

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

Citation: Re Spangenberg, 2016 BCSECCOM 180

Date: 20160531

**John ‘Johnny’ ‘JFA’ Ferdinand Alexander Spangenberg,  
Odyssey Renewable Growth Inc., and geoTreasuries Clean Energy Limited,  
all also known as ‘Clean Carbon Finance’, ‘Clean Energy Finance USA’,  
‘One geoFinance’, ‘GT2 Climate Risk Bonds Inc.’, and ‘GeoSteward Inc.’**

<b>Panel</b>	Nigel Cave	Vice Chair
	Audrey T. Ho	Commissioner
	Suzanne K. Wiltshire	Commissioner

**Hearing Dates** August 24 – 27 and December 17, 2015

**Submissions Completed** May 2, 2016

**Date of Decision** May 31, 2016

**Appearances**

Shaneel Sharma For the Executive Director

John Spangenberg For the Respondents

**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. The Findings of this panel on liability made on March 11, 2016 (2016 BCSECCOM 72), are part of this decision.

[2] The panel found as follows:

1. Spangenberg and Odyssey Renewable Growth Inc. contravened:
  - a) section 57(b) of the Act with respect to one investor in the amount of \$69,996;
  - b) section 61 of the Act with respect to the issuance of securities to one investor for \$69,996;
2. Spangenberg and geoTreasuries Clean Energy Limited contravened:
  - a) section 57(b) with respect to six investors in the amount of \$101,450 in aggregate;
  - b) section 61 of the Act with respect to the issuances of securities to five investors for \$91,450; and

3. Spangenberg, as a director and officer of both Odyssey and geoTreasuries, is liable under section 168.2 of the Act for the contraventions of sections 57(b) and 61 committed by both Odyssey and geoTreasuries, respectively.

[3] The sanctions portion of this hearing proceeded solely in writing. We received written submissions from both the executive director and the respondents.

## **II. Positions of the Parties**

[4] The executive director seeks the following orders:

1. For Spangenberg:

- a) permanent orders under sections 161(1)(b) and (d)(i) through (v);
- b) an order under section 161(1)(g) in the amount of \$171,446; and
- c) an administrative penalty under section 162 in the amount of \$225,000.

2. For geoTreasuries:

- a) permanent orders under sections 161(1)(b) and (d)(iii) through (v); and
- b) an order under section 161(1)(g) in the amount of \$101,450.

3. For Odyssey:

- a) permanent orders under sections 161(1)(b) and (d)(iii) through (v); and
- b) an order under section 161(1)(g) in the amount of \$69,996.

[5] The respondents' submissions do not directly address the issue of the appropriate sanctions in this case. The respondents say that a lifetime ban would be inappropriate in that it would incorrectly presume that Spangenberg's medical issues (discussed further below) are incurable and would deny him a second chance.

[6] The respondents' other submissions mirror those raised by them during the liability phase of the hearing. We summarized these submissions in our Findings at paragraph 55, and do not need to repeat them here.

[7] Finally, the respondents now submit that investor funds were not misappropriated, but, instead, were used on legitimate business purposes and as a reasonable salary for Spangenberg.

[8] We have considered each of the submissions of the respondents set out in paragraphs five, six and seven above. Most of these submissions go to the issue of liability, which has already been determined, or are simply not relevant for the purpose of sanctions. However, several of these submissions – notably the respondents' lack of any prior history of securities regulatory misconduct, his current financial circumstances and his assertions with respect to his mental disorders - are relevant to sanction considerations, and we discuss them further below.

### **III. Analysis**

#### **A. Factors**

- [9] 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.
- [10] 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*

- [11] This Commission has repeatedly stated 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". All of the respondents have been found liable for that misconduct.
- [12] The respondents' misconduct is a more egregious form of fraud. In this case, Spangenberg, through the corporate respondents, raised money from investors on the basis of their intent to invest in the development of a business focused on renewable energy financing and then he simply spent the vast majority of that money on his personal expenses. The seriousness of the misconduct is exacerbated by Spangenberg's forgery of certain documents to disguise his fraud.

- [13] Contraventions of section 61 of the Act are also inherently serious. This section is one of the Act's foundational requirements for protecting investors and preserving the integrity of the capital markets. It requires that those who wish to distribute securities file a prospectus with the Commission. This is intended to ensure that investors receive the information necessary to make an informed investment decision.
- [14] The legislation provides exemptions from section 61 if the issuer and those who trade in securities follow certain specified requirements. These requirements are designed to protect investors and markets, so persons who intend to rely on the exemptions must ensure that they are met.
- [15] It is clear that the respondents were neither diligent, nor turned their minds at all, to determining whether the requirements of the exemptions were met with respect to the five investors to whom they made illegal distributions. Consequently, those investors were denied the protections intended by the Act.

***Harm to investors***

- [16] Significant harm has been done to the investors in this case. All of them have lost all of their investments in the corporate respondents. Most of the investors also provided their personal time and efforts to developing the business of one or more of the corporate respondents. Those efforts were undermined by the diversion of their invested funds to Spangenberg for personal use rather than putting such funds to use in the business as they intended.
- [17] The respondents say that some of the responsibility for the loss and damage done to the investors must fall upon the investors themselves. It is never a satisfactory response for a respondent, who has failed to provide investors with the basic protections required under the Act, to attempt to shift responsibility to those harmed by their misconduct. However, it is particularly offensive to have those who commit fraud attempt to shift responsibility for their actions. Here the investors did not simply invest in a risky investment and then lose their money when one or more of those risks came to pass; rather, the investors were deceived about the very nature of their investment by respondents who manifested that deception in many ways including falsification of an analyst's report, the contents of an annual report, and repeated lies about Spangenberg's background.

***Enrichment***

- [18] Spangenberg was clearly enriched by his misconduct. In fact, the only evidence of investor funds being used for the business purposes of the corporate respondents was as reimbursement for one of the investor's out-of-pocket expenditures. A reimbursement of an investor's further out-of-pocket expenses is not the same as a return of any invested funds and we do not find that this reimbursement represents either a lessening of the respondents' enrichment or a mitigating factor.

- [19] The respondents' submissions make much of Spangenberg's personal circumstances and his need for funds to support his family. That the funds fraudulently taken from investors were then used by Spangenberg to make spousal and/or child support payments is not a mitigating factor to our consideration of appropriate sanctions.
- [20] Spangenberg's general financial circumstances are relevant for the purposes of considering the issue of specific deterrence and we will consider this issue in further detail below.

***Aggravating or mitigating factors***

- [21] None of the respondents has any history of securities regulatory misconduct.
- [22] Although parts of the respondents' submissions speak to Spangenberg's remorse for the harm done by his actions, other parts of those submissions, namely the attempt to shift some responsibility for his actions to the investors themselves, represent the opposite of remorse. Taken as a whole, we do not believe the respondents' statements of remorse and we do not find them a mitigating factor.
- [23] The respondents say that we should take Spangenberg's purported mental health issues into account in determining the appropriate sanctions. In particular, they say that Spangenberg suffered from several mental disorders that made him believe that "the ends justified the means".
- [24] We considered the evidence of Spangenberg's alleged mental conditions in our findings. In particular, we found as follows on this issue:
- [71] In support of his submissions relating to a mental disorder, Spangenberg provided photocopies of two unsigned letters, written in Dutch, dated in 2008 and 2009. We were not provided with certified (or otherwise) translations of the full text of these letters. Given the deceptions that Spangenberg engaged in, as outlined above, we find that he is not a credible witness, and we give these letters no weight.
- [72] Further, even if the letters say what Spangenberg suggests they say, they were written more than a year prior to the events that form the basis of the fraud, and do not provide evidence that the alleged mental disorder existed during the relevant period.
- [73] We find that there is no clear, convincing and cogent evidence to support Spangenberg's assertion that he suffered from a mental illness that prevented him from forming the requisite mental intent to engage in the fraudulent scheme outlined above.
- [25] The respondents did not submit any further evidence in the sanctions phase of this proceeding with respect to Spangenberg's mental health. We reiterate our finding that the respondents have not provided evidence of Spangenberg's mental health sufficient to consider it in these proceedings.

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

[26] Much of what we have considered under this factor has been set out above. What is critical here is that those who commit fraud represent a very grave risk to our capital markets. That is why those who commit fraud are almost universally permanently banned from further participation in our capital markets. As is often noted in our sanction decisions, the securities industry is a regulated industry and continued participation in that industry is a privilege, not a right.

[27] In this case, the nature and extent of the deceits associated with the fraud and the respondents' attitudes that their victims have some responsibility for their losses only heightens our concerns with respect to the risk that they represent to the market. The respondents in this case represent the upper end of risk to our capital markets.

***Specific and general deterrence***

[28] The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct.

[29] The respondents submit that the financial circumstances of Spangenberg must be taken into account in determining our financial sanctions. This issue was addressed recently in *Re The Falls Capital Corp.*, 2015 BCSECCOM 422 at para. 49, where the panel said:

We agree that a respondent's inability to pay a financial sanction is not relevant to the question of whether it is appropriate to make an order under section 161(1)(g). We also agree that a respondent's inability to pay an order under section 162 should not be determinative of whether such an award should be made. It should be but one of the considerations in determining what orders are appropriate for specific deterrence in the circumstances. A respondent's ability to pay is not relevant to issues of general deterrence.

[30] In this case, there is some evidence of Spangenberg's financial circumstances. We have records of the bankruptcy of his former business in Holland. We have tax returns for Spangenberg's wife. However, all of this evidence is several years old. We do not have current financial information for Spangenberg. Therefore, this submission has had no consideration in our findings. Even if there were evidence of Spangenberg having limited financial means, that evidence would only be relevant in the manner described in *The Falls*, above.

***Previous Orders***

[31] The executive director submits that there are three previous decisions of this Commission that we should consider in determining the appropriate sanctions in this case, particularly on the issue of the appropriate administrative penalty under section 162 of the Act, *Re Cho*, 2013 BCSECCOM 454; *Re Rush*, 2016 BCSECCOM 55; and *Re Zhong*, 2015 BCSECCOM 383.

- [32] In *Cho*, the respondent was found to have contravened the Act with respect to illegal distributions, misrepresentations and fraud. He raised just over \$100,000 from five investors and repaid those investors approximately \$60,000 as purported returns on their investments. The respondent's misconduct included the use of multiple fake identities. The respondent received lifetime market prohibitions, was ordered to pay approximately \$20,000 under a section 161(1)(g) order and was ordered to pay to the Commission an administrative penalty of \$200,000.
- [33] In *Rush*, the respondents were found to have committed fraud and traded in securities without being registered to do so. The respondents raised approximately \$73,000 from one investor and repaid that investor approximately \$13,000 as purported returns on her investment. The individual respondent's misconduct included a protracted period of deceit and the impersonation of a third party in an attempt to conceal the fraudulent conduct. The individual respondent received lifetime market prohibitions, was ordered to pay approximately \$60,000 under a section 161(1)(g) order and was ordered to pay to the Commission an administrative penalty of \$200,000.
- [34] In *Zhong*, the respondent was found to have committed fraud, traded in securities without being registered to do so and to have made prohibited representations to investors. The misconduct involved investments totaling approximately \$400,000 from multiple investors. The respondent received lifetime market prohibitions, was ordered to pay approximately \$400,000 under a section 161(1)(g) order and was ordered to pay to the Commission an administrative penalty of \$250,000.
- [35] We agree with the executive director that the misconduct in these previous decisions is similar to that of the respondents in this case. These decisions are therefore useful guidance for the appropriate sanctions in this case.

## **V. Orders**

### ***Market Prohibitions***

- [36] We view Spangenberg to be a very serious risk to our capital markets and, given the risk posed by those who commit fraud, he should be permanently barred from them.
- [37] The executive director has asked for permanent market prohibitions against the corporate respondents as well. The corporate respondents have been dissolved. Notwithstanding this, we agree with the executive director that permanent market prohibitions are appropriate in the circumstances for the corporate respondents as well. There are mechanisms under most corporate legislation to restore dissolved corporations and our orders will address this risk to our capital markets.

***Section 161(1)(g) order***

- [38] The executive director has asked for orders under section 161(1)(g) against each of the respondents in the amount that they were found to have contravened section 57 of the Act. In the case of Spangenberg that amount is \$171,446. In the case of geoTreasuries that amount is \$101,450. In the case of Odyssey that amount is \$69,996. The executive director has asked that Spangenberg and the corporate respondents be jointly and severally liable for the amounts to be ordered against the corporate respondents to avoid duplication of these amounts.
- [39] In this case it is clear that the amounts the respondents obtained from investors through the fraudulent misconduct were simply taken by Spangenberg and spent on personal expenses. The funds were not used by any of the respondents in a manner consistent with the purposes for which they were raised from investors.
- [40] In the circumstances, we agree with the Executive Director that the requested orders under section 161(1)(g) are appropriate and in the public interest.

***Administrative penalty***

- [41] The executive director has asked for an administrative penalty against only Spangenberg. He says that this is as a result of the corporate respondents having been dissolved and for having been a mere alter ego of Spangenberg.
- [42] A significant administrative penalty is warranted in this case for reasons of both specific and general deterrence.
- [43] This case involves significant elements of deceit, with serious harm to the investors involved. We have found no mitigating factors in this case.
- [44] We agree that the misconduct in this case is very similar to that set out in the *Cho*, *Rush* and *Zhong* decisions. We agree that the range of administrative penalties set out in those decisions is appropriate in the circumstances of this case. The totality of the misconduct in this case falls somewhere between the *Cho* and *Rush* cases on one end and the *Zhong* decision on the other. We find the requested \$225,000 administrative penalty to be appropriate in all of the circumstances.

**VI. Summary**

- [45] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

***Spangenberg***

1. under sections 161(1)(b),(c) and (d)(i) through (v),
  - a) Spangenberg cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts,
  - b) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply to Spangenberg,



- c) Spangenberg resign any positions he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant,
  - d) Spangenberg is permanently prohibited from becoming or acting as a registrant or promoter,
  - e) Spangenberg is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and
  - f) Spangenberg is permanently prohibited from engaging in investor relations activities;
2. under section 161(1)(g) of the Act, that Spangenberg pay to the Commission \$171,446; and
  3. under section 162 of the Act, that Spangenberg pay to the Commission an administrative penalty of \$225,000;

***geoTreasuries***

4. under sections 161(1)(b),(c) and (d)(iii) through (v)
  - a) geoTreasuries cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts,
  - b) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply to geoTreasuries,
  - c) geoTreasuries is permanently prohibited from becoming or acting as a registrant or promoter,
  - d) geoTreasuries is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and
  - e) geoTreasuries is permanently prohibited from engaging in investor relations activities; and
5. under section 161(1)(g), that geoTreasuries pay the Commission \$101,450;

***Odyssey***

6. under sections 161(1)(b),(c) and (d)(iii) through (v)
  - a) Odyssey cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts,
  - b) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply to Odyssey,
  - c) Odyssey is permanently prohibited from becoming or acting as a registrant or promoter,
  - d) Odyssey is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and
  - e) Odyssey is permanently prohibited from engaging in investor relations activities; and
7. under section 161(1)(g), that Odyssey pay to the Commission \$69,996.

***Joint and several liability***

8. Spangenberg and geoTreasuries are jointly and severally liable with respect to the amount in paragraph 5. Spangenberg and Odyssey are jointly and severally liable with respect to the amount in paragraph 7. However, in no event shall Spangenberg's liability under section 161(1)(g) exceed the amount set out in paragraph 2.

May 31, 2016

**For the Commission**

Nigel P. Cave  
Vice Chair

Audrey T. Ho  
Commissioner

Suzanne K. Wiltshire  
Commissioner