

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act*, RSBC 1996, c. 418

Citation: Re Dhala, 2015 BCSECCOM 336

Date: 20150831

**Hussain Dhala**

<b>Panel</b>	Nigel P. Cave Gordon L. Holloway	Vice Chair Commissioner
<b>Hearing Dates</b>	April 15 and 16, 2015 and July 22, 2015	
<b>Submissions Completed</b>	July 22, 2015	
<b>Date of Findings</b>	August 31, 2015	
<b>Appearing</b>	Olubode Fagbamiye For the Executive Director	

**Reasons for Decision<sup>1</sup>**

**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 January 26, 2015 (2015 BCSECCOM 358), the executive director alleges that:
- a) Hussain Dhala perpetrated a fraud on four investors for a total of \$38,250, contrary to section 57(b) of the Act;
  - b) Dhala lied during an interview with Commission investigators, contrary to section 168.1 of the Act;
  - c) Dhala's conduct harmed the integrity and credibility of the province's securities market and regulatory environment, and is contrary to the public interest.
- [3] During the hearing the executive director called four witnesses, a Commission investigator and three investors, tendered documentary evidence and provided written

---

<sup>1</sup> Commissioner Farber participated in the hearing but resigned from the Commission before the Decision was issued. He took no part in this decision.

and oral submissions. Although he had notice of the hearing, Dhala did not attend the hearing, tender any evidence or provide any written or oral submissions. As a result, the executive director applied to have the liability and sanction portions of the hearing heard together. We granted that application. The following are our findings on liability and our decision on sanctions.

## **II. Background**

- [4] Dhala is a resident of British Columbia and has never been registered under the Act. Dhala is the sole proprietor of HMD Capital. HMD Capital has never been registered under the Act.
- [5] During the time period relevant to the allegations in the notice of hearing, Dhala was a self-employed day trader whose activities included trading in foreign exchange products.
- [6] Dhala convinced four members of his direct and indirect social circle to give him funds for investment purposes. Three of those individuals (M, DC and RC) testified at the hearing. The fourth individual (J) did not testify but provided documentary evidence to the Commission investigator which was tendered as evidence in the hearing. The evidence from all four of the individuals as to what transpired is very similar.
- a) Investor M*
- [7] M testified that he was approached by Dhala with an investment opportunity. Dhala told M about a TSXV listed company, Prophecy Platinum Corporation, that was conducting a private placement. Dhala told M that it was a private offering and not one that M could participate in other than through Dhala.
- [8] M ultimately provided \$10,350 to Dhala. Dhala's banking records show that these funds were deposited into Dhala's bank account and were used for Dhala's personal expenditures. Dhala did not acquire any securities of Prophecy on behalf of M.
- [9] After repeated attempts by M to recover his funds, M ultimately brought a successful civil claim against Dhala and recovered the \$10,350 that M gave to Dhala.
- b) Investor DC*
- [10] DC testified that he was approached by Dhala with the same investment opportunity as M (i.e. an opportunity to participate in a Prophecy private placement). Dhala told DC that he had a personal relationship with a senior officer of Prophecy and, as a result, could ensure the participation of DC in the offering.
- [11] DC provided \$2,500 to Dhala. Dhala's banking records show that these funds were deposited into Dhala's bank account and were used for Dhala's personal expenditures. Dhala did not acquire any securities of Prophecy on behalf of DC.
- [12] DC has not had any of his funds returned to him.

*c) Investor RC*

- [13] RC testified that Dhala approached him with respect to currency trading on behalf of RC. RC provided funds to Dhala for this purpose. At some later point, Dhala approached RC about investing in the purported Prophecy private placement. Dhala indicated to RC that he was properly qualified to be selling these securities and that it would just be simpler for RC if Dhala made the purchase of Prophecy securities on his behalf rather than RC acquiring them directly.
- [14] In total, RC provided \$22,700 to Dhala. Dhala's bank records show that all of these funds were deposited to Dhala's bank account and were used for Dhala's personal expenditures. Dhala did not conduct any currency trading on behalf of RC and did not purchase any securities of Prophecy on behalf of RC.
- [15] RC was able to convince Dhala to return \$1,000 of his funds. RC asked for further funds from Dhala and Dhala told him that he could not do this as his accounts were frozen by the Commission. This was not true. The remainder of \$21,700 has not been returned to RC.

*d) Investor J*

- [16] J did not testify at the hearing. However, J provided documentary evidence which sets out that he provided \$2,700 to Dhala on the understanding that Dhala was to invest this money by acquiring shares of Prophecy. Although these documents were not corroborated by testimony from J under oath we have given these documents weight given the similarity of this evidence with that of the other three investors. There was no evidence before us that disputed any of the evidence tendered by the executive director with respect to J.
- [17] J provided the funds to Dhala by writing a cheque in the name of Dhala's proprietorship, HMD Capital.
- [18] There is no evidence of where this money was deposited. There is no evidence that Dhala ever acquired any securities of Prophecy on behalf of J. We find that Dhala did not acquire any shares of Prophecy on behalf of J.

*e) Interview with Commission Staff*

- [19] On February 26, 2013, following all the events described above, Dhala attended an interview with Commission staff. Dhala attended the interview with legal counsel and the interview was conducted under oath.
- [20] During the interview, Dhala stated that he only traded on his own behalf, on behalf of his parents and one other individual. He also stated that he only dealt with investor, M, with respect to buying shares of Prophecy.

### **III. Law**

#### **a) Standard of Proof**

[21] 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.

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

[23] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

#### **b) Fraud**

[24] Section 57(b) says

A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct

...

(b) perpetrates a fraud on any person.

[25] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Théroux*, [1993] 2 SCR 5 (at page 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) Breach of section 168.1(1)(a)**

[26] Section 168.1(1)(a) of the Act states a person must not

Make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

[27] In *Jo Ann Nuttall* 2011 BCSECCOM 521, at paragraph 44, the Commission said the following regarding materiality in section 168.1(1)(a)

The materiality threshold in section 168.1(1)(a) measures the degree to which the information given is false or misleading – how far it departs from the truth – not its relevance to the investigation.

**IV. Analysis and Findings**

**a) Fraud**

[28] The executive director has proven, to the requisite standard, the required elements of fraud.

[29] Dhala took the four investor's funds using deceit - he promised that he would invest the funds for them in securities of Prophecy and currency trading but instead used the funds on personal expenditures. Dhala's deceit was in respect of securities as required under section 57(d) of the Act. This clearly establishes the prohibited act and deprivation elements that constitute the *actus reus* of fraud.

[30] Dhala deposited the funds from three of the investors into his personal bank account and had a cheque from the fourth investor made out in the name of an entity of which he was the sole proprietor. Only he controlled all of the investor's funds and only he would know if the funds were used for the purposes intended by the four investors. He clearly had subjective knowledge of both the deceit and that the deceit caused the actual deprivation suffered by the investors. This clearly establishes the *mens rea* of fraud.

[31] Therefore, we find that the executive director has proven that Dhala contravened section 57(b) of the Act with respect to four investors for a total of \$38,250.

**b) Contravention of Section 168.1(1)(a)**

[32] Dhala was interviewed by Commission investigators in 2013, after Dhala's dealings with the four investors described above were completed. The Commission investigators were appointed under the Act as required under section 168.1(1)(a).

[33] During the interview, Dhala admitted to receiving money from investor M on the basis that he would invest most funds on M's behalf. Dhala was then asked if had taken money

from anyone else on the same basis as investor M. Dhala told the Commission staff no. The correct answer to that question was yes. That statement was false in a material respect in that the answer of one investor is far different than the truthful answer of four investors.

[34] Consequently, we find that Dhala contravened section 168.1(1)(a).

## **V. Summary of findings**

[35] We have found that:

- a) Dhala contravened section 57(d) when he committed fraud with respect to four investors for a total of \$38,250; and
- b) Dhala contravened section 168.1(1)(a).

## **VI. Sanctions**

### **a) Position of the parties**

[36] The executive director seeks the following orders:

- a) under section 161(1)(b), that Dhala permanently cease trading in securities and exchange contracts;
- b) under section 161(1)(d)(i) and (ii), that Dhala resign any position as and is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
- c) under section 161(1)(d)(iii), that Dhala be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- d) under section 161(1)(d)(iv), that Dhala be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- e) under section 161(1)(d)(v), that Dhala is permanently prohibited from engaging in investor relations activities;
- f) under section 161(1)(g), that Dhala disgorge to the Commission \$26,900; and
- g) under section 162, that Dhala pay an administrative penalty of at least \$150,000.

### **b) Factors**

[37] Orders under sections 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37.

[38] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified 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**

##### ***Seriousness of the conduct***

[39] This Commission has repeatedly found that fraud is the most serious misconduct under the Act. As noted in *Manna Trading Corp Ltd. (Re)*, 2009 BCSECCOM 595, “nothing strikes more viciously at the integrity of our capital markets than fraud”.

[40] Dhala’s conduct is an egregious form of fraud. In this case, Dhala lied to the investors to induce them to give him money and then simply spent the money on his personal expenses.

[41] Dhala then continued his deceit by lying under oath to Commission staff about his activities. This is serious misconduct in and of itself. As noted in *Edward Bernard Johnson*, 2007 BCSECCOM 437, “section 168.1 is important in preserving the integrity of the regulatory system by requiring those required to provide information to the commission do so truthfully”.

##### ***Harm to investors***

[42] Clearly Dhala’s misconduct has resulted in financial harm to investors. We have found that the four investors gave Dhala a total of \$38,250 and \$26,900 has been lost by the

investors.

- [43] We heard testimony from three of the investors that their financial losses were significant given their financial circumstances at the time. In addition, the victims were unsophisticated investors who all stated that this experience has negatively affected their perspective on future investing.

***Dhala's enrichment***

- [44] The evidence clearly establishes that Dhala was personally enriched through his misconduct. His bank records indicated that he deposited all but the cheque made out to his sole proprietorship into his personal account and spent the money on his personal expenditures.

***Aggravating or mitigating factors; past misconduct***

- [45] Dhala does not have any history of regulatory misconduct.
- [46] There are no aggravating or mitigating factors in this case.

***Fitness to continue to participate in the capital markets***

- [47] Dhala has been found to have committed fraud. Permanent market prohibitions are common sanctions if not universal for those who commit fraud. The reason for this is that fraud is the most serious misconduct contemplated by the Act.
- [48] There are no facts before us that support diverting from this sanction in this case. The fraud was significant both in terms of dollar amounts, number of investors and the blatancy of the deception and personal enrichment arising therefrom. Further, Dhala demonstrated his indifference to the securities regulatory authorities by lying to them as part of their investigation. Dhala represents a serious ongoing risk to our capital markets in British Columbia.

***Specific and general deterrence***

- [49] The sanctions we impose must be sufficient to ensure that Dhala and others will be deterred from engaging in similar misconduct.

***Previous Orders***

- [50] The executive director has directed us to two decisions of this Commission that he says involve factual circumstances that are analogous to those before us in this matter.
- [51] In *Ajit Singh Basi*, 2011 BCSECCOM 573, the respondent committed fraud on one investor in the amount of \$15,500 and spent a significant portion of those funds on personal expenses. Basi was given permanent market bans, a disgorgement order in the net amount (i.e. net of a repayment of some of the \$15,500 by Basi to the investor) of Basi's enrichment and an administrative fine of \$100,000.



- [52] In *Shen Cho (Re)*, 2013 BCSECCOM 454, the respondent raised \$102,000 from his fraudulent conduct and was personally enriched by \$20,500 as a result (the remainder was returned to the investors). Cho was given permanent market bans, a disgorgement order in the amount of his personal enrichment (\$20,500) and an administrative fine of \$200,000. The quantum of the fraudulent misconduct committed by Cho is significantly larger than that committed by Dhala and we would find Dhala's misconduct closer to that of Basi than Cho.
- [53] The executive director says that the seriousness of Dhala's misconduct falls somewhere in between that of Basi and Cho in that the total amount raised from Dhala's misconduct falls between that of Basi and Cho. As a consequence, he says that the amount of the administrative fine should be \$150,000 – the amount mid-way between the quantum of the fines to Basi and Cho.
- [54] We agree that these are sanctions awarded in cases where the nature of the misconduct was analogous to that before this panel. We do not see a reason to depart from this range of sanctions given the various factors we have considered and the circumstances of this case.
- [55] We think it appropriate to make a disgorgement order under section 161(1)(g) in the circumstances of this case. As set out in *Michaels* [insert full cite], an order under section 161(1)(g) in the amount of the respondent's enrichment would strip Dhala of all amounts he received personally by his misconduct and is consistent with the broad purpose of this provision of the Act. In this case, the amount of Dhala's enrichment is \$26,900 which is the total amount obtained from his fraudulent misconduct net of certain amounts returned to the investors.
- [56] The executive director did not submit any previous decisions with respect to the appropriate sanction applicable to contraventions of section 168.1(1)(a). Dhala has been found, separate from fraud, to have contravened this section and we believe that a separate award should be made with respect to this misconduct.
- [57] In *Re Wood*, 2015 BCSECCOM 169, an administrative penalty of \$30,000 was awarded against the respondent for a contravention of section 168.1(1)(1)(a). We think this to be the appropriate range of administrative fine applicable to contraventions of this section of the Act.

## **VII. Orders**

- [58] Considering it to be in the public interest, we order:
- a) under section 161(1)(b), that Dhala permanently cease trading in securities and exchange contracts;

- b) under section 161(1)(d)(i) and (ii), that Dhala resign any position as, and is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
- c) under section 161(1)(d)(iii), that Dhala be permanently prohibited from becoming or acting as a registrant investment fund manager or promoter;
- d) under section 161(1)(d)(iv), that Dhala be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- e) under section 161(1)(d)(v), that Dhala is permanently prohibited from engaging in investor relations activities;
- f) under section 161(1)(g), that Dhala disgorge to the Commission \$26,900; and
- g) under section 162, that Dhala pay an administrative penalty of at \$125,000, where \$100,000 of such fine is in respect of Dhala's fraudulent misconduct and \$25,000 of such fine is in respect of Dhala's contravention of section 168.1(1)(a).

August 31, 2015

**For the Commission**

Nigel P. Cave  
Vice Chair

Gordon L. Holloway  
Commissioner