

**Daveed Zarr (formerly known as Asi Lalky)
and Zarr Energy Corporation**

Securities Act, RSBC 1996, c. 418

Hearing

Panel	George C. Glover, Jr. Gordon L. Holloway	Commissioner Commissioner
Hearing Date	December 2, 2013 and March 10, 2014	
Submissions Completed	October 3, 2014	
Date of Decision	October 31, 2014	
Submissions filed by		
Neil Cave	For the Executive Director	
Daveed Zarr	For himself	

Decision

I Introduction

- ¶ 1 This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. Our Findings on liability were made on August 25, 2014 (2014 BCSECCOM 317) and are part of this decision.
- ¶ 2 We found that Zarr contravened sections 61(1), 34(a) and 50(1)(d) of the Act by offering to sell Zarr Energy shares on the Zarr Energy website without filing a prospectus, by soliciting an investment in foreign exchange trading through a Craigslist advertisement without being registered and by making misrepresentations that he was a professional currency trader and that the investment he was offering would provide a 50% annual return.

II Positions of the parties

- ¶ 3 The executive director seeks orders:
1. permanently prohibiting Zarr from trading in, or purchasing, any securities or exchange contracts,

2. that any or all of the exemptions set out in the Act, the regulations or a decision do not apply to Zarr,
 3. that Zarr
 - (i) resign any position that he holds as a director or officer of an issuer or registrant,
 - (ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,
 - (iii) is prohibited from becoming or acting as a registrant or promoter,
 - (iv) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and
 - (v) is prohibited from engaging in investor relations activities;
 4. that Zarr is prohibited from disseminating to the public, or authorizing the dissemination to the public, of any information or record of any kind, and
 5. requiring Zarr to pay an administrative penalty of \$60,000.
- ¶ 4 Zarr made written submissions on sanction in which he suggested an alternative sanction of performing 50 hours of volunteer work in the Community Policing Centre.

III Analysis

A Factors

- ¶ 5 Orders under section 161(1) and 162 of the Act are protective and preventative and are intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.
- ¶ 6 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified a non-exhaustive list of 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.”

B Application of the Factors

Enrichment and harm to investors; seriousness of the conduct; damage to integrity of capital markets

- ¶ 7 The Commission has consistently held that any contravention of sections 34(a) and 61(1) is inherently serious as those sections are the foundation investor protections of the Act. The requirement in section 34(a) that those who trade in securities must be registered is intended to ensure that purchasers of securities are offered only securities that are suitable. The requirement in section 61(1) that those who wish to distribute securities must file a prospectus with the Commission is intended to ensure that investors and their advisers get the information they need to make an informed investment decision. *See Corporate Express Inc., et al.* 2006 BCSECCOM 153.
- ¶ 8 Fortunately for investors, no one actually invested in Zarr Energy or in Zarr's advertised foreign exchange trading opportunity. Accordingly, no investors lost any funds and Zarr did not receive any benefit from his misconduct.
- ¶ 9 Notwithstanding this, Zarr contravened the Act in three fundamental ways—by offering shares in Zarr Energy without a prospectus, by advertising a foreign exchange trading investment opportunity without being registered and by making false and misleading statements in the course of promoting the foreign exchange trading investment opportunity.
- ¶ 10 Zarr's misconduct threatened to damage the reputation and integrity of the British Columbia capital markets and to make investors hesitant to invest in the capital markets when they cannot trust those who promote investment opportunities without complying with applicable securities laws.

Market Risk/Fitness to be a Registrant, Director, Officer or Advisor to Issuers

- ¶ 11 Zarr made no effort to understand the prospectus and registration requirements applicable to the offering of the Zarr Energy shares or the promotion of the foreign exchange trading investment opportunity.
- ¶ 12 He repeatedly published misrepresentations regarding his expertise as a foreign currency trader (he admitted that he was terrible at foreign exchange trading) and touting unrealistic rates of return (50% annual returns) on the foreign exchange trading investment opportunity without any meaningful identification of the risks.
- ¶ 13 Zarr displayed wanton disregard for the need for securities regulatory compliance. He combined excuses for his misconduct with unwillingness to take any responsibility for the potential harm to investors who might have been persuaded to invest in either Zarr Energy or in Zarr's foreign exchange scheme. It is clear that Zarr poses an ongoing threat to investors and to the integrity of our capital markets. We consider these threats sufficient to warrant sanctions more significant than what might be based primarily on the fact that no investors actually lost any monies.
- ¶ 14 In addition, Zarr repeatedly published significant misrepresentations that were blatant and egregious lies without a hint of foundation in fact in the course of promoting the foreign exchange investment opportunity. This pattern of deceit, carelessness and wilful disregard of securities regulation and the investors and market participants intended to be protected by such regulation demonstrate that he poses a substantial risk to our capital markets if he were allowed to continue to participate in them without restriction.
- ¶ 15 Zarr included some boilerplate general risk disclosure in some of his Craigslist promotional advertizing. He also testified that he consulted the Commission staff concerning another investment scheme that he sought to offer and abandoned that project when he was advised of the significant regulatory requirements. This demonstrates that Zarr was aware of securities regulatory requirements but he failed to do any due diligence towards complying with the obligations imposed on a person seeking investment from the public. In his testimony, Zarr attempted to blame the staff of this Commission for not warning him of his contraventions.

Mitigating and aggravating factors; past misconduct

- ¶ 16 The executive director submitted that although Zarr has no history of past misconduct, Zarr's testimony that he considered his promotion of the foreign exchange investment opportunity as "playing a game" and Zarr's multiple contraventions of the Act suggest that Zarr continues to pose a risk to investors and to the capital markets.
- ¶ 17 Zarr submitted that: "I didn't engage in trading securities for the public so there wasn't a requirement for me to register...no person can possibly know all the

rules....Posting an innocuous ad on Craigslist doesn't fall within the category of wrong...." "...if I knew that there was an [A]ct that forbade me from engaging in ANY activity I would respect it and move on to other things."

¶ 18 Zarr's submissions evidence a continuing failure to understand and admit that he engaged in multiple serious contraventions of the Act and that he failed to comply with fundamental requirements to provide a prospectus, to register to trade in securities and to refrain from making misrepresentations. His attempts to blame the Commission for not warning him of his failures to comply show an unwillingness to accept the responsibilities imposed on a person seeking investment from the public.

¶ 19 We find no mitigating factors.

¶ 20 We find that the nature of Zarr's misconduct and his continuing attitude constitute aggravating factors and demonstrate that he poses an ongoing and substantial risk to investors and to the capital markets.

Specific and general deterrence

¶ 21 The sanctions we impose must be sufficiently severe to ensure that Zarr and others will be deterred from engaging in similar misconduct.

Previous orders

¶ 22 We have considered past decisions of the Commission cited by the parties.

¶ 23 Both the executive director and Zarr referred the panel to *Paul Lester Stiles*, 2012 BCSECCOM 383. This case was similar to the present case in that Stiles posted Craigslist advertisements soliciting funds for investment. There was no prospectus filed and Stiles was not registered. The advertisements contained significant misrepresentations including promises of enormous returns. As in this case, Commission investigators posing as prospective investors contacted Stiles seeking further information including minimum investment required. Stiles responded with further misrepresentations, investment documentation and instructions on how to invest. There was no evidence that any investor made any actual investment.

¶ 24 The Commission panel in *Stiles* ordered permanent bans under section 161(1) and an administrative penalty of \$35,000.

¶ 25 Zarr submits that *Stiles* is relevant to sanctions against him because Stiles was warned by Commission staff on several occasions that his Craigslist advertisements were or appeared to be in contravention of the Act and yet he persisted in his contraventions. In this present case, there is no evidence that Zarr was warned or counselled by Commission staff before the notice of hearing was issued.

- ¶ 26 The executive director has no duty to provide warnings or counselling to persons who appear to be acting in contravention of the Act. Persons who seek to raise funds for investment from the public have the responsibility to comply with applicable securities regulation and cannot rely on any alleged failure by Commission staff to warn them of possible contraventions.
- ¶ 27 In the *Samuel Richard Allaby et al.* case (2012 BCSECCOM 399), relied on by the executive director, Allaby also posted Craigslist advertisements seeking funds for investment and also made misrepresentations regarding expected returns, guarantees of repayment and absence of risk. Again, a Commission investigator posing as a prospective investor contacted Allaby who responded with further misrepresentations and provided instructions on how to invest. As in *Stiles*, there was no evidence that any investor made any actual investment. Allaby was also warned by Commission staff that the offerings appeared to violate the Act.
- ¶ 28 In *Allaby*, the panel ordered permanent bans under section 161(1) and an administrative penalty of \$50,000.
- ¶ 29 In both *Stiles* and *Allaby*, the panels found that there was attempted fraud. There was no actual fraud in these cases as there was no evidence of any investments and, therefore, no actual deprivation.
- ¶ 30 Also in the present case, there was no actual deprivation of investors, but the serious misconduct alleged and proven against Zarr fully supports our conclusion that Zarr's conduct constituted serious breaches of the Act and that Zarr poses an ongoing and substantial risk to investors and to the capital markets.
- ¶ 31 Although permanent bans, as were meted out in *Stiles* and *Allaby*, are not warranted in this case, we are satisfied that substantial bans are appropriate based on the risks that Zarr poses to investors and to our capital markets.
- ¶ 32 In *Stiles*, the panel considered it appropriate to base the administrative penalty on the amounts *Stiles* was prepared to accept from the Commission investigators who posed as prospective investors. In *Allaby*, no specific amounts were sought from the Commission investigators who posed as prospective investors. The panel in *Allaby* referenced the *Douglas Charles* decision (2011 BCSECCOM 574) in which the panel imposed a \$100,000 administrative penalty where there was no evidence of actual investments but individual investors were targeted by the dishonest and predatory conduct of the respondent.
- ¶ 33 As to the amount of the administrative penalty, we consider that an amount based on the minimum investment of \$250,000 sought by Zarr in his Craigslist advertisements would be excessive as individual investors were not targeted.

¶ 34 A penalty more in line with those imposed in *Stiles* and *Allaby* would be appropriate. In *Stiles* the administrative penalty was \$35,000 and in *Allaby* was \$50,000. The executive director in this case sought an administrative penalty of \$60,000. In this case, we have determined that the appropriate administrative penalty for Zarr is \$20,000.

IV Orders

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

(A) until the later of the date on which Zarr has made the payment ordered in paragraph 35(B) and October 31, 2018:

1. under section 161(1)(b)(ii), Zarr is prohibited from trading in, or purchasing, any securities or exchange contracts, except that he may trade and purchase securities for his own account through a registrant, if, prior to such trade or purchase, he gives the registrant a copy of this decision;
2. under section 161(1)(c), any or all of the exemptions set out in the Act, the regulations or a decision do not apply to Zarr,
3. under section 161(1)(d), Zarr
 - (i) resign any position that he holds as a director or officer of an issuer or registrant,
 - (ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,
 - (iii) is prohibited from becoming or acting as a registrant or promoter,
 - (iv) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and
 - (v) is prohibited from engaging in investor relations activities; and

(B) under section 162, Zarr pay an administrative penalty of \$20,000.

¶ 36 We did not find it necessary to make an order against Zarr under section 161(1)(e)(i) regarding dissemination of information or records to the public as that provision only applies to registrants, issuers or persons engaged in investor relations activities, all of which activities are prohibited for Zarr until the conditions set out in paragraph 35 have been satisfied.

¶ 37 October 31, 2014

¶ 38 **For the Commission**

George C. Glover, Jr.
Commissioner

Gordon L. Holloway
Commissioner