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

Citation: Re Figueiredo, 2016 BCSECCOM 233 Date: 20160707

Rui Figueiredo (aka Roy Figueiredo), PARE Realty Ltd., and 0929870 B.C. Ltd.

Panel	Nigel P. Cave	Vice Chair
	Gordon L. Holloway	Commissioner
	Suzanne K. Wiltshire	Commissioner
Hearing Dates	January 18 and 19 and April 26, 2016	
Submissions Completed	April 26, 2016	
Date of Findings	July 7, 2016	

Appearing

Olubode Fagbamiye	For the Executive Director

Reasons for Decision

I. Introduction

[1] This is a hearing under sections 161(1) and 162 of the *Securities Act*, BCSC 1996, c. 418.

[2] The executive director issued a notice of hearing in respect of the respondents on September 17, 2015 (2015 BCSECCOM 352).

[3] In the notice of hearing the executive director alleges that:

a) the respondents perpetrated a fraud on an investor contrary to section 57(b) of the Act; and

b) Rui Figueiredo, as a director of each of PARE Realty Ltd. and 0929870 B.C. Ltd., authorized, permitted or acquiesced in each of PARE's and 0929870's contraventions of section 57(b) of the Act and therefore also contravened section 57(b) by operation of section 168.2 of the Act.

[4] During the hearing, the executive director called two witnesses, a Commission investigator and the investor (Investor T), tendered documentary evidence and provided written submissions.

[5] Although they had notice of the hearing, the respondents did not attend the hearing, tender any evidence or provide any written submissions.

[6] Following the completion of the liability portion of the hearing, the executive director applied to combine the sanctions portion of the hearing with the liability portion. As the respondents had not participated in any manner in the hearing, we granted the application.

[7] The following are our findings on liability and our decision on sanctions.

II. Background

[8] Figueiredo is a resident of British Columbia.

[9] PARE was incorporated in British Columbia on June 14, 2010. Figueiredo was a director of PARE. PARE was dissolved on November 18, 2013.

[10] 0929870 was incorporated in British Columbia on January 11, 2012. Figueiredo was a director of 0929870.

[11] The respondents were purportedly carrying on business in a segment of the real estate market known as "rent to own" home purchases. The respondents purportedly provided short term loans to renters of houses in order that those renters could use the funds for deposits or down payments connected to their home purchases.

[12] Figueiredo and Investor T had previously worked together and in October, 2013, the two reconnected. Figueiredo told Investor T that he had started his own "rent to own" business.

[13] Figueiredo told Investor T that he would offer Investor T the opportunity to make short term loans to Figueiredo's clients in the respondents' business.

[14] Figueiredo sent Investor T a copy of a business plan for the rent to own business purportedly carried out by the respondents.

[15] Investor T agreed to make the short term loans proposed by Figueiredo, in both his own name and in the name of Investor T's wife.

[16] Although certain of the loans were made in the name of Investor T's wife, Investor T was the person who both loaned the funds and dealt exclusively with the respondents. During October and November of 2013, Investor T (in his and his wife's name) made a total of nine loans, in the aggregate amount of $81,000, purportedly to nine different clients of the respondents' rent to own business.

[17] The funds provided by Investor T to Figueiredo were deposited into one of two bank accounts, one in the name of Figueiredo personally and one in the name of 0929870. Figueiredo had sole signing authority over the bank account in the name of 0929870.

[18] Of the $81,000 given to the respondents, $23,125 was returned to Investor T by the respondents purportedly as the interest on some of Investor T's investments and as the return of the principal amount of certain of these loans.

[19] A review of the banking records of the respondents makes clear that the remainder of the funds were simply taken by Figueiredo and spent on personal expenses unrelated to the rent to own business. There is no evidence that Investor T's funds were ever provided as loans to home buyers in connection with real estate purchases.

[20] At the time of each advance of funds from Investor T to the respondents, he was provided with a promissory note (on the letterhead of PARE) and a security lien agreement, both purportedly signed by an RTO program participant (i.e. a person purchasing real estate under the program). It is impossible to decipher the legal meaning or business intent of the security lien agreement but these documents were signed by 0929870 "doing business as" PARE Realty Ltd. In each case, Figueiredo was the signing authority for 0929870 on these agreements. The promissory notes were also signed by both Figueiredo, in his personal capacity, and by PARE. Figueiredo was the sole signing authority for PARE on these agreements.

[21] Investor T received a covenant in each of the promissory notes that PARE and Figueiredo would both be obligated to repay the principal amount of the loan if the borrower(s) defaulted on the promissory note. The exact terms of each of the promissory notes differed but all offered substantial rates of return and maturity dates of less than one year.

[22] It is clear from reviewing these documents that Figueiredo was using PARE and 0929870 interchangeably in these arrangements.

[23] The largest single loan amount advanced by Investor T to the respondents was $50,000. Investor T testified that he required a number of assurances from Figueiredo in connection with making this loan. One of those assurances was that the funds would be kept in a lawyer's trust account pending completion of the purchase of the home that was the subject of the loan. Investor T testified that Figueiredo gave this assurance. Following this assurance, Investor T advanced the funds to the respondents.

[24] After having advanced the $50,000 to the respondents, Investor T asked Figueiredo for a trust statement from the law firm purportedly holding his funds in trust. After considerable stalling, Figueiredo provided Investor T with a trust statement purportedly issued by a law firm in Kelowna.

[25] Investor T contacted the law firm that had purportedly issued the trust statement and was advised that the firm had not issued the trust statement and did not hold any funds in trust for the respondents.

[26] Further, a representative of the law firm provided an affidavit that was introduced as evidence in these proceedings. That affidavit confirmed that the trust statement provided

by Figueiredo to Investor T was not authentic and had not been issued by the law firm. It also confirmed that the firm had never held any money in trust related to any of the respondents and that the firm had never represented any of the respondents.

[27] The trust statement was clearly fabricated.

[28] Investor T also testified that one of the purported home purchasers to whom he was advancing funds was a TV personality. Commission investigators obtained an affidavit from this person. In the affidavit this person states he does not know any of the respondents, he did not borrow any money in connection with a rent to own program through any of the respondents and that his signature, purportedly on the promissory note given to Investor T, was not made by him.

[29] The loan to the TV personality was clearly a sham and the signature on the promissory note given to Investor T was a forgery.

[30] PARE was dissolved in early November 2013. Two of the investments made by Investor T, for which he received a promissory note executed (in part) by PARE, occurred after PARE ceased to legally exist.

[31] Of the $81,000 in total invested by Investor T, $67,000 was deposited into a bank account in the name of 0929870 and $14,000 was deposited directly into a bank account in the name of Figueiredo. Purported repayments of and returns on promissory notes to Investor T, were made from the account of 0929870 in the amount of $19,125 and from Figueiredo's account in the amount of $4,000.

III. Applicable Law

a) Standard of Proof

[32] 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.

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

[34] 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

[35] 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.

[36] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux,* [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) Liability under section 168.2(1)

[37] Section 168.2(1) of the Act states that if a company contravenes a provision of the Act an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual "authorizes, permits, or acquiesces in the contravention".

IV. Analysis and Findings

a) Fraud

[38] The executive director submits that each of the respondents perpetrated one act of fraud against Investor T (rather than 9 separate acts of fraud corresponding with each separate investment made by Investor T). In framing his case in this manner, the executive director asked us to view the entirety of the conduct by the respondents as one big sham or fraudulent scheme. He submits that the scheme involved multiple elements of deceit (including forgery, fabricated documents, misappropriation of funds and no actual rent to own business).

[39] The executive director submits each of the respondents participated in the scheme – although not in all elements of all nine investments. PARE was a party to the promissory notes. 0929870 signed the security lien agreements, albeit in the style of "doing business as" PARE Realty Ltd., and 0929870's bank account was used to both receive funds from Investor T and to make purported repayments of investments to him. Figueiredo personally was involved in all aspects of the scheme (including dealing directly with

Investor T, providing documents to solicit Investor T's funds and signing documents) and also controlled each of the corporate respondents. Although PARE ceased to legally exist at the time of the last two investments by Investor T, the promissory notes were still executed in PARE's name.

[40] Section 57(b) requires that the conduct in question be "in relation to securities". In this case, Investor T clearly believed that he was providing funds, through a promissory note, to rent to own house purchasers. Promissory notes were provided by the respondents to Investor T in connection with each advance of funds.

[41] Section 1(1) of the Act defines a "security" to include "(d) a bond, debenture, note or other evidence of indebtedness …" The promissory notes provided by the respondents to Investor T clearly fit within this definition. We also find that the conduct of each of the respondents, including, without limitation, the taking and payment of funds, the solicitation of Investor T, entering into the notes, all is in relation to the securities.

[42] We agree with the submissions of the executive director that the investment opportunity presented to Investor T by the respondents was one fraudulent scheme. While that scheme contained multiple elements of deceit carried out by different respondents, at its core was a deceit that the funds would be used in connection with the respondents' purported rent to own business and in reality the funds were repaid, in part, to Investor T to perpetuate the deceit and the remainder simply misappropriated for Figueiredo' s personal expenses. In this case, the evidence establishes that each of the respondents participated in some element of the fraudulent scheme and all are controlled entities of the individual respondent Figueiredo.

[43] The evidence also clearly establishes deprivation. The decision of the British Columbia Court of Appeal in *R. v. Abrahamson*, [1983] B.C.J. 1305 sets out that the mere payment of money as part of an investment upon deceit is sufficient to establish deprivation, regardless of any subsequent repayment of those funds, in whole or in part. However, in this case, there has also been clear deprivation to Investor T who has lost the difference between the $81,000 advanced to the respondents and the amounts returned to him as purported repayments of and returns on that investment.

[44] Finally, the evidence establishes that the respondents had the necessary *mens rea* of fraud. The respondents knew that the entire enterprise was one large fraudulent scheme and that Investor T would suffer deprivation as a consequence. Figueiredo, through the use of his own bank account and his signing authority over the bank account of 0929870, knew that funds were not being used in the manner represented to Investor T. Figueiredo also was responsible for forging signatures and preparing false documents to perpetuate the scheme. The corporate respondents are deemed to have the requisite *mens rea* for fraud as Figueiredo was the controlling mind and management of both the corporate respondents.

[45] Therefore, we find that each of the respondents contravened section 57(b) of the Act with respect to one contravention each in the amount of $81,000.

b) Liability under section 168.2

[46] The executive director submits that Figueiredo should be held liable under section 168.2 for PARE's and 0929870's contraventions of section 57(b).

[47] Under section 168.2, an officer or director of a corporate entity may be liable for the contraventions of the corporation if that director or officer "authorizes, permits or acquiesces" to the misconduct. There have been many decisions which have considered the meaning of the terms "authorizes, permits or acquiesces". In sum, those decisions require that the respondent have the requisite knowledge of the corporate contraventions and ability to have influence over the actions of the corporate entity (through action or inaction).

[48] In this case, Figueiredo clearly had the requisite level of knowledge and ability to influence the activities of both the corporate respondents in order to have authorized, permitted or acquiesced to their contraventions of section 57(b). In fact, the corporate respondents in this case were both merely the alter ego of Figueiredo and he represented the totality of their mind and management. We find that Figueiredo is liable under section 168.2 for the contraventions of section 57(b) carried out by both PARE and 0929870.

V. Sanctions

a) Position of the parties

[49] The Executive Director seeks the following orders, in the public interest:
Figueiredo:

a) permanent market bans against each of Figueiredo and 0929870;

b) an order under section 161(1)(g) that Figueiredo and 0929870 be jointly and severally liable for the payment of $57,875 to the Commission; and

c) an order under section 162 that Figueiredo pay $130,000 to the Commission.

b) Factors

[50] 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.

[51] 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.

c) Application of the Factors

Seriousness of the conduct

[52] 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". All of the respondents have been found liable of that misconduct.

[53] The respondents' misconduct is an egregious form of fraud. In this case, Figueiredo, through and with the corporate respondents, raised money from Investor T on the basis of Investor T's intent to provide loans to home purchasers in the respondents' purported rent to own business. Instead, it was all a sham. There is no evidence that there ever was any real business carried on by the respondents. The respondents took Investor T's funds, used a portion of them to perpetuate the fraud by paying purported returns and then Figueiredo simply pocketed the remainder and used it for personal expenses. The seriousness of the misconduct is exacerbated by the various individual acts of deceit including forgery of signatures and fabrication of documents to disguise the fraud.

Harm to investors

[54] In this case, there was harm to Investor T. Although he was repaid a portion of the amount that he advanced to the respondents as purported returns on his investment, the remainder remains unpaid and there was no evidence that further recovery is possible.

Figueiredo's enrichment

[55] Figueiredo was clearly enriched by the respondents' misconduct. Figueiredo took all of the funds that were not repaid to Investor T ($57,875) and used them for his personal expenditures.

Aggravating or mitigating factors; past misconduct

[56] None of the respondents have a history of securities regulatory misconduct.

[57] There are no mitigating factors in this case.

Fitness to continue to participate in the capital markets

[58] Those who commit fraud represent a significant risk to our capital markets. That is why permanent market prohibitions are almost always imposed where a respondent is found to have committed fraud.

[59] This was an egregious form of fraud. There was no real business. Figueiredo forged signatures and falsified documents to perpetuate the fraud. Figueiredo represents the upper end of risk to our capital markets.

Specific and general deterrence

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

Previous Orders

[61] The executive director directed us to four previous decisions of this Commission as support for his requested orders. They were *Re Basi*, 2011 BCSECCOM 573, *Re Dhala*, 2015 BCSECCOM 336, *Re Wong Sang Shen Cho*, 2013 BCSECCOM 454 and *Re Mesidor*, 2014 BCSECCOM 6.

[62] 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. Subsequently, a distribution of frozen funds reduced the amount still owed to investors to $20,000. 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.

[63] In *Mesidor*, the respondent perpetrated a fraud on two investors by taking $32,000 from them for foreign exchange trading but only advancing approximately half of that amount into the trading account, the remainder the respondent used for personal expenses. The respondent also prepared a false financial statement for his company which he sent to one of the investors. The Commission imposed permanent market bans on the respondent and ordered him to pay $16,000 under a section 161(1)(g) order (even though the respondent had repaid $2,000 to the investors,) and $75,000 for an administrative penalty. The panel did not take the amounts paid to investors into account in determining the amount of its order under section 161(1)(g) because there was no evidence as to whether the $2,000 repaid to investors was attributable to the funds obtained by the respondent through his fraud or from the investor funds which were properly invested.

[64] In *Basi*, the respondent perpetrated a fraud on one investor by taking $15,500 from the investor to purchase shares but instead deposited the funds into his account and spent $11,000 of the funds on personal expenses. The Commission imposed permanent market

bans on the respondent and ordered him to pay $11,000 under a section 161(1)(g) order and $100,000 for an administrative penalty.

[65] In *Dhala*, the respondent perpetrated a fraud on four investors by taking $38,000 from four investors purportedly to invest in a private placement of a TSXV listed company but instead spent all of the money on personal expenses. Some of the investors funds were subsequently recovered by investors through legal proceedings, the Commission imposed permanent market bans on the respondent and ordered him to pay $27,000 (being the remainder of the investors' funds taken and not repaid by the respondent) under a section 161(1)(g) order and $125,000 for an administrative penalty.

VI. Orders

Market Prohibitions

[66] We view Figueiredo 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.

[67] The executive director has asked for permanent market prohibitions against only one of the corporate respondents - 0929870. PARE has been dissolved. Notwithstanding this, we think that it is in the public interest that permanent market prohibitions are made against both the corporate respondents. 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

[68] The executive director has asked for orders under section 161(1)(g) against each of Figueiredo and 0929870 in the amount of $57,875 (being the net amount obtained from Investor T and not returned to him by way of purported repayments of and returns on his investments). The executive director has asked that Figueiredo and 0929870 be jointly and severally liable for the amounts to be ordered against the two of them to avoid duplication of these amounts.

[69] In this case it is clear that the amounts the respondents obtained from Investor T through their fraudulent misconduct were initially deposited into a bank account in the name of Figueiredo ($14,000) and a bank account in the name of 0929870 ($67,000). The net amount of the funds, after payments back to Investor T, were simply taken by Figueiredo and spent on personal expenses.

[70] It is impossible, in this case, to see 0929870 as anything other than the corporate alter ego of Figueiredo. Its bank account was used for deposit of funds fraudulently obtained and it had no independent role in the misconduct. It is clear that Figueiredo obtained, either directly or indirectly, the full net amount of the funds provided by Investor T ($57,875). Therefore we think it appropriate in these circumstances to make both Figueiredo and 0929870 subject to section 161(1)(g) orders in the amount of $57,875 on a joint and several liability basis.

[71] 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

[72] The executive director has asked for an administrative penalty against only Figueiredo. It is not clear to us why an administrative penalty was not asked for in respect of 0929870 but it was not and we will not make an order under section 162 against it.

[73] A significant administrative penalty against Figueiredo is warranted in this case for reasons of both specific and general deterrence.

[74] This case involves significant elements of deceit, with serious harm to the investor involved. We have found no mitigating factors in this case.

[75] We agree that the misconduct in this case is very similar to that set out in the *Cho*, *Basi*, *Dhala* and *Mesidor* 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* case on one end and the *Basi*, *Dhala* and Mesidor decisions on the other. The amount raised from investors in Cho was greater than that found in this case. However, the multiple elements of deceit involved in this case make it more serious than the cases at the lower end of the range. We find the requested $130,000 administrative penalty to be appropriate in all of the circumstances.

VII. Summary

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

Figueiredo

1. under sections 161(1)(b),(c) and (d)(i) through (v),

    a) Figueiredo cease trading in, and is 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 Figueiredo,

    c) Figueiredo 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) Figueiredo is permanently prohibited from becoming or acting as a registrant or promoter,

    e) Figueiredo is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and

f) Figueiredo is permanently prohibited from engaging in investor relations activities;

2. under section 161(1)(g) of the Act, that Figueiredo pay to the Commission $57, 875; and

3. under section 162 of the Act, that Figueiredo pay to the Commission an administrative penalty of $130,000;

0929870

4. under sections 161(1)(b),(c) and (d)(iii) through (v).

a) all persons permanently cease trading in and are permanently prohibited from purchasing any securities of 0929870,

b) 0929870 cease trading in, and is permanently prohibited from purchasing, any securities or exchange contracts,

c) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply to 0929870,

d) 0929870 is permanently prohibited from becoming or acting as a registrant or promoter,

e) 0929870 is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and

f) 0929870 is permanently prohibited from engaging in investor relations activities; and

5. under section 161(1)(g), that 0929870 pay to the Commission $57,875;

PARE

6. under sections 161(1)(b),(c) and (d)(iii) through (v),

a) all persons permanently cease trading in and are permanently prohibited from purchasing any securities of PARE,

b) PARE cease trading in, and is permanently prohibited from purchasing, any securities or exchange contracts,

c) the exemptions set out in the Act, the regulations or any decision as defined in the Act, do not apply to PARE,

d) PARE is permanently prohibited from becoming or acting as a registrant or promoter,

e) PARE is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market, and

f) PARE is permanently prohibited from engaging in investor relations activities; and

Joint and several liability

7. Figueiredo and 0929870 are jointly and severally liable with respect to the amount in paragraphs 2 and 5.

July 7, 2016

For the Commission

Nigel P. Cave
Vice Chair

Gordon L. Holloway
Commissioner

Suzanne K. Wiltshire
Commissioner