

Jefferson Franklin Mesidor

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken	Vice Chair
	Judith Downes	Commissioner
	George C. Glover, Jr.	Commissioner

Date of hearing June 25, 2013

Date Submissions completed July 3, 2013

Date of Findings October 21, 2013

Appearing

Jeremy Gellis For the Executive Director

Jefferson Franklin Mesidor For himself

Findings

I Introduction

- ¶ 1 This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 In a Notice of Hearing issued October 15, 2012 (2012 BCSECCOM 400) the executive director alleges that Jefferson Franklin Mesidor perpetrated fraud, contrary to section 57 of the Act.
- ¶ 3 Mesidor appeared on his own behalf and testified, but did not cross-examine any of the executive director's witnesses, call any other witnesses, enter any documentary evidence, or make any submissions.

II Background

A The Allegations

- ¶ 4 The executive director alleges that Mesidor perpetrated fraud when he represented to two investors that he would pool their money with his own to conduct foreign exchange

trading for profit, when he failed to contribute any of his own money to the pool, and when he used about half of the investors' money for purposes other than foreign exchange trading.

- ¶ 5 Mesidor had a company of which he was the sole director, called Templeton Investments Inc.

B The Evidence

- ¶ 6 We will call the two investors A and B. A testified at the hearing. In her testimony, she confirmed the truth of the answers she gave in an interview with Commission staff in July 2011. A transcript of that interview is part of the record. Her testimony was clear and straightforward and we found her a credible witness.

- ¶ 7 B died in August 2011. The only evidence we have from her is a set of documents found among her personal effects that included a summary of her dealings with Mesidor and unsworn statements to commission staff. These statements, and the statements in the summary are consistent with statements she made in a small claims action against Mesidor and with the evidence A gave in her interview and at the hearing. We find, on a balance of probabilities, that we may rely on the statements in B's summary that are relevant to the allegations in the notice of hearing.

C The Facts

- ¶ 8 A and her husband attended the same church as Mesidor. Mesidor and the husband were in a bible study group. A's husband died suddenly in 2005, leaving A with two small children. Mesidor offered help and support and he and A became friends.
- ¶ 9 The day after her husband's funeral, A introduced Mesidor to her close friend, B. Over time, B and Mesidor also became friends.
- ¶ 10 Through their friendships with Mesidor, A and B came to trust him.
- ¶ 11 A and B learned that Mesidor did foreign exchange trading. There were discussions among the three of them about it. Those discussions eventually led to the idea that the three of them would each contribute to a pool of funds in equal amounts that Mesidor would then use to engage in foreign exchange trading. For A and B, part of the motivation was that they could use some or all of the profits for charitable purposes.
- ¶ 12 The intent was that each of the three would contribute \$20,000, although the actual amounts contributed were lower. Between August 2007 and March 2008 A gave Mesidor \$15,000 and B gave Mesidor \$17,280. The unequivocal evidence of both A and B is that Mesidor represented to them that he would use their funds, in combination with his own funds, exclusively to engage in foreign exchange trading through his company,

Templeton. The agreement was that all of them would contribute the same amounts and share profits (or losses) equally.

¶ 13 Mesidor contributed only \$340.

¶ 14 Neither did he use A's and B's funds exclusively for foreign exchange trading. Of the \$32,280 that A and B invested, Mesidor disbursed amounts as follows:

- \$16,301 to Forex Capital Markets, a firm in New York
- \$8,000 in cash withdrawals
- \$2,930 to pay for groceries, restaurants, and credit card payments
- \$2,500 to his personal bank account
- \$2,500 to a Melody Mitchell for "professional consulting services"

¶ 15 Essentially all of the funds sent to the foreign exchange trading account in New York were lost through trading. Mesidor returned \$1,000 to each of A and B. But for that, both lost their entire investment.

¶ 16 Mesidor testified at the hearing. Although he attempted to project a confident demeanour in his evidence in chief, we found him not to be a credible witness. His testimony was inarticulate, vague, rambling, and largely non-responsive to the allegations in the notice of hearing. In cross-examination his demeanour was markedly less confident, and his answers were generally evasive or non-responsive.

¶ 17 This is a summary of his testimony on the matters relevant to the allegations in the notice of hearing:

- A and B knew that they were making an equity investment in Templeton ("it was made very, very, clear to them that this was an equity investment," he said) and therefore they should have known that a portion of their investment would be used to fund Templeton's expenses.
- The funds spent on expenses were those incurred by Templeton in the course of its business. "Templeton used my apartment as an office - hydro, internet, everything was expensed through Templeton", he said.
- The \$2,500 payment to Melody Mitchell (who was Mesidor's girlfriend) was "a marketing spot where I was promoting the company in Toronto through the Miss Canada Universe Pageant or something like that. There was some benefits the company had to gain from doing that."
- He admitted that he did not contribute any of his own funds into the same foreign exchange trading account that he invested the funds from A and B. He testified that he was investing in foreign exchange trading alongside A and B, but through a different account.

- “There was never an intention to defraud them, mislead them”
 - He did not solicit investment from A or B.
- ¶ 18 We cannot find that A and B understood their investment was an equity investment in Templeton without rejecting entirely their evidence on the nature of the investment.
- ¶ 19 It is clear from A’s testimony at the hearing and from her statements in her interview, as well as from B’s summary of the events, that all of their discussions with Mesidor centred around foreign exchange trading, and it was that activity in which all of their investment was to be placed, along with Mesidor’s.
- ¶ 20 We have little evidence about the level of B’s financial sophistication, but it is apparent from A’s evidence that she was utterly unsophisticated in financial matters. She had no significant knowledge of foreign exchange trading. She invested only because she trusted Mesidor and B (who in large part persuaded her to participate in the investment). We very much doubt that A would have understood the term “equity investment”, much less in distinction to an investment in foreign exchange trading.
- ¶ 21 Whether or not Mesidor arranged matters so that A and B invested in foreign exchange trading directly or through Templeton, the evidence is clear that A and B believed that all of the funds they were investing would be used for foreign exchange trading, and that their belief was based on Mesidor’s representations that he would use their money for that purpose.
- ¶ 22 Mesidor prepared financial statements for Templeton dated June 30, 2007 showing a balance of \$21,000 in Templeton’s foreign exchange trading account. A statement of that account for the same period shows a balance of \$69. The statements were signed by Mesidor, and a copy of them was among the set of documents found among B’s personal effects relating to her dealings with Mesidor.
- ¶ 23 Mesidor’s explanation was that the statements were not final statements, but only a template for statements that he was using to prepare actual statements. He was unable to explain, if the statements were merely a draft, why they bore his signature, and how they ended up in B’s possession.
- ¶ 24 There is no reasonable alternative explanation as to how B would have been in possession of these statements unless Mesidor sent them to her.
- ¶ 25 We find that Mesidor prepared false and misleading financial statements for Templeton and sent them to B.

III Findings

¶ 26 Section 57 of the Act says:

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

¶ 27 The British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 stated the following regarding fraud in the context of the *Securities Act*:

“29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.”

¶ 28 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

“... 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 interests 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).”

¶ 29 The evidence provides clear and convincing proof that Mesidor committed what *Théroux* describes as prohibited acts and that those acts caused deprivation.

¶ 30 We find that Mesidor told A and B that he would pool their money with his own to engage in foreign exchange trading. He testified that he was investing in foreign exchange trading alongside A and B, but through a different account.

¶ 31 There is no evidence that he did so nor, even if he did do so, that his funds and those of A and B were invested in the same foreign exchange trading contracts. We find that Mesidor did not invest in foreign exchange trading equally with or alongside A and B.

- ¶ 32 We find that A and B did not believe that they were making an equity investment in Templeton. We find that Mesidor told A and B that he would use their funds exclusively to engage in foreign exchange trading. The evidence is that he used half their funds for other purposes, and did so knowingly. Whether those other purposes were legitimate Templeton business expenses (as to which we are sceptical, but make no finding) is irrelevant. What is relevant is that he did not use A's and B's funds for the purpose to which they entrusted those funds to him.
- ¶ 33 We find that Mesidor also prepared and delivered to B financial statements that he must have known were false and misleading.
- ¶ 34 Mesidor says he did not solicit the investments from A and B, but that is not relevant. What is relevant is that he lied to them about how he would use their funds.
- ¶ 35 All of these were deceitful acts.
- ¶ 36 Through Mesidor's deceit, A and B were deprived of all but \$1,000 of each of their investments. The executive director does not allege fraud in relation to the losses they incurred in foreign exchange trading, so the losses to A and B attributable to the fraud are about \$14,000 collectively.
- ¶ 37 All of this evidence provides clear and convincing proof that Mesidor had subjective knowledge of the deceit, and that he as a consequence caused deprivation to A and B.
- ¶ 38 We find that Mesidor perpetrated a fraud on A and B, contrary to section 57 of the Act.

IV Sanctions

- ¶ 39 We direct the parties to make their submissions on sanctions as follows:

By November 8 The executive director delivers submissions to Mesidor and to the secretary to the Commission

By November 15 Mesidor delivers response submissions to the executive director and to the secretary to the Commission. A party wishing an oral hearing on the issue of sanctions so advises the secretary to the Commission

By November 22 The executive director delivers reply submissions (if any) to Mesidor

and to the secretary to the Commission

¶ 40 October 21, 2013

¶ 41 **For the Commission**

Brent W. Aitken
Vice Chair

Judith Downes
Commissioner

George C. Glover, Jr.
Commissioner