

2025 BCSECCOM 273

Order Varying Notice of Administrative Penalty

David Charles Greenway

Section 162.04 of the *Securities Act*, RSBC 1996, c. 418

1. In a Notice of Administrative Penalty dated February 28, 2025 (the Notice), I found that David Charles Greenway committed seven contraventions of sections 9.1(2)(a) and 9.3 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and Item 7.2.1 of Form 51-102F5 Information Circular (the Form) because:
 - a. three reporting issuers named in the Notice sent and filed information circulars (the Circulars) that were not “completed” because they omitted disclosure of the orders imposed against Greenway in [David Charles Greenway and Kjeld Werbes 2012 BCSECCOM 59](#) (the Order), and
 - b. Greenway, a director of each of these issuers at the time they sent and filed the Circulars, authorized, permitted or acquiesced in these contraventions.
2. Under section 162.01 of the *Securities Act* (the Act), subject to his right to dispute the alleged contraventions or penalty amount under section 162.04 of the Act, I considered it in the public interest to require him to pay an administrative penalty of \$25,000 for the alleged contraventions.
3. On March 21, Greenway gave written notice requesting an opportunity to be heard to dispute the amount of the penalty. On April 22, his counsel made written submission on why the penalty should be reduced. On May 2, staff replied to Greenway’s submissions. On May 16, Greenway responded to staff’s reply. This is my decision on the appropriate penalty amount. I have decided to reduce the penalty to \$22,500.

Submissions

4. Greenway submitted that it would not be contrary to the public interest to require him to pay a penalty in the range of \$10-15,000 because:
 - a) He believed an experienced solicitor with knowledge of the Order prepared the Circulars
 - b) He always disclosed the Order in the Personal Information Forms that public company directors must file with stock exchanges and it was easily found on the internet
 - c) The decision imposing the Order shows his conduct in that matter was unintentional; he quickly admitted wrongdoing; after it happened he took a course

on public company director obligations, resigned from director and officer positions and complied with undertakings he had given

- d) There is a spectrum of seriousness; there is no evidence of investor harm or complaints nor any basis to question his assertion that he was unaware of the requirement to disclose the Order
- e) The publication of this decision, the requirement to disclose this penalty going forward and the proposed penalty are adequate for general and specific deterrence
- f) In the precedent staff provided (*Re Dunn* 2023 BCSECCOM 251), Dunn's behaviour was significantly more serious because:
 - i. he was a former registrant
 - ii. he breached a past settlement order and started doing so right after entering into it; he filed new director names in the corporate registry while continuing to act as a *de facto* director
 - iii. Dunn's failure to disclose the past sanction was not an innocent mistake
 - iv. Dunn's failure to disclose was in an offering document soliciting investment
 - v. Dunn "dragged out" the proceedings and attempted to reargue the case in the sanction hearing.
- g) In contrast, Greenway has always promptly acknowledged and rectified his mistakes and taken steps to educate himself
- h) He is prepared to take a course as directed by the executive director or staff.

Staff's Reply

- 5. To summarize, staff replied that:
 - a. Greenway's explanations (that an experienced solicitor prepared the forms and was aware of the previous order, and that he was unaware of the requirement to disclose) were already before the executive director and factored into the Notice
 - b. The differences between the conduct of Greenway and Dunn and the more serious nature of Dunn's conduct were discussed in staff's Report seeking the penalty and appropriately considered in the Notice
 - c. The \$25,000 penalty amount should be confirmed.

Greenway's Reply

- 6. In reply, Greenway says that staff fail to take into account that he immediately accepted responsibility and took immediate steps to correct the omissions. He is prepared to take a course as recommended by the executive director or staff. There has been a significant expansion of securities regulation since 1985 and few people have a full understanding of all of it. There should be recognition of the fact that mistakes will be made. Given

Greenway's acknowledgement of his mistakes and steps to remedy them, a penalty of \$10-15,000 is appropriate.

Analysis

7. I agree with staff that many of the factors Greenway points to in his submissions were considered in arriving at the \$25,000 penalty in the Notice:
 - a. A lawyer was involved in preparing the circulars (see paras. 11 & 12 of the Notice)
 - b. The prior sanction was unintentional (para. 42)
 - c. There is no evidence of investor harm (para. 43)
 - d. Disclosure mistakes are sometimes made (para. 43)
 - e. There is no basis to question that his assertion that he was unaware of the requirement (para. 44)
 - f. Dunn's conduct was more serious because he was a former registrant, started breaching his settlement almost immediately and hid his ongoing involvement; it was not an innocent mistake; the violation was in an offering document but Dunn offered rescission (para. 52).
8. Some of points Greenway makes that might be considered new or different from what I considered in the Notice, and my analysis of them, are as follows:
 - a. Greenway submitted that the information circulars that omitted disclosure of his past sanction were prepared by an experienced solicitor and that he "believes" that solicitor was aware of the past sanction. This goes slightly beyond what is in the Notice, which only reflects Greenway's assertions that the information circulars in question were prepared by legal counsel and that he was unaware of the requirement to disclose.
 - i. Analysis: Greenway is clearly not asserting a due diligence defence with this submission, because he is not disputing the contravention, only the amount of the penalty. I take him to be saying he believed the lawyer who prepared the circular would have included disclosure of the past sanction if required. This goes to the point that Greenway's conduct was unintentional. This was already considered in para. 44 of the Notice, where I note he was unaware of the requirement to disclose.
 - b. Greenway always disclosed the sanction in his PIFs and it was searchable on the internet.
 - i. Analysis: I do not find this compelling because the requirement to disclose prior sanctions in an information circular is on top of PIF disclosure requirements. The main point of disclosure in information circulars is to inform shareholders considering the appointment of

directors, whereas PIFs go to the exchange. The fact that the sanction was searchable on the internet is also not compelling; all BCSC sanctions are searchable on the internet but it does not lessen the obligation to make prescribed disclosure.

- c. Regarding the prior contravention that led to the Order, Greenway quickly admitted wrongdoing; after it happened he took a course on public company director obligations, resigned from director and officer positions and complied with undertakings he had given.
 - i. Analysis: These facts are listed in para. 27 of the prior sanction decision (cited above). The panel took them into consideration in setting the sanction for his insider trading violation, and I considered the totality of the 2012 sanction decision in determining the appropriate sanction as set out in the Notice.
- d. Dunn “dragged out” the proceedings for breach of his settlement and non-disclosure of his prior sanction and tried to reargue his case; in contrast, Greenway has admitted his contravention in this matter and rectified his mistakes.
 - i. Analysis: On the one hand, pointing out the differences between Greenway and Dunn’s behaviour is not persuasive because I found that the most helpful guidance for setting the sanction was the \$10,000 sanction against Dunn’s company for a single instance of omitting Dunn’s sanction in the offering document.

On the other hand, this point is genuinely new in the sense that I did not know what Greenway’s response to the Notice would be when I issued it. I now know that Greenway is not disputing his liability and only seeks a reduction in the sanction. He deserves credit for admitting his contravention.

- e. Greenway is prepared to take a course as directed by the executive director or staff.
 - i. Analysis: Greenway’s willingness to take a course is a good thing, however, requiring someone to take a course is not an option in a proceeding under section 162.01 of the Act. In addition, the real issue seems to be that Greenway needs to exercise more diligence to learn the applicable legal requirements before engaging in a particular transaction or activity in the capital markets; general courses may or may not help with that.

- f. There has been a significant increase in the number of securities laws over the past decades and it would be difficult for anyone to understand them all.
 - i. Analysis: This is not relevant to setting sanctions. Securities markets are highly regulated and anyone participating in them must be diligent about learning and complying with applicable requirements.
- 9. Having considered Greenway's submissions, the only compelling difference from the factors I considered in issuing the Notice is that Greenway has not disputed liability. I also take his point that he appears to be the type of person who readily admits his compliance errors and takes steps to rectify them. Given these factors, I conclude that a \$2,500 reduction of the penalty from what was proposed in the Notice would be in the public interest.

Order

10. Under section 162.04(3) of the Act, I:

- a. confirm by order that Greenway contravened sections 9.1(2)(a) and 9.3 of NI 51-102 and Item 7.2.1 of the Form, and
- b. order Greenway to pay an administrative penalty of \$22,500 by August 18, 2025.

I further confirm that Greenway has the right, under section 165 of the Act, to seek a hearing and review by the Commission of this decision.

June 17, 2025

Peter J. Brady
Executive Director