

Citation: 2014 BCSECCOM 235

Strategic Global Investments (d.b.a. SGI Traders SA)

Securities Act, RSBC 1996, c. 418

Hearing

Panel	George C. Glover, Jr. Brent W. Aitken Judith Downes	Commissioner Vice Chair Commissioner
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Hearing Date February 12, 2014

Submissions Completed February 14, 2014

Date of Decision June 17, 2014

Appearing

Anjalika N. Rogers For the Executive Director

Decision

I Introduction

- ¶ 1 This is a hearing under sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 On August 13, 2013, the executive director issued a notice of hearing (2013 BCSECCOM 266) alleging that Strategic Global Investments (d.b.a. as SGI Traders SA):
- fraudulently raised US\$80,000 from three investors residing in British Columbia, contrary to section 57(b) of the Act, and
 - was not registered to trade in any capacity contrary to section 34.
- ¶ 3 At the set date hearing in September 2013, the executive director proved that Strategic had been served in accordance with the requirements of the Act and that there had been no contact with Strategic. The Commission granted the executive director's request that both liability and sanction be dealt with at the hearing. Strategic did not appear at the hearing nor was it represented by counsel.

II Background

- ¶ 4 During the summer of 2012, several individuals describing themselves as representatives of Strategic, cold-called three investors at their residences in British Columbia.
- ¶ 5 Unless otherwise stated, all dollar amounts are in US dollars.
- ¶ 6 In July 2012 a person calling himself Bill Johnson cold-called a British Columbia resident whom we refer to as TC. He persuaded TC, who testified at the hearing, to invest \$5,000 in “gold options”. Paperwork emailed to TC described the investment as “gold calls”. TC received, ostensibly from Strategic, account opening forms, U.S. tax forms and wire transfer instructions. On July 10, 2012 TC completed the forms, sent them to Strategic and, following the wire transfer instructions received from Strategic, sent \$5,000 to a Costa Rican bank account in Strategic’s name.
- ¶ 7 About two weeks later, Johnson called TC and told him his investment was then worth \$22,000 and asked him if “John Cole”, purportedly Strategic’s president and CEO, could call him. TC agreed and a person identifying himself as Cole called him within a day or two.
- ¶ 8 Cole told TC that his gold investment was doing very well. He also told him that the Euro was in decline and he should invest \$50,000 against the declining Euro. TC agreed and sent \$50,000 to Strategic on July 25.
- ¶ 9 One or two weeks after that, Cole called TC and told him that although his \$50,000 investment against the Euro had lost money and was now worth only \$28,000, his gold investment had made money and was now worth \$86,000. Cole told TC he would take the remaining \$28,000 from the Euro investment and invest it in gold options.
- ¶ 10 In late August TC received a call from a person who identified himself as Spencer Kelly, who told him he had taken over his account at Strategic. Kelly told TC he should invest another \$10,000. TC said he only had \$8,000 and on August 23 he sent that money to Strategic.
- ¶ 11 On August 27 Kelly called TC and told him his account was now worth \$164,000, but the US government was seeking \$28,000 in withholding taxes. Kelly told TC he could “make the problem go away” for \$10,000. TC, worried about his funds, agreed and sent the funds the same day.

- ¶ 12 In mid-September Kelly called TC to say because TC “was a good guy” and “was a real pleasure to deal with” he would pay the taxes, but he needed TC to send \$5,000 to \$10,000 “as a sign of goodwill”. TC had only \$3,000 and sent that.
- ¶ 13 TC received no more calls from Strategic. He called Strategic to seek payment of his money. All he got was excuses. He received back none of the money he invested, much less the gains that Strategic told him his investments had made.
- ¶ 14 TC, who is retired and has limited means, lost \$76,000 as a result of his dealings with Strategic. He is devastated by the loss, which has all but wiped out his savings and left him with a debt, secured by his home. He cannot sustain payments on the outstanding balance of his home equity loan.
- ¶ 15 A Commission investigator testified that she interviewed and obtained documents from two other investors resident in B.C. who were also persuaded by Strategic representatives to invest in “gold call options” and who also received account opening forms, U.S. tax forms and wire transfer instructions from Strategic. These investors between them invested \$4,000 with Strategic.
- ¶ 16 Both investors were called multiple times by Strategic representatives to persuade them to make further investments. In each case, the Strategic representatives assured the investors that their initial investments had grown substantially in value within a very short period.
- ¶ 17 The other two investors refused to make further investments and asked that their alleged profits be reinvested. They demanded return of their investments and profits but no repayments were made. Eventually, their calls and emails to Strategic went unanswered and unreturned.
- ¶ 18 Strategic claimed on its website to be a leading commodity and foreign exchange trading firm that provided trading services to clients in over 70 countries from its head office in Chicago. In fact, Strategic was not registered to trade options in the United States or Canada, and the address of its so-called head office was a virtual office service, but Strategic was not a client of the service.
- ¶ 19 Strategic’s website, which claimed it had been in business since 2002, was not created until June 2012 and was up for only one month.
- ¶ 20 None of the investors has received any amounts back from Strategic. There is no evidence that they will recover any of the funds they invested or otherwise sent to Strategic – an aggregate of \$80,000.

III Analysis and Findings

A “Security”

- ¶ 21 There can be no contravention of either section 57(b) or of section 34(a) unless there is involved a “security” as defined in the Act.
- ¶ 22 Section 1(1) defines “security” to include “a document evidencing an option”.
- ¶ 23 The gold call options ostensibly to all three investors, and the Euro put option marketed to TC, were evidenced by documents sent to them by Strategic.
- ¶ 24 We find that the investments Strategic offered the three investors were securities.

B Fraud

1 Law

- ¶ 25 Section 57(b) of the Act states that: “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 ought to know, that the conduct ... (b) perpetrates a fraud on any person.”
- ¶ 26 The Supreme Court of Canada in *F. H. v McDougall* 2008 SCC 53 held:
- “49 . . . I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”
- ¶ 27 The Court also held (at paragraph 46) that evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.
- ¶ 28 The British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 set out the elements that must be proved to make a finding of fraud under the Act, citing *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)."

2 Prohibited Act; deprivation

- ¶ 29 The evidence shows that Strategic committed prohibited acts. Its representatives told TC:
- in early July that it would invest his \$5,000 in gold options;
 - around July 25 that his two-week-old \$5,000 investment in gold options had grown to \$22,000 and that it would invest the \$50,000 he sent in Euro options
 - around the beginning of August that his gold options were worth \$86,000 (later in August, TC agreed to invest another \$8,000 in gold options);
 - near the end of August that his gold options were worth \$164,000, that there was \$28,000 due in "holding taxes" (which we take was a reference to withholding taxes) to be paid, but they could be made to "go away" if TC sent \$10,000, which he did; and
 - in mid-September, that his taxes would be paid if he sent more money (he sent \$3,000).
- ¶ 30 Strategic told the other two investors that the money they sent would be invested in gold options.
- ¶ 31 All of these were lies. Strategic was a sham. It had no head office, its website was a fiction, and it was not registered in the United States or Canada to trade in gold or currency options. Strategic could therefore not have legally invested the investors' money in those investments.
- ¶ 32 It was impossible for a legitimate investment in \$5,000 worth of gold options made on July 10, 2012 to have grown more than four times to \$22,000 in two weeks, to \$86,000 in four weeks, and to \$164,000 by the end of August (even accounting for TC's additional investments).
- ¶ 33 The withholding taxes story does not hold water. TC ostensibly invested a total of \$13,000 in gold options between July 10 and August 23 (there is no evidence that Strategic invested \$28,000 from TC's so-called Euro investment in gold options). It is not believable that his investment could yield gains attracting withholding taxes of more than twice what he invested. On top of that, if the holding taxes were legitimate, they could not have been made to "go away" if TC paid another \$10,000.

- ¶ 34 It is not credible that Strategic would choose to pay any of TC's taxes.
- ¶ 35 All of these lies were calculated to induce TC to invest more money, and it worked. He thought his initial \$5,000 investment was yielding enormous returns so he invested more: \$50,000 two weeks later and \$8,000 a few weeks after that. TC thought he owed taxes of \$28,000 so he sent another \$10,000 to make them "go away". He thought Strategic would help pay the taxes if he sent more money, so he sent his last \$3,000.
- ¶ 36 The evidence shows a pattern of deceit with one aim in mind: to separate TC and the other two investors from their money.
- ¶ 37 This is not a case where lies merely put the investor's pecuniary interests at risk. Not only did Strategic lie to TC, it stole his \$76,000, along with the \$4,000 invested by the other two investors.
- ¶ 38 The evidence shows it is more likely than not that none of the money Strategic obtained from these investors was invested in anything. Strategic simply stole their money.
- ¶ 39 We find that Strategic's conduct was dishonest and deceitful.
- ¶ 40 As a consequence of Strategic's dishonest conduct, the three investors suffered deprivation. They have lost all of the money they sent to Strategic – \$80,000 in the aggregate.
- ¶ 41 We find that Strategic committed prohibited acts and that as a consequence the three investors suffered actual deprivation.

3 Subjective knowledge

- ¶ 42 The evidence shows that the scheme perpetrated by Strategic was an intentional fraud. Strategic representatives called the three investors and aggressively promoted Strategic's investments. We have found that they lied to the investors when they told them their money would be invested in gold or currency options, and when they later tried to extort more money (successfully, in TC's case).
- ¶ 43 Strategic's conduct was directed by a person or persons whose clear intention was to steal other people's money. That person, or those persons, had to have had subjective knowledge that they were not telling the truth to the investors. They also had to have had subjective knowledge that their lies would, as a consequence, cause deprivation – that was, after all, the whole point.

- ¶ 44 Whoever that person was, or those persons, were, they were the acting and directing minds of Strategic, so their state of mind is attributable to Strategic.
- ¶ 45 We find that Strategic had subjective knowledge of its prohibited acts and had subjective knowledge that this dishonesty would result in actual deprivation to the three investors.

4 Finding

- ¶ 46 We find that Strategic perpetrated a fraud, contrary to section 57(b).

C Unregistered trading

- ¶ 47 Section 34(a) states that a person “must not . . . trade in a security . . . unless the person is registered in accordance with the regulations”
- ¶ 48 Under section 8.4 of National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* a person who is not in the business of trading securities, and who does not hold “himself, herself or itself” out as being in the business of trading securities, is not required to register.
- ¶ 49 Section 1(1) defines “trade” to include “(a) a disposition of a security for valuable consideration” and “(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)”.
- ¶ 50 Strategic traded securities: its cold calls to the three investors, and its sending of documentation to them, were all acts in furtherance of a disposition of a security for valuable consideration. Strategic also described itself as a professional commodities and foreign exchange trading firm. We find that Strategic held itself out as being in the business of trading securities.
- ¶ 51 Strategic was not registered under the Act.

- ¶ 52 We find that Strategic traded in securities without being registered, contrary to section 34(a).

IV Sanctions

- ¶ 53 The factors relevant to sanction are set forth in *Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 (at p. 24).
- ¶ 54 Strategic perpetrated fraud, the most serious misconduct under the Act.

- ¶ 55 Strategic also traded securities without being registered. The registration requirement is one of the foundation investor protection provisions in the Act; trading without registration is therefore inherently serious.
- ¶ 56 That the investors were harmed by Strategic’s misconduct is obvious: by trading without being registered and perpetrating a fraud, Strategic deprived them, and enriched itself, by at least \$80,000. In these circumstances, it is appropriate to order disgorgement.
- ¶ 57 Strategic is clearly unfit ever to participate in B.C.’s capital markets in any capacity.
- ¶ 58 There are no mitigating factors.
- ¶ 59 The orders we are making are intended to deter Strategic from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants.
- ¶ 60 We are also ordering an administrative penalty in recognition of Strategic’s fraudulent conduct. We have followed decisions by other Commission panels in similar circumstances and have based the penalty on a multiple of three times the amount taken from the investors.

V Orders

- ¶ 61 Considering it to be in the public interest, we order:
- under section 161(1)(b)(i) of the Act, that all persons cease trading permanently, and are prohibited permanently from purchasing, securities or exchange contracts of Strategic;
 - under section 161(1)(b)(ii), that Strategic cease trading permanently, and is prohibited permanently from purchasing securities or exchange contracts;
 - under section 161(1)(d)(iii), that Strategic is prohibited permanently from becoming or acting as a registrant or promoter;
 - under section 161 (1)(d)(iv), that Strategic is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
 - under section 161 (1)(d)(v), that Strategic is prohibited permanently from engaging in investor relations activities;

- under section 161(1)(g), that Strategic pay to the Commission the amount it obtained as a result of its contraventions of the Act, which we find to be not less than US\$80,000; and
- under section 162, that Strategic pay an administrative penalty of US\$240,000.

¶ 62 June 17, 2014

¶ 63 **For the Commission**

George C. Glover, Jr.
Commissioner

Brent W. Aitken
Vice Chair

Judith Downes
Commissioner