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

Citation: Re Oei, 2024 BCSECCOM 27 Date: 20240118

Paul Se Hui Oei, Canadian Manu Immigration & Financial Services Inc., 0863220 B.C. Ltd. and 0905701 B.C. Ltd.

Panel	Marion Shaw	Commissioner
	Karen Keilty	Commissioner
	Jason Milne	Commissioner
Submissions completed	January 5, 2024	
Decision date	January 18, 2024	

Appearing

Matthew S. Smith	For the Executive Director

Decision

I. Introduction

[1] On December 12, 2017, in *Re Oei*, 2017 BCSECCOM 365 (Liability Decision), the Commission found that Paul Se Hui Oei (Oei), Canadian Manu Immigration & Financial Services Inc. (Manu) and others had perpetrated fraud contrary to section 57(b) of the *Securities Act*, RSBC 1996, c. 418 (Act).

[2] On August 8, 2018, in *Re Oei*, 2018 BCSECCOM 231 (Sanction Decision), the Commission ordered Oei and Manu jointly and severally to disgorge $3,087,977.41 to the Commission pursuant to section 161(1)(g) of the Act.

[3] The Commission has recovered $69,887.85 (Funds) in partial satisfaction of the disgorgement order made against Oei and Manu.

[4] On January 27, 2023, the executive director applied to the Commission for approval of a proposed claims process under section 15.1 of the Act relating to the Funds (Claims Process).

[5] On March 29, 2023, in *Re Oei*, 2023 BCSECCOM 140, the Commission approved the Claims Process.

[6] On November 3, 3023, the executive director provided the Commission with his report and recommendations (Report) and an affidavit of a staff member in the Enforcement Division of the Commission.

[7] Having considered the evidence and recommendations provided by the executive director as well as the factors set out in section 7.4 of the *Securities Regulation*, B.C. Reg. 196/97 (Regulation) relevant to the executive director's recommendations, we make the payment order below pursuant to section 15.1(3) of the Act.

II. Applicable Law

A. Provisions of the Act and Regulation

[8] Section 15.1 of the Act provides:

> **Claim for wrongful benefit**
> **15.1** (1) The commission must publish a notice if the commission receives money from an order under section 155.1(b), 157(1)(b) or 161(1)(g).
> (1.1) A notice under subsection (1) must set out a period within which a person may make a claim.
> (1.2) The period referred to in subsection (1.1) must be at least 3 months from the date the notice is given.
> (2) A person may make a claim to money referred to in subsection (1) by submitting an application in accordance with the regulation.
> (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) The commission may retain any money not payable under subsection (3) after the period referred to in subsection (1.1) expires and after adjudicating all claims in accordance with the regulations.

[9] The Regulation in respect of section 15.1 of the Act provides:

> **Definitions**
> **7.1** In this Part:
>
> **"eligible applicant"** means a person who
>
> (a) suffered pecuniary loss as a direct result of misconduct that resulted in an order for which the commission gave notice under section 15.1(1) of the Act,
> (b) did not directly or indirectly engage in the misconduct that resulted in the order, and
> (c) has not been denied a claim under section 7.4(6);
>
> **"order"** means an order made under section 155.1(b), 157(1)(b) or 161(1)(g) of the Act.
>
> **Claims application**
> **7.3** (2) If a person has made an application under section 15.1 of the Act and the information provided in the application changes in a material respect so that the information provided is false or misleading, the person must report the change to the commission promptly.
>
> **Adjudication of claims**
> **7.4** (1) If the commission determines that an applicant is an eligible applicant in respect of an order, the commission may make a payment to the eligible applicant from money received from the order.
> (2) When determining the amount to be paid to an eligible applicant, the commission must consider the following:
> (a) the amount of money received from the order;
> (b) the loss suffered by the eligible applicant;
> (c) the losses suffered by all eligible applicants;
> (d) any other information the commission considers appropriate in the circumstances;

(3) When determining an applicant's loss for the purposes of this section, the commission must not include any amount claimed by the applicant in respect of a loss of opportunity, including interest on any loss, and must consider the following:
    (a) whether the applicant received or is entitled to receive compensation from other sources for the loss arising from the misconduct that resulted in the order;
    (b) whether the applicant benefitted from the misconduct that resulted in the order;
    (c) the results of any hedging or other risk limitation transactions made by the applicant.
(4) The commission may prorate payments among eligible applicants if, having considered the matters under subsection (2), the commission determines that the money the commission received from the order is insufficient to pay the claims of all eligible applicants.
(5) A prorated payment made to an eligible applicant must be determined in accordance with the following formula:

$$\frac{A \times B}{C}$$

where

A = the amount of money the commission received under the order,
B = the loss suffered by the eligible applicant, and
C = the losses suffered by all eligible applicants.

(6) The commission may deny an applicant's claim if the applicant
    (a) fails to comply with section 7.3 (2), or

    (b) makes a statement or provides information to the commission that, in a material respect and at the time and in the light of the circumstances in which it is made, is false or misleading, or omits facts from the statement or information necessary to make that statement or information not false or misleading.

    [en. B.C. Reg. 91/2014, Sch. s. 1.]

Opportunity to be heard

7.5 Except for a decision to prorate payments under section 7.4(4), the commission must not deny all or part of a claim without giving the applicant an opportunity to be heard.

B. Applicable principles

[10] In *Re Alexander*, 2017 BCSECCOM 78, at paragraphs 25 to 27, the Commission set out some general principles to consider in determining applications to pay out funds pursuant to section 15.1 of the Act:

> [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;

2. applications under section 15.1 are not generally determined with a view to the public interest (unlike many other provisions of the Act which expressly require the Commission to take the public interest into consideration when making an order or taking some other step);

3. a Commission panel considering an application under section 15.1 should apply the test of whether the evidence, on a balance of probabilities, supports granting the application;

…

[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;

- where there is a substantial number of claimants, ensure that the Commission's administrative procedures for vetting those claims are appropriate;

- provide a forum whereby disputes over claims may be heard; and

- make orders for payments where we are satisfied that the evidence, on a balance of probabilities, warrants such an order.

[27] Similarly, the executive director, who is responsible for administrative oversight of the vetting of applications, plays an important role by making recommendations to the panel (wherever possible) in much the same manner that a trustee in bankruptcy makes a recommendation for payment out of court based on their administrative oversight of the claims process.

[11] The Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, at paragraphs 76 to 78, noted that section 15.1 of the Act is an "expeditious" method for victims to receive some money and is not restitution, which restores victims to their original position. Restitution is generally reserved for the courts.

III. Background

A. Claims process

[12] In accordance with the Claims Process, the executive director:

a) issued a press release and posted a notice about the Claims Process on the Commission's public website with a claim deadline of August 11, 2023; and

b) emailed the press release and notice of the Claims Process to all potentially eligible applicants for whom staff had email addresses.

[13] On August 11, 2023, the four-month period set out in the Claims Process expired.

[14] The executive director received applications in respect of the Funds from nine individuals, identified below by their initials (Applicants).

[15] The executive director's report and recommendations to the Commission provided details on the Funds, the Claims Process, and the Applicants' applications for compensation.

B. The claims filed under section 15.1

[16] The Applicants filed applications with the Commission claiming the following amounts:

Investor	Amount Claimed
SWC	$65,000 - $7,275 returned = $57,725
WC	$500,000 - $30,000 returned = $470,000
JPZ	$500,000 - $30,000 returned = $470,000
CH	$500,000
WL	$500,000
YL	$115,000
JPM	$50,000 - $8,250 returned = $41,750
YJ	$5,095,540.26
ZML	$45,000

[17] Investor WL's investment was on behalf of investor WL and her mother. Investor WL's application included the death certificates of investor WL's mother and father and investor WL's father's last will and testament naming investor WL as executor and sole beneficiary of the father's estate. The executive director provided an affidavit from a staff member in the Enforcement Division of the Commission that stated that investor WL had advised the staff member that investor WL was the sole beneficiary of the estate.

[18] Investor YL's application stated that investor YL had received some interest payments but did not know the exact figure. The executive director advised in his Report that, according to the evidence submitted in the liability hearing, investor YL had received $29,165, making his remaining claim $85,835.

[19] In his Report, the executive director advised that according to the evidence submitted in the liability hearing, investor JPM had received $9,000 from three cheques instead of the $8,250 set out in investor JPM's application. However, the executive director recommended that investor JPM's application be approved as submitted because investor JPM had advised the executive director that investor JPM had no record of receiving one of the cheques, there was no evidence to disprove that claim, and the difference in the resulting prorated amount to be paid to investor JPM is immaterial.

[20] Investor YJ's claim was made personally and as an agent for a group. Investor YJ based the claim of $5,095,540.26 on the decision of the British Columbia Supreme Court in *Jiang v. Oei*, 2023 BCSC 921, in which the Court found that investor YJ was owed $1,497,500 USD and 15,987,930 RMB. Investor YJ converted those amounts into $5,095,540.26 CAD for purposes of his claim to the Funds. In the Liability Decision, at paragraph 74, the panel had found that investor YJ and his group had invested $3.72 million USD, which at the time represented $4 million CAD.

[21] Investor ZML was a member of investor YJ's group. The staff member's affidavit stated that investor YJ's lawyer had advised Commission counsel that investor ZML had not taken proceedings against investor YJ, and consequently the loss suffered by investor ZML was not already included in the loss suffered by investor YJ.

[22] Each of the Applicants certified that they did not, directly or indirectly, engage in the misconduct that resulted in the disgorgement order.

C. The executive director's report and recommendations

[23] In his Report, the executive director outlined the steps he took to administer the Claims Process. He recommended that each claim be approved and distributed on a *pro rata* basis from the Funds together with accrued interest, all in accordance with the formula prescribed by section 7.4(5) of the Regulation.

[24] The executive director set out the basis upon which he is satisfied that:

a) the Commission has complied with all applicable procedural requirements in the Act and Regulation;

b) each Applicant is an "eligible applicant" and had filed their application in the required form and within the required four-month time period, in accordance with section 15.1 of the Act; and

c) payment (on a *pro rata* basis) in accordance with the applications and section 7.4(4) of the Regulation is supported by the applications, together with the evidence presented at the liability hearing.

[25] Section 7.5 of the Regulation provides that except for a decision to prorate claims in accordance with section 7.4(4), the Commission must not deny all or part of a claim without giving the Applicant an opportunity to be heard. The executive director submitted that the Applicants are not entitled to be heard under section 7.5 because he recommended approval of all the applications with a *pro rata* distribution of the Funds to the Applicants.

[26] The executive director recommended that the interest accrued on the Funds to the date that payment is issued to the Applicants by the Commission also be distributed to the Applicants on a *pro rata* basis.

[27] The executive director recommended that the Applicants' claims be quantified as:

Investor	**Amount Claimed**
SWC	$65,000 - $7,275 returned = $57,725
WC	$500,000 - $30,000 returned = $470,000
JPZ	$500,000 - $30,000 returned = $470,000
CH	$500,000
WL	$500,000
YL	$115,000 - $29,165 returned = $85,835
JPM	$50,000 - $8,250 returned = $41,750
YJ	$5,095,540.26
ZML	$45,000

[28] On December 19, 2023, on behalf of the panel, the Hearing Office notified counsel for investor YJ and counsel for the executive director that since the Commission had determined in the Liability Decision that investor YJ and his group had invested $4,000,000 CAD, we consider that amount, and not the $5,095,540.26 subsequently

claimed by investor YJ, to be the relevant loss for present purposes. The notice advised that if either investor YJ or the executive director wished an opportunity to be heard in respect of that decision, they had until January 5, 2024 to respond. No response was received from either party.

D. Position of the parties

[29] None of the Applicants made any submissions or requested an oral hearing.

[30] In his Report, the executive director took the position that:

a) the Commission has complied with all applicable procedural requirements in the Act and Regulation;

b) each Applicant qualifies as an "eligible applicant" as defined in the Regulation and has submitted their application in the required form;

c) investor WL is the eligible Applicant for the portion of the Funds owed to investor WL's deceased mother;

d) the Applicants should receive the amount invested by the Applicants less any payments the Applicants received from the respondents;

e) the Commission should make a full distribution of the Funds and any interest accrued on the Funds to the Applicants;

f) because the Funds totalled less than the total amount claimed by the Applicants, section 7.4(5) of the Regulation applies and prorated payments of the Funds should be made to the Applicants in accordance with the formula set forth in that section;

g) the interest accrued on the Funds since the Commission received them should be paid to the Applicants on the same prorated basis; and

h) the interest on the Funds be calculated to the date that payment is issued to the Applicants by the Commission.

IV. Analysis

[31] The executive director's Report was made in writing. We provided counsel for the executive director and counsel for investor YJ with the opportunity to be heard, as per section 7.5 of the Regulation, regarding our intention to assess investor YJ's loss at $4,000,000. Neither party responded. No other party requested an opportunity to make submissions in person. We find that we are able to make an order on the applications without an in-person hearing or further submissions.

[32] Mindful of the Commission's guidance in *Re Alexander*, we have reviewed the executive director's Report as well as the affidavit in support. Our task is to determine whether the evidence, on a balance of probabilities, supports granting the applications.

[33] We are satisfied that each of the Applicants is an "eligible applicant" under the Act.

[34] We find that the Commission has given the requisite notice to the public with respect to the Funds as required by section 15.1(1) of the Act.

[35] We find that each of the Applicants properly applied for payment of funds pursuant to section 15.1(2) of the Act, and that the amount of the loss suffered by each Applicant as calculated by the executive director is appropriate and in accordance with section 7.4 of the Regulation, except that investor YJ's loss will be calculated as $4,000,000 instead of the $5,085,540.26 set out in his application.

[36] Regarding our calculation of investor YJ's loss, we note that in the Sanction Decision, the panel ordered that Oei and Canadian Manu jointly and severally disgorge $3,087,977.41, which represented the total misappropriation of $5,081,415 less $1,993,437.59 that had been returned to four of the investors. As noted above, the Commission panel found that investor YJ and his group had invested $3.72 million USD, which at the time represented $4 million CAD. We consider that amount to be the relevant loss for purpose of distributing disgorged funds to the eligible applicants. A fair distribution of the Funds to the eligible applicants should be based on each investor's share of the misappropriated funds as determined in the Sanction Decision and our allocation of the Funds should not consider additional losses incurred by investor YJ such as the additional amounts determined by the Court in *Jiang v. Oei*, 2023 BCSC 921 or include additional losses for subsequent changes in exchange rates.

[37] We find that it is appropriate to pay out all of the Funds to the Applicants because the notice period has expired and no other claims were brought during that period.

[38] Since the Funds are insufficient to pay out in full the Applicants' claims, it is appropriate to prorate payments among the Applicants in accordance with section 7.4(5) of the Regulation, based on the following amounts:

Investor	**Amount**
SWC	$57,725
WC	$470,000
JPZ	$470,000
CH	$500,000
WL	$500,000
YL	$85,835
JPM	$41,750
YJ	$4,000,000
ZML	$45,000

[39] It is also appropriate to pay out the accrued interest, calculated to the date that payment is issued to the Applicants by the Commission, to the Applicants on the same prorated basis as the Funds.

[40] Applying the principles laid out in *Re Alexander*, we find that the applicable procedural

requirements set out in the Act and Regulation have been met, and that the evidence, on a balance of probabilities, supports granting the Applicants' applications.

V. Decision and Order

[41] We grant the Applicants' applications and order under section 15.1(3) of the Act that the executive director pay to them, on a prorated basis in accordance with section 7.4(5) of the Regulation, the Funds and interest accrued on the Funds as follows:

a) to investor SWC, $653.82, together with a pro rata share of the payable interest;

b) to investor WC, $5,323.44, together with a pro rata share of the payable interest;

c) to investor JPZ, $5,323.44, together with a pro rata share of the payable interest;

d) to investor CH, $5,663.24, together with a pro rata share of the payable interest;

e) to investor WL, $5,663.24, together with a pro rata share of the payable interest;

f) to investor YL, $972.21, together with a pro rata share of the payable interest;

g) to investor JPM, $472.88, together with a pro rata share of the payable interest;

h) to investor YJ, $45,305.89, together with a pro rata share of the payable interest; and

i) to investor ZML, $509.69, together with a pro rata share of the payable interest.

January 18, 2024

For the Commission

Marion Shaw
Commissioner

Karen Keilty
Commissioner

Jason Milne
Commissioner