

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

Citation: Re Mann, 2024 BCSECCOM 472

Date: 20241106

Order under section 161(6)

**Naresh Singh Mann,
also known as Naresh Singh Maan**

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Introduction

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418.
- [2] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges, and the courts. If the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 54).
- [3] On May 29, 2024, the executive director of the Commission applied (Application) for an order imposing sanctions on Naresh Singh Mann, also known as Naresh Singh Maan (Mann) under sections 161(1) and 161(6)(a) of the Act based on his conviction for one count of fraud over \$5,000 made by the Provincial Court of British Columbia.
- [4] In his Application, the executive director tendered affidavit evidence, supporting materials, and submissions to the Commission.
- [5] Mann responded to the Application, providing written submissions. The executive director replied to this response with written submissions.

Background

- [6] On October 12, 2018, Mann plead guilty to one count of fraud over \$5,000, contrary to section 380(1)(a) of the *Criminal Code*, R.S.C. 1985, c C-46.
- [7] On November 17, 2023, the Honourable Justice Rideout, of the Provincial Court of British Columbia sentenced Mann to:
 - (a) 12 months probation; and
 - (b) 50 hours of community work service within nine months.

Summary of Findings

- [8] The Provincial Court of British Columbia found that between February 1, 2013 and April 30, 2013, at or near Burnaby, British Columbia, Mann committed the offence of fraud over \$5,000.

- [9] The details of Mann's misconduct is contained in the Oral Reasons for Sentence in *R. v. Mann*, Vancouver Registry, File No. 251350-1:
- (a) Mann met CS, then in his early sixties, in February 2013 while he was shopping at Mann's store. During a conversation in which CS revealed to Mann that he was retired, Mann asked him if he had money that he would be willing to invest for six months in a business venture relating to online gambling. Mann told him that he would double his money at the end of six months.
 - (b) Mann and CS subsequently met a couple more times at Mann's store. CS told Mann that he could not afford to lose his money. Mann told CS that that would not be a problem, that he and his brother-in-law had previously invested in the opportunity, and that he had received his funds back in six months.
 - (c) On February 21, 2013, CS provided Mann with a bank draft for \$15,400 payable to a numbered company of which Mann was a former director. In return, Mann provided him with an agreement confirming that, after six months, CS would be paid an additional return on his investment of 25% to 100%.
 - (d) After about six months passed, CS contacted Mann to redeem his investment. Mann did not return his funds as promised. Mann told CS that there was an issue and VISA was not releasing the money.
 - (e) None of CS's funds were invested in the business venture. Rather, Mann, the numbered company, and Mann's wife spent the bulk of the funds on retail purchases, cash withdrawals, and business expenses. By the time that the matter was submitted to the Crown, Mann had repaid CS approximately \$300.
 - (f) Mann entered into a plea agreement with the Crown resulting in Mann entering a guilty plea in October 2018. Under that agreement, the Crown agreed to a joint submission for a suspended sentence including 12 months of probation and other conditions provided that full restitution was made to CS. In 2019, Mann made substantial restitution of approximately \$11,000 to CS. Mann completed making restitution to CS in November 2021.

Submissions from the parties

The executive director's submissions

- [10] The executive director submitted that fraud is one of the most serious types of misconduct because of the intentional deceit perpetrated on investors.
- [11] The executive director stated that the fraud that Mann plead guilty to was exacerbated because he "took advantage of a vulnerable senior" but that Mann's fraud was "not of long duration or of high value" and he had "made full restitution."
- [12] The executive director identified Mann's guilty plea as a mitigating factor and did not identify any aggravating factors.
- [13] The executive director argued that Mann posed a risk to the capital markets because of his "deceptive conduct to a vulnerable investor" and that Mann's acceptance of his responsibility "is not sufficient to outweigh the risk".

[14] The executive director is seeking that Mann resign any position he holds as a director or officer of an issuer or registrant under section 161(1)(d)(i) of the Act and permanent prohibitions:

- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except in accounts in your own name with a person registered to trade in securities under the Act if you have first provided the registered representative with a copy of this order before any trade takes place in:
 - (A) RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for your own benefit;
- (ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;
- (iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
- (iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
- (v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives market; and
- (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity; and
- (vii) under section 161(1)(vi) from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him.

Mann's responding submissions

[15] Mann submitted that the executive director's proposed orders "are disproportionate and unwarranted given the specific circumstances of my case and the principles of administrative law and natural justice." He stated:

- (a) He had an accident in 2020 "which resulted in a serious concussion and cognitive impairment".
- (b) He has not "engaged in any securities trading" since his accident and therefore has "voluntarily removed" himself from the markets since then.

- (c) He has only traded securities for himself and has never worked in any professional capacity within the securities industry and, as such, “poses minimal risks to other market participants.”
- (d) It would be unjust remove his right to “participate in the markets” in the future.
- (e) In the alternative, if the Commission is going to impose restrictions, then those restrictions “be limited to accepting investments from or investing on behalf of other individuals” and permitting Mann to manage his own investments if his health improves.
- (f) He has accepted responsibility for his actions and has made full restitution.
- (g) Any enrichment he received was temporary “and has been fully remediated through restitution.”
- (h) His “guilty plea, acceptance of responsibility, lack of prior criminal record, and full restitution are substantial mitigating factors”.
- (i) His future risk to investors and the markets is minimal considering his “lack of involvement in the securities industry, the isolated nature of the incident, and the steps taken towards rehabilitation”.
- (j) Deterrence “must be balanced against the principle of proportionality” and the “criminal sanctions already imposed” deterrence.
- (k) His concussion from 2020 resulted in cognitive impairment and disability status. He earns a limited amount monthly and will probably never be employable again. These conditions and his potential for rehabilitation should be considered when assessing Mann’s circumstances as per *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.
- (l) The executive director’s proposed permanent market bans “are disproportionate to the offense” and his “personal circumstances” and would “impose a “professional death sentence”” which raises “serious questions of reasonableness and proportionality”.
- (m) Additional penalties following his criminal conviction and sentence raise “significant concerns about double jeopardy and the principles of fundamental justice enshrined in section 7” of the *Charter*.
- (n) “The Commission’s failure to present its intentions regarding administrative sanctions during the criminal proceedings deprived” Mann of an opportunity to be fully informed when he plead guilty in the criminal matter and could have altered his plea bargain. This raises issues with procedural fairness, abuse of process, inconsistency with the principle of transparency, and the duty of fairness.

[16] Mann proposed that he receive:

- (a) A time limited suspension from market activities;
- (b) Mandatory education in securities regulations;
- (c) Regular reporting to the Commission for a defined period; and
- (d) A probationary period with monitored market activities.

[17] Mann attached to his responding submissions unsworn documents about his health, one of which indicates that he had been approved by the Ministry of Social Development and Poverty Reduction as a Person with Disabilities, effective May 1, 2024.

The executive director's reply submissions

[18] The executive director replied:

- (a) Mann's misconduct was sufficiently serious to warrant permanent market bans because:
 - (i) Permanent bans have been imposed in other cases of fraud, such as *Re Davis*, 2016 BCSECCOM 375, where there was a single victim and a modest sum.
 - (ii) It took eight years, a criminal charge, and a plea bargain to "eventually plead guilty and repay the investor" and the sentence imposed was "conditional upon full restitution prior to formal sentencing."
 - (iii) "The eventual repayment did not negate the deprivation". In addition, "restitution was effectively imposed upon the Respondent, and so his repayment does not suggest that he is any less of a risk to investors or the markets."
 - (iv) "Fraud against a vulnerable senior is a particularly egregious form of fraud" as stated in *Re Lau*, 2016 BCSECCOM 320.
- (b) The lapse of time since the fraud is irrelevant to the need for a permanent ban because:
 - (i) Although the original fraud occurred in 2013, Mann was not sentenced until 2023. The executive director commenced his application "approximately six months after the Court imposed the criminal sentence."
 - (ii) The Supreme Court of Canada in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, held that the sanction in another jurisdiction is the event that gives rise to a proceeding, not the date of the underlying conduct.
- (c) Permanent bans will not result in double punishment because:
 - (i) Reciprocal orders are not equivalent to criminal punishment and do "not offend a principle of fundamental justice".

- (ii) “Section 161(1) orders are protective and preventative in nature and prospective in application.” They are there to prevent future harm to the capital markets and serve a different purpose than a criminal sentence.
- (iii) Mann’s fraud “had “more than one aspect” and “[gave] rise to more than one legal consequence.””
- (d) Mann’s medical condition is irrelevant to whether measure short of a permanent ban would enable him to earn a livelihood because:
 - (i) It “is not relevant to this panel’s consideration of whether measure short of a permanent ban would enable him to earn a livelihood”.
 - (ii) Permanent prohibitions “will not deprive” Mann of his livelihood because Mann “confirmed that he does not earn income from activities in the capital markets.”
- (e) There is no authority for Mann’s suggestion that there was a requirement for the Commission to “present its case for additional administrative sanctions during the original trial.”

[19] Mann submitted an additional document in response to the executive director’s reply submissions wherein he provided some observations on the mistaken belief that the reply submissions were dispositive.

Analysis

- [20] The Commission is established under the Act to regulate the capital markets in British Columbia. Central to the Commission’s mandate under the Act is to protect the investing public from those who would take advantage of them, and to preserve investor confidence in the regulated capital markets.
- [21] Under section 161(6)(a), the Commission may, after providing an opportunity to be heard, make an order in respect of a person if the person has been convicted in Canada of an offence involving securities or derivatives.
- [22] The executive director tendered affidavit evidence that Mann is a resident of Vancouver, British Columbia.
- [23] The executive director submitted in his Application that Mann’s guilty plea was a mitigating factor because it saves time and public resources.
- [24] The executive director cited *Re Zhong*, 2015 BCSECCOM 383, for the principle that the Commission “has consistently issued permanent market bans against those who have been found to have committed fraud.” More specifically, the executive director cited *Re Davis*, 2018 BCSECCOM 284, *Re Basi*, 2011 BCSECCOM 573, and *Re Mesidor*, 2014 BCSECCOM 6, as cases where the quantum of the fraud was similar to the one committed by Mann.

- [25] In *Davis*, the panel held a hearing to reconsider its decision to impose permanent market bans as ordered by the Court of Appeal in *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149. The panel previously found that Davis perpetrated a \$7,000 fraud on an investor and, after considering the *Eron* factors and Davis's individual circumstances, the panel ordered permanent prohibitions and a \$15,000 administrative penalty against Davis.
- [26] In *Basi*, Basi fraudulently used \$11,055 of an investor's \$15,000 investment to pay down personal debt and for other personal uses. The panel ordered permanent market bans on Basi plus disgorgement of \$11,055 and an administrative penalty of \$100,000.
- [27] In *Mesidor*, the respondent took \$32,280 from two investors for foreign exchange trading. He used \$16,301 of those funds for foreign exchange trading and the remaining \$16,000 for personal expenses. The panel ordered permanent market bans on Mesidor plus disgorgement of \$16,000 and an administrative penalty of \$75,000.
- [28] Each of the cases relied on by the executive director was a fraud that purported to involve securities. Each case resulted in permanent market bans on the respondents. Mann's fraud was of a similar quantum to *Davis*, *Basi*, and *Mesidor*.
- [29] We have considered the Application, the circumstances of Mann's misconduct, and the factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.
- [30] Mann's misconduct was extremely serious. He fraudulently took \$15,400 from an investor who trusted him and used it for his personal expenses. Mann intended to and did deceive an investor who trusted him. His misconduct demonstrates that he is a risk to the capital markets. We find that he is unfit to participate in the British Columbia capital markets and that permanent prohibitions are warranted.
- [31] However, despite Mann's misconduct, his securities history indicates that trading in his own accounts for his sole benefit does not pose a risk to the public and the capital markets. We reach that conclusion because Mann's fraud had no relationship to trading and because although Mann's misconduct was serious, Mann's lack of a history of other criminal or regulatory issues and his efforts towards restitution separate him from some of the most untrustworthy individuals who are often the subject of applications of this type. Mann's responding submissions request, in the alternative, that Mann be permitted to manage his own investments. Given our conclusion that permitting Mann to do so would not pose a risk to the public or to markets we accept Mann's submission that he should be permitted to manage his own investments. He may do so as long as he provides a registered representative with a copy of this order.

Order

- [32] We find that it is in the public interest to order that:
- (a) under section 161(1)(d)(i), Mann resign any position he holds as a director or officer of an issuer or registrant;
 - (b) Mann is permanently prohibited:

- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except in accounts in his own name with a person registered to trade in securities under the Act if he has first provided the registered representative with a copy of this order before any trade takes place;
- (ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;
- (iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
- (iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
- (v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
- (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity; and
- (vii) under section 161(1)(d)(vi), from engaging in promotional activities on Mann's own behalf in respect of circumstances that would reasonably be expected to benefit Mann.

November 6, 2024

For the Commission

Gordon Johnson
Vice Chair

Warren H. Funt
Commissioner