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act".

[61] *Zlatic*, said this about the determination of dishonesty (at page 45):

> Dishonesty is, of course, difficult to define with precision. It does, however, connote an underhanded design which has the effect, or which engenders the risk, of depriving others of what is theirs. J. D. Ewart, in his *Criminal Fraud* (1996), defines dishonest conduct as that "which ordinary, decent people would feel was discreditable as being clearly at variance with straightforward or honourable dealings".

[62] *Théroux* noted that courts have included within the meaning of "other fraudulent means" the "use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property". It went on to say that when considering unauthorized diversion of funds, an important consideration will be whether the diversion "could reasonably be thought to serve personal rather than bona fides business ends".

Obstruction of justice

[63] Section 57.5 of the Act states:

> (1)A person must not
>
> (a) refuse to give any information or produce any record or thing, or

> (b) destroy, conceal or withhold, or attempt to destroy, conceal or withhold, any information, record or thing reasonably required for a hearing, review, investigation, examination or inspection under this Act.
>
> (2)A person contravenes subsection (1) if the person knows or reasonably should know that a hearing, review, investigation, examination or inspection is being conducted or is likely to be conducted and the person takes any action referred to in subsection (1).

[64] In *Re North America Frac Sand Inc.,* 2022 ABASC 110, the Alberta Securities Commission stated as follows while considering a similar provision in its governing legislation:

> [582] As stated by the ASC in *Re Fletcher*, 2012 ABASC 222 at para. 108 (also see *Re TransCap Corporation*, 2013 ABASC 201 at para. 92):
>
>> To find a contravention of section 93.4(1) of the Act, we need not find that there was an obstruction of the investigation (although this may well be a relevant consideration at any required sanction hearing). Rather, to find such a contravention, we must determine first whether [a respondent] concealed or withheld, or attempted to conceal or withhold, information and, second, whether that information was reasonably required for an investigation under the Act.
>
> [583] Both *Fletcher* (at para. 113) and *TransCap* (at para. 92) clarified that a panel need find only that the information was reasonably required for the investigation, not that the person being questioned knew it was reasonably required for such an investigation. In other words, interviewees during Staff investigations do not get to decide what they consider is important or relevant to an investigation.

Contraventions attributable to employees, officers, directors and agents

[65] Section 168.2(1) of the Act states that if a corporate respondent contravenes a provision of the Act, an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual “authorizes, permits, or acquiesces in the contravention.”

[66] There have been numerous decisions that have considered the meaning of the terms “authorize, permit or acquiesce.” In sum, these decisions require that the respondent have the requisite knowledge of the corporate contraventions and the ability to influence the actions of the corporate entity through action or inaction.

[67] In *Re Momentas Corp.,* 2006 ONSEC 15, the Ontario Securities Commission considered the meaning of “authorized, permitted or acquiesced” for a director or officer’s liability for the issuer’s non-compliance with the Act, and stated:

> 118 Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms “authorize”, “permit”, and “acquiesce” varies significantly. “Acquiesce” means to agree or consent quietly without protest. “Permit” means to allow, consent, tolerate, given permission, particularly in writing. “Authorize” means to give official approval or permission, to give power or authority or to give justification.

IV. Positions of the parties on liability

[68] Given the respondents made neither written nor oral submissions on liability, the following is the position of the executive director.

[69] The executive director alleges that White and Kingdom:

a) illegally distributed securities; and

b) committed fraud when they used investors' funds to repay other investors and a personal loan and when they continued to raise funds when they knew that Kingdom was defaulting on payments to investors.

[70] The executive director also alleges that White:

a) obstructed justice when she refused to provide documents and information reasonably required for an investigation; and

b) authorized, permitted or acquiesced in Kingdom's contraventions of section 57(b) and section 61(1)(a) of the Act and therefore contravened the provisions under section 168.2.

The Respondents distributed securities of Kingdom illegally

[71] The executive director submits that the Respondents raised $1,186,860 from 24 investors by distributing securities for which a prospectus had not been filed. The executive director also alleges that the Respondents did not file exempt distribution reports for any of these investments and that no exemptions from the prospectus requirement were available.

[72] The executive director also submits that during an interview under oath, White admitted that the Respondents had never filed exemption reports with the Commission. At the time of the investments, White admitted that she did not know what an accredited investor was. An accredited investor is one of the basis for an exemption to the requirement to file a prospectus.

[73] The executive director submits that the Agreements are securities as such term is defined in the Act.

[74] The executive director further says that, based on the reasoning and analysis in *Re FS Financial Strategies,* 2017 BCSECCOM 238 and *Re Braun,* 2018 BCSECCOM 332, when we focus on the economic reality of the Agreements over their form, such Agreements are either "evidences of indebtedness" or "investment contracts" and thereby fall into the definition of a "security" in Section 1 of the Act.

[75] The executive director then submits that:

a) the Agreements were disposed of for valuable consideration and were, therefore, distributed as the term "distribute" is defined in the Act;

b) such distribution was done without filing a preliminary prospectus or prospectus, offering memorandum or report of exempt distribution related to such distribution;

c) none of the investors who entered into the Agreements with the Respondents qualified for exemptions to the prospectus requirements in respect of any such distribution; and

d) the Respondents breached section 61 of the Act each time they distributed securities to investors who did not qualify for exemptions.

The Respondents committed fraud in two ways

[76] The executive director submits that:

a) in her interview with investigators, White was asked whether she ever used one investor's funds to repay an earlier investor and she said, "honestly, I would probably say yes. And it was at the beginning of my career when I didn't know that you weren't allowed to do that";

b) White said she had repaid investors with other investor funds in her first year of business, 2016, 2017, and that she had done it in the range of three or four times;

c) the Respondents used the funds invested by six investors to repay investments made by eight others; and

d) the Respondents used $66,000 of one investor's initial $82,000 investment to repay a personal loan owed to White's step-father. The evidence adduced by the executive director identifies White's step-father as a private lender rather than an Investor.

[77] The executive director also submits that:

a) on January 24, 2019, Kingdom entered into an Agreement with investor B and BP. The investment was $100,000 for six months at eight percent interest; and

b) prior to the investment, on January 21, 2019, investor B sent an email describing how she and investor BP just spent two hours with White learning about the business and committed to investing $100,000 in Kingdom. Investor B shared some promotional materials she received from White. White told investigators that she told investors B and BP "what I told most investors". She was not sure exactly what she had said but was sure she told them "what the company mission and vision is for". White didn't think their investment was earmarked for a specific property.

[78] The executive director also submits that:

a) on the day the investors B and BP's $100,000 investment was deposited into Kingdom's account, the balance was $46.21;

b) by the time of investors B and BP's investment, Kingdom had already defaulted on payments to earlier investors;

c) in an email to Commission investigators, Investor B confirmed that, at the time of her investment, White did not mention anything about the financial state of the company or it being in any financial distress; and

d) in a compelled interview, under oath with Commission staff, White told investigators that Kingdom was unable to pay investors after August 1, 2018.

[79] The executive director further submits that:

a) the Respondents breached section 57(b) of the Act, as it was then, in an amount of $175,771.54, when the Respondents used some investors' funds to repay other investors and to repay a personal loan to White's step-father; and

b) the Respondents breached section 57(b) of the Act in the amount of $100,000 when the Respondents entered into an Agreement relating to the distribution of securities of Kingdom without disclosing that, at that time, Kingdom was unable to make and had defaulted on payments to other investors.

White obstructed justice

[80] The executive director submits that White attended a compelled interview under oath with Commission investigators on December 8, 2020.

[81] During the course of the interview, Commission investigators made 14 requests that White provide additional documents and information. The first request was for the date White established a corporate entity. Requests 2 - 6, 11, 13 and 14 were for contact information. Requests 7 - 9 related to joint venture and property agreements. Request 10 was for documents relating to a specific property, including an agreement for purchase and sale and any emails related to the property. Request 12 was for email communications with an individual.

[82] The executive director submits that this information and documentation was reasonably required for the investigation because Commission staff were asking for:

a) contact information for investors White had confirmed had invested in Kingdom;

b) copies of joint venture agreements Kingdom had entered into with investors; and

c) a purchase agreement related to a property involving a Kingdom investor.

[83] After the interview, on December 23, 2020, the Investigator followed up with White by email regarding the requests for further information. White responded on December 23, 2020 by saying, in part, "providing this info is only a waste of my time and won't change the outcome".

[84] On December 24, 2020, White called the Investigator. During their conversation, the Investigator reiterated that failure to comply with the requests for information made during the interview would be contrary to section 144 of the Act and may result in enforcement action.

[85] On January 11, 2021, White emailed the Investigator and advised that she had retained counsel and requested additional time to provide the requested information. The Investigator provided an extension until February 19, 2021.

[86] On February 22, 2021, the Investigator wrote to White and asked whether she would be providing the requested information. White responded the following day and said she was still working towards the goal of retaining counsel. The Investigator responded that day and

reiterated the request for information and advised he would not extend the deadline. White never responded to this email.

[87] At the time the requests for further documents and information were made, White knew there was an investigation underway. She had complied with previous demands and attended the December 8, 2020, compelled interview. During the interview, the Investigation Order was entered as an exhibit.

[88] The executive director submits that White obstructed justice by breaching section 57.5(1)(a) of the Act when she failed to comply with demands made for information and documents that were reasonably required for the investigation of the matters that are the subject of this hearing.

Contraventions by Kingdom are attributable to White

[89] The executive director submits that:

a) White was the sole director, CEO and controlling mind of Kingdom;

b) White signed the Agreements on Kingdom's behalf and controlled all of Kingdom's bank accounts and as such, she controlled disbursements from such accounts and determined how and where investors' money was spent by Kingdom; and

c) Kingdom was White's corporate alter ego and any acts or failures to act by Kingdom that resulted in breaches of this Act could not have occurred without White's authorization.

[90] As such, the executive director submits that White is personally responsible, pursuant to section 168.2 of the Act, for the breaches by Kingdom of sections 57(b) and 61 of the Act.

V. Analysis and Findings

Illegal distribution

[91] The submissions of the executive director on the application of the principles set forth in *Re FS Financial* and *Re Braun* to the facts at issue here aligns with the approach taken by earlier panels when considering whether or not offering documents constitute securities by virtue of being found to be, among other things, evidence of indebtedness or investment contracts.

[92] With reference to the factors set forth in *FS Financial* and the test laid out in *Re Braun,* both set out in detail above, this panel finds that:

a) the Agreements are securities as defined in the Act;

b) such securities were distributed as trades each and every time the Respondents entered into an Agreement with an investor;

c) Kingdom and/or White, depending on the circumstances, were the issuers of the securities;

d) the Respondents engaged in multiple trades of securities when they entered into the Agreements with the investors for consideration of $1,186,860;

e) the trade in those securities was a distribution under the Act;

f) no preliminary prospectus or prospectus, offering memorandum or report of exempt distributions were filed in relation to this distribution of securities; and

g) none of the investors qualified for exemptions to the prospectus requirements under the Act.

[93] This panel finds that the Respondents breached section 61 of the Act each time they distributed securities to investors who did not qualify for exemptions.

Commission of fraud

[94] The fraudulent acts alleged by the executive director in these circumstances are:

a) White took a portion of the proceeds of distribution from some investors, in the amount of $175,771.54, and used such funds to repay other investors and to repay a personal loan to her step-father; and

b) the Respondents distributed securities to two investors for proceeds of $100,000 while failing to disclose that, at the time of such distribution, Kingdom was unable to make and had defaulted on payments to other investors.

[95] Following the approach in *Anderson*, in both alleged factual circumstances, this panel finds that the evidence led by the executive director proves the alleged underlying facts that constitute the prohibited acts and specifically finds that such acts were acts of deceit or some other fraudulent means and that such acts caused deprivation in the form of actual loss to the affected investors.

[96] This panel also finds that:

a) White had subjective knowledge of such acts of deceit and dishonesty;

b) White was the operating mind of Kingdom and therefore Kingdom had the same subjective knowledge; and

c) both Respondents had knowledge that these acts could have, as a consequence, the deprivation of others, in this case the affected investors.

[97] This panel adopts, without reservation, the approach taken in *Théroux*, wherein it was noted that courts have included within the meaning of "other fraudulent means" the "use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized abrogation of funds or property". The court in *Théroux* also went on to say that when considering unauthorized diversion of funds, an important consideration will be whether the diversion "could reasonably be thought to serve personal rather than bona fides business ends".

[98] The executive director established through evidence adduced at the hearing on this matter that the Respondents used corporate funds for a personal purpose of White (i.e. payout of personal loans to her step-father) and diverted funds intended to be used for the purposes represented by the Respondents to certain investors, in the course of the illegal distribution, to instead be used to repay other investors.

[99] This panel finds such acts amounted to fraud being perpetrated by the Respondents on such affected investors pursuant to section 57(b) of the Act.

Obstruction of justice

[100] During the course of the interview, Commission investigators made 14 requests that White provide additional documents and information. The first request was for the date White established a corporate entity. Requests 2 - 6, 11, 13 and 14 were for contact information. Requests 7 - 9 related to joint venture and property agreements. Request 10 was for documents relating to a specific property, including an agreement for purchase and sale and any emails related to the property. Request 12 was for email communications with an individual.

[101] The executive director submits that this information and documentation was reasonably required for the investigation because Commission staff were asking for:

a) contact information for investors White had confirmed had invested in Kingdom;

b) copies of joint venture agreements Kingdom had entered into with investors; and

c) a purchase agreement related to a property involving a Kingdom investor.

[102] It cannot be the case that failure to maintain adequate business records, whether intentional or not, in any way mitigates responsibility for the commission of breaches under this Act. Failure to comply with demands made for information and documents that were reasonably required for an investigation is a breach of the Act.

[103] The statutory threshold (both in British Columbia as set out in s. 57.5 of the Act and in Alberta as described in *Frac Sand*) is "reasonably required". That is a broad phrase, and section 57.5 has been read broadly by our Court of Appeal. An "investigation…under this Act" includes both formal investigations under Part 17 of the Act and informal investigation processes. In *Wang v. British Columbia Securities Commission*, 2023 BCCA 101, Horsman, J.A. in her dissenting reasons concurred with, on this point, by the majority, writes at paragraph 54:

> …Section 57.5, on its face, is broadly worded to apply to conduct related to an "investigation... under the Act". There is no limiting language. There is no indication in the statutory language or context that the legislature intended to draw a distinction between formal and informal investigations. The purpose of section 57.5 is to facilitate the Commission's effective administration of the *Securities Act* by prohibiting conduct that would thwart the Commission in carrying out various regulatory processes, including investigations…

[104] It is not necessary for the investigator to testify that the information sought was reasonably required for the investigation. Having reviewed the outstanding requests made of White at her compelled interview and having considered the matters in issue in this proceeding, we find that the executive director has established that the requested information and documents were reasonably required for the investigation."

[105] This panel finds that by failing to comply with the demands made for information and documents that were reasonably required for the investigation of the matters that are the subject of this hearing, White breached section 57.5(1)(a) of the Act.

Attribution of contraventions by Kingdom to White

[106] This panel accepts the submissions of the executive director and finds that, as the sole director, CEO and controlling mind of Kingdom and as the person who signed the Agreements on Kingdom's behalf and controlled all of Kingdom's bank accounts, including all disbursements from such accounts, Kingdom was White's corporate alter ego and any acts or failures to act by Kingdom that resulted in breaches of this Act could not have occurred without White's authorization.

[107] This panel finds that, pursuant to section 168.2 of the Act, White has contravened sections 57(b) and 61 of the Act.

VI. Submissions on Sanction

[108] We direct the executive director and the respondents to make their submissions on sanctions as follows:

By February 5, 2024	The executive director delivers submissions to the respondents and the Commission Hearing Office.
By February 19, 2024	The respondents deliver response submissions to the executive director and the Commission Hearing Office.
By February 19, 2024	Any party seeking an oral hearing on the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
By February 26, 2024	The executive director delivers reply submissions (if any) to the respondents and to the Commission Hearing Office.

January 15, 2024

For the Commission

James Kershaw
Commissioner

Deborah Armour, KC
Commissioner

Jason Milne
Commissioner