

Citation: 2014 BCSECCOM 286

**Rashida Samji, Rashida Samji Notary Corporation
and Samji & Assoc. Holdings Inc.**

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

Hearing

Panel	Brent W. Aitken Judith Downes Gordon L. Holloway	Vice Chair Commissioner Commissioner
Dates of Hearing	November 4-8, November 13-15, and December 17-19, 2013; March 12, 2014	
Date of Findings	July 16, 2014	
Appearing		
Joyce Johner Anthony Abato	For the Executive Director	
H. Roderick Anderson Owais Ahmed	For the respondents	

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 an amended notice of hearing issued April 9, 2013 (2013 BCSECCOM 50), the executive director alleged that Rashida Samji, Rashida Samji Notary Corporation (Samji Notary), and Samji & Assoc. Holdings Inc. (Samji & Associates) contravened the Act by perpetrating a fraud, contrary to section 57(b) of the Act.
- ¶ 3 The executive director alleges that Samji perpetrated a fraud when she:
- ran a Ponzi scheme in which she received \$83 million from 218 investors; and
 - took \$300,000 from an investor for a false mortgage and created more false mortgages for that investor and another investor.
- ¶ 4 All of the conduct connected with the alleged fraud was Samji's. The corporate respondents were both wholly-owned by Samji and she had exclusive control over their

affairs. As we have found below, the corporate respondents participated in the alleged fraud because the funds raised by, and distributed under, the Ponzi scheme flowed through bank accounts in the name of the corporate respondents. The corporate respondents did not engage in any conduct distinct from Samji's.

- ¶ 5 The notice of hearing is organized under four main headings.
- ¶ 6 The first main heading is "Background". Under that heading, paragraphs 1 through 3 contain alleged facts about the respondents.
- ¶ 7 The second main heading is "Misconduct". It has two subheadings, "Ponzi scheme" and "False mortgage". Under the subheading "Ponzi scheme", paragraphs 4 through 7 contain factual allegations relating to the alleged Ponzi scheme. Under the subheading "False mortgage", paragraphs 8 through 12 contain factual allegations relating to the alleged false mortgages.
- ¶ 8 The third main heading is "Fraud". Under that heading, paragraphs 13 and 14 allege that the respondents, by "engaging in the misconduct described above" (that is, the conduct described in paragraphs 4 through 12), perpetrated a fraud, contrary to section 57(b).
- ¶ 9 The final main heading is "Continuous pattern of forging legal documents". Under that heading, paragraph 15 says that Samji "forged a number of legal documents which are not securities" and goes on to describe them.
- ¶ 10 It is not apparent from the notice of hearing what the executive director expects us to do with the statement in paragraph 15.
- ¶ 11 The statement in paragraph 15 describes conduct that does not, on its own words, involve trading in securities, which on its face calls into question our jurisdiction to consider it. The executive director's answer to this is that the forgeries constituted conduct contrary to the public interest, although the first time he took that position was in his reply submissions, and even then provided no argument or authority in support of his position.
- ¶ 12 Apart from the problem of jurisdiction, the notice of hearing contains no allegation that the conduct described in paragraph 15 contravened the Act or was contrary to the public interest.
- ¶ 13 With no clear basis for our jurisdiction, and no allegations of a contravention of the Act or conduct contrary to the public interest, there is no basis for us to make any finding based paragraph 15. We ignored it.

II Law and Issues

A Standard of Proof

- ¶ 14 The standard of proof is proof on a balance of probabilities. In *F. H. v. McDougall* 2008 SCC 53, the Supreme Court of Canada held:

“49 In the result, 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.”

- ¶ 15 The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.

B Meaning of Fraud

- ¶ 16 Section 57(b) 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.”

- ¶ 17 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 establish 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).”

C Issues

- ¶ 18 The executive director alleges two frauds: one associated with the Ponzi scheme, and one associated with the false mortgages.

D The Evidence

- ¶ 19 The executive director entered nearly 10,000 documents and called 18 witnesses, including 11 investors and the Commission staff investigator.
- ¶ 20 The evidence includes the transcript of a compelled interview by Commission staff of Samji, under oath, on October 16, 2013, about two weeks before the hearing started. Samji was represented by counsel at the interview. In these Findings, the statements we attribute to Samji are those she made in her compelled interview.
- ¶ 21 Samji made numerous admissions in her interview, some of which we describe in these Findings. We find that the evidence corroborates Samji’s admissions. Our Findings are based on all of the evidence, including Samji’s admissions.

IV Analysis and Findings

A Alleged Ponzi Scheme

1 Prohibited act

The respondents

- ¶ 22 Samji became a notary public in 1988 and was practicing as such in 2003, the start of the relevant period. In 2005, she sold her practice and became a “roving notary”. Roving notaries cover the practices of notaries who are on vacation, ill, or otherwise temporarily unable to carry on their practices.
- ¶ 23 Samji Notary was the professional corporation through which Samji carried on her practice as a notary public. Samji & Associates was Samji’s management company related to her practice.
- ¶ 24 The respondents said in their submissions that they “take no position with respect to the Ponzi scheme allegation, with the exception that . . . the number of investors, the amount of money received and the amount paid out under the investment . . . is incorrect.” From their submissions, it appears that their dispute has more to do with the amounts received and paid out by Samji than the number of investors.

The investment

- ¶ 25 Samji admits that she began offering an investment in 2003.
- ¶ 26 In exchange for the funds invested, she says she gave each investor a document titled “Letter of Direction”, which we will refer to as an LOD.
- ¶ 27 Each LOD showed the name and address of the investor and was dated as of the date of the investment. The body of one typical LOD read as follows:

“I [investor], of the above address,

Hereby AUTHORIZE and DIRECT Samji & Associates as follows:

To place in trust, Canadian \$220,000 (TWO HUNDRED AND TWENTY THOUSAND DOLLARS) on July 15, 2010 and to be returned to the undersigned, unless specifically directed on January 15, 2011.

These funds are to remain “In Trust” and not to be paid out to any party without specific direction from the undersigned.” [*emphasis in original*]

- ¶ 28 The investor signed the LOD on a line provided on the lower right side of the form. On the lower left side appeared “c.c. Samji & Associates” and the firm’s address. Some LOD’s were also signed by Samji.
- ¶ 29 Samji says she kept electronic and paper records for each investor, showing the investor’s invested capital, promised return, and maturity date. Maturities varied, but typically were six months.
- ¶ 30 Rates of return varied, but typically were 12% per annum, payable one month after the date of investment. Each investor’s promised return was entered in Samji’s records but did not appear on the face of the LOD. Investors had the option of “rolling over” their investment in lieu of their capital being repaid, and many did.

What Samji told the investors compared to the facts

- ¶ 31 Among the documents found on Samji’s business computer was a document titled “Summary – Investment Opportunity”. Samji says that she prepared the document for possible use in soliciting investment, but that it “was never circulated”. Asked if the document described the investment she was offering, she replied, “More or less, yes”. The evidence of the investors about what Samji told them is consistent with the content of the Summary. These are excerpts:

“A brief summary is outlined herewith for interested Investors in a secure Investment Opportunity managed through a Trust Fund operated and managed by a Notary Public, duly commissioned in and subject to the laws of British Columbia, Canada.

1. The Investor deposits funds into the Notary’s Trust Account. Based on this deposit, the Notary provides a “Comfort Letter” to certain Companies dealing in the Wine business in South America and South Africa. Of particular note is that this is NOT A GUARANTEE OR A LETTER OF CREDIT. It is a

COMFORT LETTER, which cannot be called upon, but has been sufficient for the Companies to then obtain their facilities to carry out their business. Since it saves the Companies utilizing their own funds for this, a fee is paid to the Investor for putting their funds “In Trust”.

2. The funds are placed in the Notary’s Trust Account, which is the security for the Investor for the following reason:

Notary’s Trust Account is monitored and audited by the Society of Notaries Public of B.C. – same as the Law Society of B.C. and each Investor provides a specific Letter of Direction (drawn up by the Notary and executed by both the Investor and the Notary), which is binding upon the Notary with regards to the amount and term of the Investment. It is incumbent upon the Notary to adhere to the terms of this Letter of Direction and provides the Security for the Investor.”

- ¶ 32 Samji admits that she told investors that their investment would be held in her notary trust account. In fact, as Samji admits, she deposited the investors’ funds not into the Samji Notary trust account, but into Samji & Associates bank accounts and, in one case, into a Samji Notary general account. Indeed, after 2005, when Samji became a roving notary, she had no trust account.
- ¶ 33 The evidence of many of the investors is that Samji told them that their investment would be used to secure letters of comfort for the Mark Anthony Group, a British Columbia winery.
- ¶ 34 Samji admits that she told investors that the investment was connected to the Mark Anthony Group. She admits that none of the investors’ funds was ever used to invest in wineries or wine-related businesses, and that she never provided any letters of comfort for offshore businesses.
- ¶ 35 Samji admits that she told investors that their money would never leave the trust account. In fact, as Samji admits, the investors’ funds were used to pay interest owed to other investors.
- ¶ 36 The evidence clearly establishes that Samji deceived the investors. The whole investment scheme was one big lie. There was no investment related to the wine business, nor any letters of comfort. The investors’ funds were not held in trust, were not maintained in the account unless the investors directed otherwise, and were not secure. Because there was no notary trust account, there was no auditing or monitoring by the

Society of Notaries Public. The investors' return did not come from fees for providing security to back comfort letters, but from other investors.

- ¶ 37 Instead, Samji used investors' funds to pay other investors in order to keep the scheme going. She also used investors' funds for her own purposes.
- ¶ 38 It was a monumental deceit.
- ¶ 39 Nor can there be any doubt that Samji had subjective knowledge of her deceit. One need not look further than her admissions, but it is also clear from the other evidence. She knew what she was telling investors was false because she knew:
- there was no wine-related investment,
 - there were no letters of comfort,
 - she did not deposit investors' funds in her notary trust account,
 - she removed the investors' funds from the accounts in which they had been deposited,
 - there was no investment income from fees for securing comfort letters, and
 - investors' returns were coming from other investors.

Finding – prohibited act

- ¶ 40 We find that Samji committed a prohibited act, in the form of deceit, and that Samji had subjective knowledge of her prohibited act.

2 Deprivation

Investor losses

- ¶ 41 There are civil proceedings against Samji and related parties in connection with Samji's alleged Ponzi scheme. Most of the investors' funds were deposited in a Samji & Associates account at the Royal Bank of Canada. For the purposes of the civil proceedings, RBC staff undertook a forensic accounting analysis of the respondents' accounts at RBC. On the basis of that analysis, RBC concluded that, as of May 31, 2013, Samji took \$110 million from over 200 investors and, of this amount, paid out \$99 million.
- ¶ 42 The respondents dispute the RBC numbers. They say that the amount Samji took is no more than \$102 million, and that Samji paid out \$98 million.
- ¶ 43 Patrick McParland is a forensic accountant who testified as an expert at the hearing. McParland was retained by the plaintiffs and some of the defendants in the civil proceedings to review the RBC methodology. The parties who retained him wanted to be sure that the RBC results were accurate for the purposes of the litigation.
- ¶ 44 McParland concluded that the RBC methodology was reasonable. He concluded, subject to qualifications, as follows:

“In summary, in our sample the RBC data base and summary schedule correctly allocate the payments and receipts identified as client investor funds to the correct client investor with the correct dates and amounts, subject to the limitations expressed”

- ¶ 45 The executive director says that it is premature to make findings as to the precise amount Samji took from investors, or the amount she paid out, because the determination of the precise numbers is a work in progress. We agree, and would add that the same goes for the amount that Samji took for her own use.
- ¶ 46 For the purposes of these Findings, we find that the evidence establishes, clearly, convincingly, and cogently, that Samji took not less than \$100 million from over 200 investors.
- ¶ 47 We are making no further finding as to the amounts that Samji took, paid out, or retained for her own use. Should this be relevant for the purposes of determining sanction, the parties can enter the appropriate evidence at that time.
- ¶ 48 All of the investors’ money Samji took she put at risk. The investment scheme was a sham. There were no fees from third parties to fund the promised returns. Moreover, as in all Ponzi schemes, it is certain that some investors will lose all of their investment. Many more may see some return of funds through the civil proceedings but the evidence shows that this group will also suffer significant losses. None will ever see the returns they were promised.
- ¶ 49 All of this shows that Samji put the investors’ pecuniary interests at risk, and that many investors will be deprived of their investment.
- ¶ 50 Samji had subjective knowledge of the deprivation. She knew she was putting the investors’ pecuniary interest at risk because she knew:
- the investment scheme was a sham,
 - there was no fee income for securing letters of comfort, and
 - the only source of funds to pay investors was new investment from existing and new investors.
- ¶ 51 We find that as a consequence of Samji’s deceit, investors’ pecuniary interests were put at risk, and that some investors’ are certain to suffer significant actual losses. We find that Samji had subjective knowledge that her deceit could have a consequence the deprivation of the investors.

3 Finding – fraud related to the Ponzi scheme

¶ 52 We find that Samji perpetrated a fraud, contrary to section 57(b) of the Act, when she traded securities to not fewer than 200 investors for proceeds of not less than \$100 million.

B Alleged fraud related to false mortgages

1 Prohibited act

The allegations

¶ 53 The executive director alleges that Samji perpetrated a fraud when she sold false mortgages to two investors, Sadrudin Abdulla Rajan and Mehboob Shivji.

¶ 54 Samji admitted in her interview that the mortgages the executive director alleges she sold to Shivji and Rajan were fabrications, but said that she made them at their request. She gave explanations as to the reasons that each of them made that request, but we have not relied on those explanations in making our findings.

¶ 55 Samji denied that either of them advanced any funds in connection with the mortgages.

Issues

¶ 56 The respondents argue that:

- the false mortgage allegations are statute-barred, and
- the executive director failed to allege, and to prove, the necessary elements of the alleged fraud.

¶ 57 To prove the allegations, the executive director must first prove that Samji committed a prohibited act. In the case of these allegations, the executive director would have to prove that Samji acted dishonestly which, at a minimum, would include proof that Rajan and Shivji did not know that the mortgages were false.

¶ 58 The executive director must also prove that, as a consequence of Samji's prohibited act, Rajan's and Shivji's pecuniary interests were put at risk which, at minimum, would include proof that Rajan and Shivji advanced Samji funds under the false mortgages.

¶ 59 We consider the allegations involving each of Rajan and Shivji separately.

Alleged false mortgage fraud – Rajan

¶ 60 This is the allegation in the notice of hearing about the mortgage Samji allegedly sold to Rajan:

“8. In 2001, Samji took \$300,000 from at least one investor (Mortgagee) purportedly as a personal mortgage to the principal of Mark Anthony for his residence in Vancouver (Mortgagor).

...

10. Samji did not provide the \$300,000 to the Mortgagor who had no knowledge of the transaction. No mortgage actually existed or was ever registered in the land titles registry.

11. Since about 1999, Samji forged at least eight other Form B Mortgage documents purportedly registering personal mortgages from the Mortgage on title of various properties.”

- ¶ 61 Rajan is the person that the executive director alleges in paragraph 8 of the notice of hearing to be the “Mortgagee”. The executive director also alleges in the notice of hearing that in connection with the alleged \$300,000 mortgage, Samji gave Rajan false documents to create the appearance of a legitimate mortgage. These include a fabricated Form B mortgage document, fake letters purporting to renew the mortgage, and a fake land title search purporting to show the false mortgage as a charge on the Mortgagor’s property.
- ¶ 62 The respondents argue that the allegation in paragraph 11 should be dismissed because it fails to allege that Rajan advanced any funds under the alleged mortgages. They also submit that the allegations are statute-barred since the mortgage transactions are alleged to have occurred long before the six-year limitation period provided in section 159.
- ¶ 63 Before considering these arguments, we assessed whether the evidence was sufficient to prove the allegation of fraud in connection with the Rajan false mortgages. In light of our finding on that issue, it was unnecessary for us to consider the respondents’ other arguments.
- ¶ 64 Rajan died in March 2012. The executive director called Mark Sicherman, a dentist and Rajan’s son-in-law, to give evidence about discussions he had with Rajan about the alleged false mortgage prior to his death.
- ¶ 65 Sicherman himself is an investor in the Samji Ponzi scheme and knew that his wife’s parents were, too. He testified that when the news broke in February 2012 of a possible Ponzi scheme involving Samji, he suggested to his wife that she call her parents to see if they were going to be alright financially if the news was true.
- ¶ 66 Sicherman testified that Rajan told Sicherman’s wife that he was protected, but Sicherman was not so sure and asked to see the documentation. When Sicherman got the mortgage documents he made some inquiries and soon discovered that they appeared to be fake. Although Sicherman knew that Rajan was a Samji investor, he did not know, prior to this, about any mortgage investments Rajan may have had with Samji. Sicherman testified that until the issue of the mortgage came up, Rajan never discussed his financial affairs with Sicherman.

¶ 67 Sicherman testified as follows about Rajan's reaction when Sicherman told him what he had discovered about the mortgages:

“ . . . my father-in-law was not a very talkative fellow. He didn't really say too much about it . . . he was surprised and upset. Rashida was a very close member of his family and I think he was, at that point, trying to find in his own mind a way that this might not be what I was telling him. So, I think he was in a bit of denial.”

¶ 68 Counsel for the executive director asked Sicherman about what else he learned from Rajan about the mortgages:

“Q Did he tell you anything else about the investment he had with Samji?

A No.

Q Did he tell you how much money he put in?

A He told me that the mortgage was \$300,000 and that it was half his and half Rashida's. He told me that what had happened was Rashida had approached him and told him that she had an opportunity to file a mortgage for a person who was purchasing property through her Ontario business and that she would take care of the investment, that my father-in-law would put in, I assume when he said half, as it turns out later it wasn't quite half, I assumed he was putting in 150 and she was putting in 150 or so for a total of \$300,000. . . .

Q Did he say anything about the renewal letters and how they occurred? How he received those?

A No, he just said they had been renewed

Q Did he provide you with any evidence of the amount of money that he had given to Ms. Samji for the investment, the initial mortgage?

A No.

Q And did he provide you with any other documentation about how Ms. Samji was paying him for that investment?

A No.”

¶ 69 Sicherman testified that after Rajan died, his wife found more mortgage documents. Sicherman himself was helping the family, in particular his wife, go through Rajan's papers:

“At the time we weren’t really looking for evidence of fraud because we didn’t know there was any. So we were tossing things rather wholesale at the time.”

- ¶ 70 Apparently Sicherman and his wife brought home other papers to deal with later. Sicherman testified that, about six weeks before the hearing, his wife found a document titled “Assets & Liabilities Dec 31 2004”. Sicherman testified “my wife said that’s positive her father’s handwriting.” He testified that he knows nothing more about the document, including where it was found or when it was created. This is the relevant excerpt from the document:

“Second mortgage to Anthony Mark Von Mandl Partnership with Rashida Samji, controlled by Rashida. Total \$300,000 -
Share Sandru Rajan \$140,000 -
” Rashida Samji \$160,000 - ”

- ¶ 71 To the right of this text was a brace, with the legend “\$140,000”.

- ¶ 72 This is Sicherman’s further testimony about this document:

“Q Were you involved in your father-in-law’s affairs, his financial affairs, in December 2004?

A No.

Q And what about your wife, was there any way to know if this was an accurate list of your father-in-laws affairs?

A No. . . .”

- ¶ 73 Counsel for the executive director then asked a series of questions about Sicherman’s investments with Samji. Sicherman testified that Samji’s trustee in bankruptcy sent him a letter claiming he was “overpaid by 300 and some odd thousands . . . we are currently in the process of trying to come up with the final number with the trustee so I can put this behind me.”

- ¶ 74 Counsel for the executive director asked Sicherman, “. . . what kind of impact has this had on your wife or your in-laws?” This is an excerpt from Sicherman’s response:

“Oh it’s been devastating. My father-in-law, you know, I can’t say this pushed him over the edge in his cancer, I mean that would be silly, [he] was going to die anyways, but it was, it was looming over him in the hospital, you know, this was four or five weeks to

be, to find out, he had been screwed over by someone he was so close to, was devastating.

...

... you know I am dealing with the ... trustee who wants \$300,000 that I didn't get. I have got a lawyer that's telling me if the people who lost a lot of money can have the opportunity to sue me to bring me down to an average of their loss, you know ... I will be out at least a hundred, the \$200,000 if that makes me a winner I don't want to win too often. It's been an awful thing."

- ¶ 75 Sicherman testified that Samji was the executrix of Rajan's estate if his wife was not living. On cross-examination, Sicherman was asked whether he had ever looked at Rajan's bank accounts to see if they showed any monthly payments on the mortgage. Sicherman answered, "No. I didn't look. My wife was acting as executrix. I was not privy to any of the bank documents."
- ¶ 76 After Sicherman testified, the executive director entered additional documents provided by Sicherman, including four bank drafts from 1999 and 2000. The executive director says the dates on the bank drafts "correspond with dates that Mr. Rajan entered into fake mortgages with Samji".
- ¶ 77 The dates of only three of the drafts correspond closely to the dates of false mortgages. There is a draft dated October 15, 1999 and a mortgage dated the same date. There is a draft dated December 16, 1999 and a mortgage dated December 15, 1999. There is a draft dated May 1, 2000 and a mortgage dated May 4, 2000. The fourth draft is dated January 17, 2000 but there is no mortgage for that date.
- ¶ 78 The dates could be viewed as minor discrepancies, but the amounts of the drafts do not add up. If the executive director's theory is correct as to the allocation of the mortgage investment between Rajan and Samji, based on Sicherman's testimony, the ratio for all of these drafts should correspond to the 140 Rajan:160 Samji ratio in Rajan's December 2004 asset summary, which reduces to a ratio 0.467 for Rajan's share.
- ¶ 79 The October 15, 1999 mortgage was for \$20,000, so Rajan's share should have been \$9,300. The draft was for \$10,000 – a share of 0.500, somewhat consistent with the executive director's theory.
- ¶ 80 The December 15, 1999 mortgage was for \$50,000, so Rajan's share should have been \$23,350. The draft was for \$30,000 – a share of 0.600, clearly not consistent with the executive director's theory (Rajan would be the majority investor).

- ¶ 81 The May 4, 2000 mortgage was for \$100,000. The draft was for \$30,000 – a share of 0.333, also not consistent with the executive director’s theory (Rajan’s share would be much lower than expected).
- ¶ 82 Above, we noted that to prove that Samji fraudulently sold Rajan a false mortgage, the executive director would have to prove that Samji acted dishonestly because Rajan was not aware that the mortgage was false, and that Rajan advanced funds under the mortgage.
- ¶ 83 In our opinion, the executive director has failed to provide clear, convincing and cogent evidence of either. His cases rests almost entirely on Sicherman’s testimony. This is clearly insufficient:
- Sicherman had no real knowledge of Rajan’s financial affairs. The only discussion he says he had with Rajan about his financial affairs was about the alleged false mortgages after the news broke about a potential Ponzi scheme involving Samji.
 - There is no documentary evidence showing that Rajan advanced \$300,000, \$140,000, or any other amount under any mortgage. Even if we accept that the document titled “Assets & Liabilities Dec 31 2004” was in Rajan’s handwriting, Sicherman admitted in his testimony that there is no way to know if it was an accurate list of Rajan’s financial affairs. There is no evidence about Rajan’s purpose in creating it (assuming he did), or the circumstances surrounding its creation.
 - There is no documentary evidence that Rajan received any payments under the mortgage.
 - Sicherman testified that he told Rajan there could be problems with his Samji mortgage investment, but that Rajan “was not a very talkative fellow and he didn’t really say too much about it”. Yet Sicherman gave no evidence explaining what he observed about Rajan’s behaviour to conclude that he was “surprised and upset”, nor any evidence corroborating that opinion.
 - Some aspects of Sicherman’s testimony betray a belief in the truth of the false mortgage allegation, and are therefore a basis to question his objectivity. He testified that he believed that Rajan “was in a bit of denial”, which presumes that Samji had indeed cheated Rajan. He testified that Rajan had to live the last few weeks of his life with the knowledge that “he had been screwed over by someone he was so close to”, another statement that presumes Samji’s guilt.

- There are unexplained inconsistencies in Sicherman’s evidence. He said that Rajan’s wife was the executrix of Rajan’s estate, but when asked whether he had looked at Rajan’s bank accounts to look for evidence of payments under the mortgage, he said he was not privy to the bank documents because his wife, Rajan’s daughter, was the executrix. More significantly, his explanation for why he and his wife “were tossing things rather wholesale” after Rajan’s death was that they “weren’t really looking for evidence of fraud because we didn’t know there was any”. Yet, only about a month or so before Rajan died, Sicherman had concluded that the mortgage documents Rajan gave him were fakes, and that Rajan was in denial that Samji had cheated him.
- Finally, we cannot ignore that Sicherman has his own problems arising out of his participation in the Samji Ponzi scheme. We did not put any significant weight on this issue, but the fact is the trustee in bankruptcy is claiming Sicherman owes the Samji bankruptcy estate up to \$300,000. It is possible that a finding that Samji owed Rajan’s estate another \$140,000 or more could be helpful to Sicherman in those circumstances.

¶ 84 We find that the executive director failed to prove that Samji perpetrated a fraud by taking \$300,000 from Rajan in connection with a false mortgage. It follows that the allegations relating to the other eight false mortgages also fail.

Alleged false mortgage fraud – Shivji

¶ 85 This is the allegation in the notice of hearing about the mortgages Samji allegedly sold to Shivji:

“12. In addition, in 2001, Samji forged at least five Form B Mortgage documents from a second investor (Second Mortgagee) purportedly registering personal mortgages on title on a property. No such mortgages were ever registered for the Second Mortgagee.

¶ 86 Shivji is the person the executive director alleges is the “Second Mortgagee”.

¶ 87 The respondents argue that this allegation is fatally flawed because it contains no allegation that Shivji knew that the mortgages were false, nor contains any allegation that he advanced any funds under the false mortgages. They also argue that the allegations are statute-barred since the mortgage transactions are alleged to have occurred long before the six-year limitation period provided in section 159.

¶ 88 In *Blackmont Capital Inc.*, 2011 BCSECCOM 490, the Commission said:

“24 A notice of hearing is the foundation of hearings before . . . this Commission. It identifies the alleged misconduct that the

respondent has to meet. It establishes the issues to be determined at the hearing. It follows that a panel does not have jurisdiction to determine matters not alleged in the notice of hearing. (Particulars need not be in the notice of hearing, but must relate to an allegation that is in the notice.)”

- ¶ 89 Paragraph 12 of the notice of hearing is ostensibly one of the foundations for the executive director’s allegation of fraud in paragraph 13. The essence of an allegation of fraud is dishonest deprivation, yet paragraph 12 alleges neither. It is a mere statement that Samji forged some mortgages from “a second investor.” There is no allegation of dishonest conduct toward that investor, nor any allegation of deprivation of that investor.
- ¶ 90 On this basis alone, we would dismiss the allegation of fraud based on paragraph 12 of the notice of hearing.
- ¶ 91 That said, we also considered whether the evidence was sufficient to prove the allegation of fraud in connection with the Shivji false mortgages, had the executive director alleged dishonesty or deprivation in paragraph 12, or had he taken the position (which he did not) that those elements were implied if paragraphs 12 and 13 of the notice of hearing were read together.
- ¶ 92 As was the case with the allegation in connection with the Rajan false mortgage, the executive director produced no documentary evidence that Shivji advanced any funds to Samji under the mortgages described in paragraph 12 of the notice of hearing.
- ¶ 93 The executive director produced no evidence that Shivji was deceived by Samji in connection with the false mortgages, other than Shivji’s testimony. The executive director admits he has no evidence that Shivji advanced any funds to Samji in connection with false mortgages, other than Shivji’s testimony.
- ¶ 94 This turned out to be a rickety platform for the executive director’s case. In our opinion, Shivji’s testimony was not remotely credible:
- Generally, Shivji’s testimony bore textbook hallmarks of unreliability.
 - Even on direct examination, his evidence was vague. He repeatedly fell back on three mantras: (a) Samji, in their culture, was his “blood sister” and he placed in her his “blind trust”; (b) he was certain he advanced funds under the mortgages but could produce no documents to prove it (he repeatedly stated he gave all his documents to the executive director); and (c) all of this happened a long time ago and he found it difficult to recall the details.
 - On cross-examination, these tendencies were magnified. He was evasive,

argumentative, and seemed incapable of providing a straightforward answer to simple, direct questions.

- Specifically, Shivji was adamant that he funded his purchase of the false mortgages by mortgaging a property he owned at 7814 Government Road in Burnaby, BC. A title search for that property shows that he did not own it at the material time. He owned another property, in Surrey, BC for a portion of the material time. That property had a mortgage registered against it, but there is no evidence that connects advances under that mortgage to any alleged advances from Shivji to Samji under the false mortgages.
- In direct examination, Shivji testified that he had given between \$1.5 and \$2 million to Samji, but had received “absolutely nothing” back from her. Faced with contrary evidence on cross-examination, he changed his story, but suggested he did not profit. The evidence suggests he did. The RBC research described in the previous section suggests that Shivji invested \$1.5 million and received almost \$2.5 million back, for a profit of nearly \$1 million.
- Shivji’s repeated response to questions about his investments with Samji was, in essence, that he just kept giving Samji money, signed whatever she put in front of him, did whatever she asked, and asked her no questions, all because of his “blind trust” in his “blood sister”.

¶ 95 The executive director made extensive submissions about Shivji’s investments in the Ponzi scheme. The objective of these submissions appeared to be to prove that Shivji advanced funds under the false mortgages that Samji then used to invest in the Ponzi scheme.

¶ 96 The relevance of these submission to the false mortgage allegation are not clear to us. Whatever may have happened to any funds advanced by Shivji under false mortgages is not relevant to the ostensible allegation that Shivji was deceived to invest in the false mortgages and was thereby deprived.

¶ 97 We find that the executive director failed to prove that Samji perpetrated a fraud by creating false mortgages showing Shivji as the mortgagee.

Disposition of false mortgage allegation

¶ 98 We dismiss the allegations that Samji perpetrated a fraud in connection with the false mortgages.

V Submissions on sanction

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

By August 8 The executive director delivers submissions to the respondents and to the secretary to the Commission

By August 22 The respondents deliver response submissions to the executive director, to each other, and to the secretary to the commission; any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission

By September 2 The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission

¶ 100 July 16, 2014

¶ 101 For the Commission

Brent W. Aitken
Vice Chair

Judith Downes
Commissioner

Gordon L. Holloway
Commissioner