

Adis Golic (aka Ady Golic)

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Nigel P. Cave Audrey T. Ho	Vice Chair Commissioner
Hearing	June 20, 2014	
Submissions Completed	June 27, 2014	
Date of Decision	July 11, 2014	
Appearing		
Kristine Mactaggart Wright	For the Executive Director	

Decision

I Introduction

- ¶ 1 This is an application pursuant to sections 161(6)(a) and 161(1) of the *Securities Act*, RSBC, 1996, c.418.
- ¶ 2 This application proceeded originally in writing; however, we held a hearing on June 20, 2014, primarily to receive submissions on sanctions. We received further written submissions on sanctions from the executive director following the hearing.
- ¶ 3 Golic was served with the application and the follow-up submissions but did not provide any written submissions or attend in person at the hearing.

II Background

- ¶ 4 On May 20, 2008, the executive director issued a notice of hearing and a temporary order against Adis Golic, Adcapital Industries Inc. and AD Capital U.S. Inc.

- ¶ 5 On June 3, 2008, the Commission extended the temporary order until a hearing was held and a decision rendered. The hearing was adjourned on each of July 28, 2008 and January 20, 2009, until it was adjourned generally on March 26, 2009, pending the outcome of criminal proceedings against Golic.
- ¶ 6 The executive director has indicated that the proceedings originated by the notice of hearing will be discontinued if orders are granted pursuant to this application.
- ¶ 7 On February 24, 2010, charges were brought against Golic in the Provincial Court of British Columbia under the Act and the *Offences Act*. There were three counts against Golic:
- a) between November 22, 2007 and May 12, 2008, he engaged in the distribution of securities without being registered to do so, contrary to section 34(1) and 155(1)(b) of the Act;
 - b) between November 22, 2007 and May 12, 2008, he engaged in the distribution of securities without filing a prospectus, contrary to section 61 and 155(1)(b) of the Act;
 - c) between March 1, 2008 and May 31, 2008, he made misrepresentations and omissions, contrary to section 50 and 155(1)(b) of the Act.
- ¶ 8 On October 17, 2011, after trial, Golic was convicted of a breach of sections 34(1) and 61 of the Act, but was acquitted of any breach of section 50 of the Act.
- ¶ 9 On February 17, 2012, Golic was sentenced to 60 days in jail, to be served on weekends, together with \$40,000 in restitution for the breaches.
- ¶ 10 In the trial and sentencing decisions of Golic, the trial judge of the Provincial Court made the following findings:
- a) the breaches of section 34(1) and 61 occurred in respect of sales of securities to three individuals for a total of \$42,000;
 - b) an aggravating factor in sentencing was that these sales occurred in the context of Golic operating a call center whereby a number of salespeople were attempting to solicit purchases of securities;
 - c) Golic was not merely careless about the securities regulatory requirements associated with these transactions, he purposely set out to avoid them;

- d) Golic was separately convicted of obstruction of justice and of uttering threats after he threatened a witness in the proceeding before the Provincial Court;
- e) Golic had a previous conviction for similar securities related offences for which he received a \$5,000 fine; and
- f) the charge of misrepresentation was dismissed against Golic.

¶ 11 On June 26, 2013, the executive director brought this application for orders pursuant to section 161(6)(a) and 161(1) of the Act, as follows:

- a) under section 161(1)(b) of the Act, that Golic cease trading in, and be prohibited from purchasing securities and exchange contracts;
- b) under section 161(d)(ii) of the Act, that Golic be prohibited from becoming or acting as a director or officer of any issuer;
- c) under section 161(1)(d)(iii) of the Act, that Golic be prohibited from becoming or acting as a registrant or promoter;
- d) under section 161(1)(d)(iv) of the Act, that Golic be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- e) under section 161(1)(d)(v), that Golic be prohibited from engaging in investor relations activities.

In each case, for a period ending on May 20, 2023 (a date 15 years from the date of the temporary order against Golic).

¶ 12 The evidence submitted by the executive director was based solely on the official record of the trial and sentencing decisions of the Provincial Court judge.

III Analysis and Findings

¶ 13 Section 161(6)(a) of the Act sets out that the Commission may, after providing an opportunity to be heard, make an order under section 161(1) of the Act if a person has been convicted in Canada of an offence under the laws of the jurisdiction respecting trading in securities or exchange contracts.

¶ 14 Golic has been convicted in Canada of an offence for the breach of sections 34(1) and 61 of the Act and we may therefore issue orders under section 161(1) of the Act, if we determine it to be in the public interest to do so.

IV Sanctions

- ¶ 15 Orders under section 161(1) of the Act are protective and preventative, intended to be exercised to prevent future harm (*Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)* 2001 SCC 37).
- ¶ 16 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission discussed the factors relevant to sanction as follows (at page 24):

“In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent’s conduct,
- the harm suffered by investors as a result of the respondent’s conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent’s conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent’s conduct,
- the respondent’s past conduct,
- the risk to investors and the capital markets posed by the respondent’s continued participation in the capital markets of British Columbia,
- the respondent’s fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.”

Application of the factors

Seriousness of the conduct and damage to markets

- ¶ 17 Contraventions of sections 34(1) and 61 are inherently serious. They are two of the Act’s foundational requirements for protecting investors and the integrity of our capital markets.

¶ 18 Contraventions of these sections usually come with aggravating or mitigating factors. In this case, the trial court judge made the following findings which we determine to be aggravating factors:

- Golic purposefully avoided the securities regulatory requirements; and
- Golic was instrumental in the running of a call center or “boiler room” for the sales of securities.

¶ 19 We find Golic’s misconduct to be on the serious end of the range of circumstances for cases involving a breach of sections 34(1) and 61. Significant deterrence is warranted for those who set up their affairs with an intent to disregard securities laws.

Harm suffered by investors; enrichment

¶ 20 The trial judge found that Golic breached sections 34(1) and 61 in respect of three investors for a total of \$42,000. However, one of the investors was a Commission investigator operating undercover for investigation purposes. The amount lost by the two remaining investors was \$40,000.

¶ 21 There was no evidence in the trial court judgment about whether Golic was personally enriched by these illegal sales of securities.

Mitigating or aggravating factors; past conduct

¶ 22 In addition to the aggravating factors mentioned above, we note:

- Golic has a prior conviction for a similar securities related offence; and
- Golic threatened a witness in the Provincial Court trial that is the basis of this application.

¶ 23 We have both a history of prior misconduct and the threatening of a witness, which at the very least, indicates no remorse on Golic’s behalf. We find both of these convictions to be significant aggravating factors. It is clear that Golic had been made aware of the seriousness of securities regulatory requirements (through his prior conviction), yet he continued to display a wanton disregard for those rules.

¶ 24 There are no mitigating factors.

Risk to investors and markets

¶ 25 Golic’s intentional avoidance of securities regulation, prior misconduct and central role in running a call center all suggest that he is a significant risk to our capital markets. Soliciting investors for investments through call centers or “boiler rooms” represents a very serious risk of breaches of securities laws and wanton disregard for those laws.

Specific and general deterrence

- ¶ 26 The orders we are making are intended to deter Golic from future misconduct and to demonstrate the consequences of illegal conduct to other market participants.

Previous orders

- ¶ 27 The executive director initially cited several previous decisions for our consideration. Unfortunately, the panel did not find those initial submissions to be of assistance. All of the cited decisions involved findings of serious misconduct (fraud, market manipulation, etc.) in addition to a finding of breaches of sections 34(1) and 61. That is not our situation in this case. While there are significant aggravating factors, there has been no finding of misconduct (eg fraud, misrepresentation, etc.) over and above breaches of sections 34(1) and 61.
- ¶ 28 We asked for additional submissions from the executive director focusing on decisions where the findings of misconduct related to a breach of sections 34(1) and 61.
- ¶ 29 Unfortunately, the executive director was not able to provide us with any decisions which involved breaches of sections 34(1) and 61 only. They referred us to several settlements. They acknowledged that those settlements were not likely to be directly applicable. We have not considered those settlements in our reasoning, as settlements occur in a completely different context than those before us in this case.
- ¶ 30 The executive director has also suggested that the timeframe for sanctions should commence from the date of the temporary order. This is not the framework for the application of sanctions that the Commission normally uses and is inconsistent with all of the previous decisions provided by the executive director.
- ¶ 31 In the end, we were left with no real guidance or analysis from counsel for the executive director on the issues of length of our orders or the date from which those orders should apply.
- ¶ 32 We can say that this case involved contraventions of the Act that were of a significantly lesser nature than the decisions given to us by the executive director in support of a 15 year time period.
- ¶ 33 Previous decisions involving breaches of sections 34(1) and 61 with a small number of investors and small total investments have generally resulted in market prohibitions from less than one year on the lower end, to three to five years on the higher end. As noted above, we view this to be one of the serious examples of breaches of sections 34(1) and 61 due to the structuring of Golic's affairs with

intentional disregard for securities laws. We also have aggravating factors, as set out above, which should result in a sanction in excess of the range noted.

V Orders

¶ 34 Considering it to be in the public interest, we order:

- a) under section 161(1)(b) of the Act, that Golic cease trading in, and be prohibited from purchasing securities and exchange contracts;
- b) under section 161(d)(ii) of the Act, that Golic be prohibited from becoming or acting as a director or officer of any issuer;
- c) under section 161(1)(d)(iii) of the Act, that Golic be prohibited from becoming or acting as a registrant or promoter;
- d) under section 161(1)(d)(iv) of the Act, that Golic be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- e) under section 161(1)(d)(v), that Golic be prohibited from engaging in investor relations activities,

in each case, for a period ending seven years from the date of this Order.

¶ 35 July 11, 2014

¶ 36 **For the Commission**

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner