

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

Citation: Re Bracetek, 2024 BCSECCOM 407

Date: 20240916

Bracetek Industries Group Ltd.

Panel

**Gordon Johnson
Marion Shaw**

**Vice Chair
Commissioner**

Date of Decision

September 16, 2024

Decision

I. Introduction

- [1] On September 4, 2024, the executive director of the British Columbia Securities Commission provided to the Commission one application (Application) under section 15.1 of the *Securities Act*, RSBC 1996, c. 418 (Act) made by an individual for the payment of funds obtained by the Commission pursuant to an order against Bracetek Industries Group Ltd. (Bracetek).
- [2] With the Application, the executive director provided a report and recommended that the Commission make a full distribution of the funds obtained by the Commission, together with any accrued interest, to the applicant. The executive director also provided an affidavit of a staff member in the Enforcement Division of the Commission in support of his recommendation (Supporting Affidavit).
- [3] Having considered the evidence and recommendations provided by the executive director as well as the factors 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.
- [4] These are our reasons for doing so.

II. Background

A. Underlying decision and settlement agreement

- [5] In a notice of hearing issued on May 26, 2021 (2021 BCSECCOM 217), the executive director alleged that Bracetek and Geoffrey Rajay Sidhu (Sidhu) committed fraud and illegally distributed securities.
- [6] On September 12, 2022, Sidhu entered into a settlement agreement (Settlement Agreement) with the executive director (2022 BCSECCOM 359). Sidhu admitted to committing one illegal distribution of securities, and the executive director discontinued the proceedings against Sidhu (2022 BCSECCOM 361).
- [7] On September 27, 2022, the executive director issued an amended notice of hearing (2022 BCSECCOM 397), against Bracetek only, alleging that Bracetek contravened section 61 of the Act by distributing \$1.75 million of its securities to a British Columbian investor (the Investor) without filing a prospectus when a prospectus exemption was not available. The amended notice of hearing did not allege fraud.

- [8] In Findings and Decision dated March 8, 2023, *Re Bracetek*, 2023 BCSECCOM 118 (Findings and Decision), the Commission found that:
- a) Bracetek was a company extra-provincially registered in British Columbia and, at the relevant time and according to its website, was in the business of manufacturing three proprietary bracing products for commercial and residential construction;
 - b) in November 2015, the Investor met Sidhu through a social networking website;
 - c) the Investor told Sidhu about her personal and financial circumstances including that she owned a home in Vancouver that was mortgage-free but she was struggling financially;
 - d) Sidhu advised the Investor on improving her financial situation, introduced her to a mortgage broker, and helped her with the application process;
 - e) on November 30, 2015, the Investor was approved for a one-year mortgage of \$2.07 million against her home;
 - f) on December 16, 2015, the Investor paid \$1.75 million to Bracetek to purchase common shares in Bracetek, and signed a subscription agreement;
 - g) Bracetek used most of the Investor's funds in December 2015 in ways that the Investor did not expect; and
 - h) the Investor lost her entire investment and suffered financial harm, in addition to emotional trauma and physical harm.
- [9] The Commission ordered under section 161(1)(g) of the Act that Bracetek pay to the Commission \$850,000 (Payment Order).

B. Funds paid pursuant to Settlement Agreement

- [10] Pursuant to the Settlement Agreement, Sidhu paid to the Commission \$900,000 (Settlement Funds).
- [11] In a decision dated November 8, 2023, *Re Sidhu*, 2023 BCSECCOM 531, the Commission ordered pursuant to section 15.1(3) of the Act that the Settlement Funds together with accrued interest be paid to the Investor (Settlement Funds Payment).

C. Recovered funds

- [12] On March 7, 2024, the Commission received \$178,749.82 in partial payment of the Payment Order (Recovered Funds).

D. Claims process

- [13] On March 22, 2024, the executive director applied to the Commission for approval of a proposed claims process under section 15.1 of the Act (Claims Process).
- [14] On May 29, 2024, the Commission issued a Ruling, *Re Bracetek*, 2024 BCSECCOM 241, approving the Claims Process.

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

- a) posted a notice about the Claims Process on the Commission's public website with a claim deadline of August 30, 2024, and
- b) emailed the notice to the only known eligible applicant, being the Investor, and her counsel.

[16] The Investor responded to the notice by filing the Application.

[17] The executive director's report to the Commission provides details on the Findings and Decision, the approved Claims Process and the Application.

III. Law and Analysis

A. Provisions of the Act and Regulation

[18] 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.

[19] Part 3 of the Regulation provides, in part:

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.

...

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. The Commission's procedure

[20] In *Re Alexander*, 2017 BCSECCOM 78 at paragraphs 25-27, 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 ... 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.

C. Position of the executive director

[21] In his report, the executive director takes the position that:

- a) the Commission has complied with the procedural requirements in the Act and Regulation;
- b) the Investor meets the definition of "eligible applicant" in the Regulation; and
- c) the Investor's claim should be approved and the Investor should receive full distribution of the Recovered Funds, plus any accrued interest.

D. Analysis

[22] The executive director's report and recommendations were made in writing. No one has requested an opportunity to make submissions in person. We find that we are able to make an order on the Application without an in-person hearing or further submissions.

[23] Mindful of the Commission's guidance in *Re Alexander*, we have reviewed the executive director's report and recommendations as well as the Supporting Affidavit. Our task is to

determine whether the evidence, on a balance of probabilities, supports granting the Application.

- [24] We find that the Investor is an “eligible applicant” for the purposes of Part 3 of the Regulation.
- [25] Although the Investor did not provide records with the Application, she has in the past provided records to the Commission that relate to her loss. The executive director highlighted text messages provided by the Investor as well as other records related to her investment that were reviewed by the panel in the Findings and Decision.
- [26] Based on the materials before us, we find that the Investor is the investor referred to in the Findings and Decision and in the Settlement Agreement. Given the Commission’s findings in the Findings and Decision, we accept that the Investor suffered a loss of \$1.75 million. Having reviewed the claim details provided by the Investor in the Application, we also accept that the Investor did not receive a return on her investment, did not benefit from the misconduct set out in the Findings and Decision, and was unable to offset or reduce her loss.
- [27] The executive director provided evidence that on November 21, 2023, the Investor recovered \$930,359.59 pursuant to the Settlement Funds Payment, that amount being the total of the \$900,000 paid to the Commission by Sidhu together with accrued interest.
- [28] Accordingly, we find that the Investor’s current claim for \$178,749.82, even after accounting for that earlier receipt of funds, does not exceed the amount of her investment.
- [29] Pursuant to section 15.1(1) of the Act, one factor we must consider is whether the Recovered Funds are “...money from an order under section ...161(1)(g).” The evidence on that point is contained in a statement in the Supporting Affidavit: “On March 7, 2024, the Commission received \$178,749.82 in partial satisfaction of the disgorgement order made against Bracetek in the Findings and Decision.”
- [30] The executive director did not provide details on the source of the Recovered Funds nor documentation to illustrate that the funds are “money from an order” under section 161(1)(g). However, we do have the sworn evidence in the Supporting Affidavit that the Recovered Funds relate to the disgorgement order against Bracetek, and a notice was published about the funds on the Commission website as part of the Claims Process. Accordingly, and on the evidence before us in this case, we find on a balance of probabilities that the Recovered Funds are money from the Commission’s section 161(1)(g) order against Bracetek, the Payment Order.
- [31] Pursuant to section 7.4(2)(d) of the Regulation, one additional factor we have considered is whether the Investor may separately seek compensation in respect of her investment in Bracetek. As we noted in our earlier decision with respect to the Settlement Funds Payment, the executive director provided evidence to establish that although the Investor had commenced a civil action against Sidhu, her lawyer had informed the court in that action that Sidhu had paid \$900,000 to the Commission and that the Investor had applied to the Commission for payment out of that amount.
- [32] With respect to this latest Application, the executive director provided evidence of an update from the Investor’s lawyer to the staff member who swore the Supporting Affidavit. The Investor’s lawyer advised that he had not obtained any court order entitling the Investor to any compensation from Sidhu and further that: “In respect to our seeking any such order, it is always

my practice to advise the court about any compensation which the Securities Commission has returned to [the Investor].”

- [33] Accordingly, we conclude that any potential recovery by the Investor in her civil action should not reduce the amount to which she is otherwise entitled pursuant to her Application.
- [34] We find that the Commission has given the required notice to the public with respect to the Recovered Funds as required by section 15.1(1) of the Act.
- [35] Since the Recovered Funds have been in the Commission’s possession, they have been accruing interest. The evidence establishes that the amount of interest accrued to September 3, 2024 is \$4,607.09. In *Re Mesidor*, 2020 BCSECCOM 164, the Commission held at paragraph 40 that while section 15.1 of the Act is silent on the issue of accrued interest, “[g]iven the more general purpose of these provisions, which includes the enabling of recovery by eligible investors against amounts collected under a section 161(1)(g) order...the language of the Act permits that accrued interest can be ordered to be paid to eligible investors”.
- [36] We conclude that interest is properly payable in these circumstances.

IV. Conclusion and Order

- [37] Having considered the report and recommendations of the executive director and the Supporting Affidavit, we conclude that the requirements set out in the Act and Regulation have been met, and that the evidence, on a balance of probabilities, supports granting the Application.
- [38] Pursuant to section 15.1(3) of the Act, we order that the Recovered Funds held by the Commission, together with interest accrued to the date of payment, be paid to the Investor.

September 16, 2024

For the Commission

Gordon Johnson
Vice Chair

Marion Shaw
Commissioner