BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Spangenberg, 2016 BCSECCOM 72 Date: 20160311

John 'Johny' '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.'

Panel	Nigel P. Cave	Vice Chair
	Audrey T. Ho	Commissioner
	Suzanne K. Wiltshire	Commissioner

Hearing dates	December 17, 2015
Submissions Completed	December 16, 2015
Decision date	March 11, 2016

Appearances

Joel Hill	For the Executive Director
John Spangenberg	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] On March 9, 2015, the executive director issued a notice of hearing in which he alleges that:

a) the respondents perpetrated a fraud against six investors in the amount of $170,000, contrary to section 57(b) of the Act;

b) the respondents distributed securities to five investors without a prospectus and without an exemption from so doing, in contravention of section 61 of the Act;

c) John "Johny" "JFA" Ferdinand Alexander Spangenberg, as a director and officer of the Odyssey Renewable Growth Inc. and geoTreasuries Clean Energy Limited, authorized, permitted or acquiesced in Odyssey's and geoTreasuries'

contraventions of sections 57(b) and 61 of the Act and by virtue of section 168.2(1) of the Act, he therefore also contravened those same provisions; and

d) the conduct of the respondents is contrary to the public interest.

[3] In his submissions following the hearing, the executive director narrowed the last of his allegations (that the conduct of the respondents is contrary to the public interest). He alleges that the respondents attempted fraud on two investors and that that conduct constitutes conduct contrary to the public interest.

[4] During the hearing, the executive director called six witnesses – one a Commission investigator and five investors. The executive director also tendered documentary evidence and provided written and oral submissions.

[5] None of the respondents attended the hearing. Spangenberg provided written submissions. In so doing, he was not clear as to whether those submissions were made on behalf of all of the respondents or only himself personally.

[6] Spangenberg provided written submissions dated August 17, 2015, November 13, 2015, December 11, 2015 and December 16, 2015. Each of these submissions was admitted during the hearing and each forms part of the material considered by the panel in reaching the findings set out herein.

[7] Within Spangenberg's submissions are a number of factual assertions which were not supported by any testimony (from Spangenberg or any other witness) given under oath, in a properly sworn affidavit or by any documentary evidence that was properly identified and tendered as evidence. Spangenberg titled one of his submissions as an "affidavit" but it was not, in fact, an affidavit. Further, one of his submissions attached copies of correspondence from third parties. That correspondence was not properly identified nor subject, in any other way, to proper procedures for the admission of evidence.

[8] After filing of his August 17, 2015 written submissions, Spangenberg was given an opportunity to submit evidence in support of the factual assertions made in his written submissions. Spangenberg did make further written submissions but these were in the form of argument, rather than evidence. Therefore, although we have admitted all of Spangenberg's submissions in the proceedings and carefully considered them, we have not given any weight to the factual assertions (other than admissions against interest) that are not supported by any evidence in these proceedings.

II. Background

[9] Spangenberg was formerly a resident of Holland. In 2009, Spangenberg moved to Canada and in June 2009 he became a resident of British Columbia. He was a resident of British Columbia throughout the time period relevant to the notice of hearing. He has never been registered in any capacity under the Act.

[10] Spangenberg was also an officer and director of Odyssey and geoTreasuries.

[11] Odyssey was a British Columbia corporation that was incorporated in December 2010. It was never registered in any capacity under the Act and never filed a prospectus in British Columbia. Odyssey was dissolved for failing to file Annual Reports in May 2013.

[12] geoTreasuries was a British Columbia corporation that was incorporated in November 2010. It was never registered in any capacity under the Act and never filed a prospectus in British Columbia. geoTreasuries was dissolved for failing to file Annual Reports in April 2014.

[13] In various correspondence with investors, Spangenberg used a variety of other company names – Clean Carbon Finance, Clean Energy Finance USA, One geoFinance, GT2 Climate Risk Bonds Inc., and GeoSteward Inc. There is no evidence that these entities were ever incorporated in Canada or the United States or registered to do business in British Columbia. We find that, if they ever were utilized (in the commercial sense) these names were "doing business as" names of Odyssey and/or geoTreasuries.

[14] The purported business of Odyssey and then geoTreasuries was to arrange project financing for clean energy projects. Neither Odyssey nor geoTreasuries ever arranged any financing for a clean energy project. Neither of the entities ever had any revenues of any kind other than the funds derived from investors.

[15] In 2011, Spangenberg met Investor VH. VH was a Dutch immigrant businessman. Spangenberg introduced Investor VH to his business, then purportedly being conducted through Odyssey. In June 2011 VH purchased $70,000 worth of shares in Odyssey. Spangenberg told Investor VH that these funds would be used to grow Odyssey's business and would not be used for salaries.

[16] In November 2011, Spangenberg told VH that he was rolling all of his purported business into a new company, geoTreasuries. VH's original shareholdings in Odyssey were exchanged for an equivalent interest in shares of geoTreasuries and Investor VH invested a further $35,000 in shares of geoTreasuries at this time. There is conflicting evidence over the nature of this second investment by Investor VH. The subscription agreement indicates that this was to be a purchase of shares from treasury from geoTreasuries. However, on the share register of geoTreasuries it appears that this second investment was recorded as a sale of shares by Spangenberg to Investor VH. Investor VH was told that this $35,000 was to be used to further the business of geoTreasuries and would not be used for salaries. This evidence is consistent with the subscription agreement. We find that this second investment of shares in geoTreasuries was a treasury issuance, regardless of how it was recorded on the company's share register.

[17] Investor VH was the only investor to acquire securities of Odyssey.

[18] In February 2012, Investor B approached Spangenberg, having seen geoTreasuries' website, about working with Spangenberg/geoTreasuries to complete his Masters thesis on clean energy financings. Investor B did become an intern for geoTreasuries. In August 2012, Investor B also purchased $9,000 of shares from geoTreasuries.

[19] Spangenberg made contact with various professional services firms. At a meeting with a large national accounting firm, Spangenberg met Investor W. Investor W testified that Spangenberg held himself out as being an individual with a high net worth with a banking industry background. Investor W left the accounting firm and asked Spangenberg if he was interested in Investor W providing professional services to geoTreasuries. Commencing in April 2013, Investor W started to perform work for geoTreasuries. Investor W also purchased $10,000 of shares from geoTreasuries. Investor W's subscription agreement made it clear that the funds were to be used to develop the geoTreasuries business. In June and July 2013, Spangenberg unsuccessfully attempted to convince Investor W to purchase further shares of geoTreasuries.

[20] Investor Y met Spangenberg at a seminar. Spangenberg told Investor Y about geoTreasuries and also volunteered to act as a career mentor for Y. Spangenberg told Investor Y that he was wealthy and had made that money through the sale of his previous business in Holland. Investor Y commenced working for geoTreasuries on an unpaid basis. Investor Y, in two separate investments in April 2013 and June 2013, purchased a total of $17,500 of shares of geoTreasuries. Investor Y was told that the funds would be used on expenses of geoTreasuries and would not be used as salary for Spangenberg.

[21] Investor Y introduced her friend Investor T to Spangenberg and geoTreasuries. In June, 2013, Investor T purchased $20,000 of shares of geoTreasuries.

[22] Spangenberg met Investor BN while he was attending a business course designed for immigrant professionals offered by a local university. Investor BN was an instructor of that course. Spangenberg told Investor BN that he was wealthy and that he had previously sold a successful business to a large international technology firm.

[23] Investor BN also worked for a large financial services company. Spangenberg indicated to Investor BN that he was dissatisfied with the advice that he received from another large financial services firm that he was purported to be using. Investor BN invited Spangenberg to meet his colleagues at his employer. Investor BN was also interested in working for geoTreasuries. Investor BN became a senior officer of geoTreasuries. In December 2013, Investor BN purchased $10,000 of shares from geoTreasuries. In January 2014, Spangenberg unsuccessfully attempted to convince Investor BN to purchase further shares of geoTreasuries.

[24] In total, these investors invested a total of $69,996 in Odyssey and $101,450 in geoTreasuries.

[25] Spangenberg represented to the investors that he was personally wealthy and that that wealth was derived from the sale of a business that he had built in Europe, prior to coming to Canada. For example, Spangenberg told Investor BN that he wished to have his colleagues prepare a proposal to manage $23 million of his money and that his wife (whom he was in the process of divorcing) had a net income of $39 million. He also regularly used the letters "CFA" to suggest that he was a Chartered Financial Analyst.

[26] Spangenberg represented to investors that he had no need to receive a salary and that the funds that were raised by Odyssey and geoTreasuries would be used to develop these businesses and would not be used for Spangenberg's salary.

[27] None of these things were true. Spangenberg's Dutch business had, in fact, gone bankrupt. The evidence from Spangenberg's divorce proceedings in 2012 is that he had no assets of any value and that his family net income was nominal. This was also confirmed in the written submissions of Spangenberg (to be discussed in more detail below). The CFA Institute has no record of Spangenberg earning the designation of Chartered Financial Analyst.

[28] The evidence is clear from banking records that Spangenberg, in fact, took most of the money that investors gave him and used it for his personal expenses. The only money returned to any of the investors was $6,090, which amount was paid to Investor VH as a reimbursement of expenses incurred by VH on behalf of Odyssey/geoTreasuries.

[29] Spangenberg told Commission staff that the funds taken from the corporate respondents and used for his personal expenses were the proceeds of loans made by the corporations to him. There are at least three different agreements in evidence which purport to document the existence of this loan arrangement. All of the documents have problems in the text of the documents which raise questions about when they were created and for what purpose. None of the investors were ever told by any of the respondents of the existence of this purported loan arrangement.

[30] Spangenberg prepared an annual report for geoTreasuries and gave that report to Investors Y, T and BN. That annual report showed an investment of $510,000 by Spangenberg in the company, that the company had total assets of $900,000 and total revenue of $1.7 million.

[31] Again, none of this was true. As noted above, Spangenberg did not have the assets to make an investment of $510,000 in the company and he admitted in an interview with Commission staff that geoTreasuries never had any revenue. This admission was confirmed by a review of the banking records of the corporate respondents.

[32] Spangenberg hired a research firm to prepare an analyst report on geoTreasuries. Spangenberg provided a copy of that report to Investor W and to another investor, Investor S, who Spangenberg had discussions with regarding an investment by Investor S in geoTreasuries. The report received by the investors described geoTreasuries as having recently been involved in carbon finance deals worth $250 million, and included a "buy" recommendation. Commission staff contacted the research firm and received a copy of the report prepared by the firm. Neither of these two statements were contained in the report prepared by the research firm. These elements were added to the report after it was sent to Spangenberg. We find that Spangenberg altered the report to include these statements, neither of which was true.

[33] Spangenberg repeatedly told investors about financings or deals that geoTreasuries had participated in or was in the process of participating in. None of these statements were true.

[34] Spangenberg, in the website for geoTreasuries and his personal e-mail signature block, represented that geoTreasuries had offices at Canada Place in Vancouver. This was personally represented to Investors W, T, Y and BN. This was not true. Spangenberg also represented to investors that geoTreasuries had offices in New York, San Francisco, Dallas and Kuala Lumpur. None of this was true.

[35] Several investors became suspicious of Spangenberg and asked for information on how their money was being spent by geoTreasuries or for evidence that it was involved in large financing transactions. Investor VH was told that geoTreasuries had paid $27,000 in legal fees. When Investor VH contacted the law firm purported to have been paid these fees, he was told that while the firm had invoiced geoTreasuries for a smaller amount, their bills had not been paid. This was confirmed by a review of the bank records of the corporate respondents. Investor W was shown an invoice from a law firm by Spangenberg for a financing project. Investor W contacted the law firm that purported to have issued the invoice and was told that geoTreasuries was not a client and that the lawyer who purportedly issued the invoice did not work for the firm.

[36] In his written submissions, Spangenberg said the following about his conduct:

> "Securities laws were violated as well as principles of 'simple decency', Machiavelli style. Consistent with his narcissistic illness, JFA believed to be 'entitled' to be above the law and that the sacrosanct mission to reduce GHG emissions justifies every means, including misrepresentations."; and
>
> "In conclusion, charged with violating the BC securities law, the defendant admits commitment of offenses, but claims that he was (i) personally fully dedicated to geoTreasuries creating value for all shareholders as an engine of profitable growth, that (ii) there was no viable alternative for sustaining his immigrant family economically, and that he was, last but not least, (iii) mentally disturbed at the time of committing the offense, that he lacked the capacity to have the intended [sic] to engage in dishonorable actions."

III. Analysis and Findings

A. Applicable Law

Standard of Proof

[37] 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.

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

[39] 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.

Prospectus requirements

[40] The relevant provisions of the Act are as follows:

a) Section 1(1) defines "trade" to include "(a) a disposition of a security for valuable consideration" and "(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)".

b) Section 1(1) defines "security" to include "(a) a document, instrument or writing commonly known as a security", "(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person", "(d) a bond, debenture, note or other evidence of indebtedness ..." and (i) "an investment contract."

c) Section 1(1) defines "distribution" as "a trade in a security of an issuer that has not been previously issued".

d) Section 61(1) states "Unless exempted under this Act, a person must not distribute a security unless…a preliminary prospectus and a prospectus respecting the security have been filed with the executive director" and the executive director has issued receipts for them.

[41] Section 1.10 of the companion policy to *National Instrument 45-106 – Prospectus Exemptions* states that the person distributing securities is responsible for determining, given the facts available, whether an exemption from the prospectus requirement, set out in section 61(1), is available.

[42] In *Solara Technologies Inc. and William Dorn Beattie* 2010 BCSECCOM 163, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

> 37 The determination of whether an exemption applies is a mixed question of law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.
> 38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship…

Liability under section 168.2(1)

[43] 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".

Fraud

[44] Section 57(b) states

> 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.

[45] 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).

B. Positions of the parties

i) Executive director

Fraud

[46] The executive director submits that:

a) Spangenberg and Odyssey contravened section 57(b) with respect to Investor VH; and

b) Spangenberg and geoTreasuries contravened section 57(b) with respect to Investors VH, B, W, Y, T and BN.

[47] The executive director submits that the *actus reus* of fraud in this case involved a long series of dishonest acts. Any one of those acts could constitute the basis of a finding of a

dishonest act to support the allegation of fraud, but that all together they constitute a fraudulent scheme where the individual dishonest acts aggravated the harm or risk of harm to investors. The executive director submits that as the controlling mind of the corporate entities and in sole control of the invested funds, Spangenberg had the requisite subjective knowledge of the dishonest acts and deprivation to constitute fraud.

[48] The executive director also submits that Spangenberg has admitted his misconduct and that the evidence is clear and convincing in support of those admissions.

Illegal distributions

[49] The executive director further submits that:

a) Spangenberg and Odyssey contravened section 61 with respect to the issuance of securities to Investor VH; and

b) Spangenberg and geoTreasuries contravened section 61 with respect to the issuance of securities to each of Investors VH, B, W, Y, and T.

[50] The executive director does not allege that the distribution to Investor BN contravened section 61 of the Act as Investor BN was an accredited investor at the time that he acquired securities from Spangenberg and geoTreasuries.

[51] The executive director says that the distributions of securities to Investors VH, B, W and Y do not qualify for the "employee" exemption from the prospectus requirements (described in further detail below) as these people were "induced" to work for Odyssey/geoTreasuries and that they were never really employees as they did not receive compensation for the services that they provided to the corporate respondents.

Conduct contrary to the public interest

[52] The executive director submits that Spangenberg and geoTreasuries attempted to obtain further investments (in addition to the investments that they had already made) from both Investors W and BN.

[53] The executive director says these efforts amounted to attempted fraud. Attempted fraud is not a contravention of any section of the Act. However, the executive director says that it is conduct that is contrary to the public interest and that we should make separate orders to this effect.

Liability for corporate contraventions

[54] The executive director says that Spangenberg was the controlling mind and management of the corporate respondents. As such, he says that Spangenberg had the requisite control and knowledge of the contraventions of section 57(b) and section 61 carried out by the corporate respondents to be found liable for that misconduct under section 168.2(1) of the Act.

ii) Respondents

[55] In his various written submissions, Spangenberg has raised a variety of concerns. They can be summarized as follows:

- that he is insolvent and cannot afford legal counsel and that, as a consequence, he has been denied a fair hearing;
- that the Commission should provide him with legal counsel and that the failure to provide him with legal counsel has resulted in him being denied a fair hearing;
- that he suffers from a variety of mental illnesses and that, as a consequence, he did not have the requisite mental intent to commit contraventions of the Act;
- that he was forced to carry out his misconduct in order to support his family;
- that the Commission has no moral authority to sanction his misconduct because: i) the Canadian justice system has turned a blind eye to misconduct carried out against indigenous peoples; ii) the Commission's policies reinforce wealth disparity in Canada; iii) the Commission misuses tax payer's funds; iv) counsel for the executive director committed errors in the preparation of their case;
- that the Commission's allegations against the respondents are politically motivated as a way to stop environmentally friendly financing vehicles;
- that the Commission is an underlying cause of international terror through its promotion of policies that enhance wealth disparity;
- that he has no history of criminal or securities related misconduct;
- that the investors who invested in the corporate respondents were all well educated and that they had an opportunity to carry out due diligence investigations;
- the Commission is discriminating against victims with mental health issues;
- that he was forced to engage in his misconduct due to age discrimination in the labour markets that prohibited him from finding alternative employment;
- that his constitutional rights were violated by the hearing process;
- that geoTreasuries was a legitimate business enterprise that he devoted substantial time and effort towards.

[56] We have considered each of these submissions.

[57] With respect to his submissions that the respondents have been denied a fair hearing or that Spangenberg's constitutional rights have been violated, there is no evidence in support of these submissions. To the contrary, Spangenberg chose not to attend the hearing, and chose not to attend two hearing management meetings prior to the hearing, even by telephone. Despite his lack of participation, his written submissions were filed with the Commission, and considered by the panel. We reject Spangenberg's assertions that he has been denied a fair hearing.

[58] Several of his submissions may be relevant to sanction (e.g. that he has no history of criminal or securities related misconduct). We will defer consideration of those

submissions until that stage of the proceedings.

[59] Two of his submissions raise potential defences to his misconduct – that his mental illness prevented him from having the requisite mental intent to commit fraud and that his misconduct was necessary. We will deal with those issues in greater detail below.

[60] The remainder of his submissions are not relevant for the purposes of this hearing.

C. Analysis

i) Fraud

[61] We agree with the submissions of the executive director on the allegations of fraud against the respondents.

[62] Spangenberg admitted this misconduct. In addition, those admissions were corroborated by clear and convincing evidence in support of findings in respect of all of the elements of fraud.

[63] We agree with the executive director that there were multiple elements of individual deceit perpetrated against each of the investors. Each of these acts of dishonesty could constitute the prohibited act necessary to form the *actus reus* of fraud. However, in this case, the respondents carried out a fraudulent scheme. Each of the individual elements of dishonesty was really directed towards the broader scheme. The key elements of this scheme were to deceive investors about Spangenberg himself and the state of the Odyssey/geoTreasuries business with a view to inducing investors to invest in the business where the funds could be misappropriated for personal use. The key element of that deceit was that investors thought that their funds were to be used for the business purposes of Odyssey/geoTreasuries. Instead, Spangenberg used the funds for his personal living expenses. Spangenberg told investors that he would not take a salary and did not tell any investors about any loan arrangement.

[64] The taking of the funds from investors on the basis of the deceits set out above caused deprivation. The investors' funds were put at risk when they were not used for the business purposes intended. Finally, there has been clear deprivation in this case as the investors have not had their funds returned. There is no evidence that the investors will ever be able to get any of their funds returned.

[65] Spangenberg, as the controller of the bank accounts of the corporate respondents and the recipient of the corporate funds, also had the requisite knowledge of the dishonest acts and the deprivation. He knew that what he told investors about himself and the state of the business entities was not true. He created fictitious documents (the annual report and key amendments to the analyst report) in support of his lies. Finally, he knew that the funds were diverted for personal use and not used for the business purposes that he told investors was the intended use of proceeds.

[66] Although the executive director submitted that Spangenberg's unsuccessful attempts to convince Investors W and BN to invest further amounts in geoTreasuries amounted to

"attempted fraud", we find that those solicitations by Spangenberg were all part of his fraudulent scheme. Those solicitations were made in the context of the numerous deceits described above and the requests for additional funds further gave the appearance of an active business looking for further investments to advance its operations.

[67] Spangenberg's submissions raise two potential responses to his misconduct. The defence of necessity, and mental illness preventing him from forming the requisite mental intent (subjective knowledge of the dishonest acts and deprivation) to have committed fraud.

[68] Spangenberg's submissions raise the issue of the applicability of these defences in Commission proceedings under the Act, which are regulatory in nature, as opposed to criminal or quasi-criminal proceedings. We leave that discussion for another date. However, for the purpose of these proceedings, we agree with the executive director that Spangenberg has failed to satisfy the requirements for either one of these defences.

[69] A party relying on the defence of necessity must identify three elements: imminent peril or danger, no reasonable alternative to the course of action they took, and proportionality between the harm inflicted and the harm avoided: *R. v. Latimer* 2001 SCC 1(CanLII) at para 28.

[70] Spangenberg has not introduced any evidence in support of any of the three parts to the test set out above. While the need to support his family is the peril that he refers to in his submissions, there is no evidence of their imminent peril. In fact, there is no evidence as to their circumstances at all. The misconduct of the respondents (i.e. the taking of the investor funds) occurred over a substantial period of time. This is not "imminent peril" as contemplated in the test for necessity.

[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 deceits 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.

[74] We find each of the respondents contravened section 57(b) in the following manner:

a) Spangenberg and Odyssey contravened section 57(b) with respect to Investor VH in the amount of $69,996; and

b) Spangenberg and geoTreasuries contravened section 57(b) with respect to each of Investors VH, B, W, Y, T and BN for $101,450 in aggregate.

ii) Illegal Distributions

[75] The shares of the corporate respondents sold to the investors by the respondents are clearly securities.

[76] The sales of the securities by the corporate respondents are clearly trades. The actions taken by Spangenberg in respect of these issuances of securities, including:

- introducing the investment idea to the investors
- drafting and writing all of the promotional material relating to the companies
- issuing the share certificates and instructing the investors as to payment methods

are all acts in furtherance of a trade. Therefore, under section 61 of the Act the respondents were required to either file a prospectus under the Act to carry on this activity or have an exemption from the requirement to do so.

[77] The respondents did not file a prospectus under the Act. The onus is on the respondents to meet the evidentiary burden of establishing the factual basis for the existence of an exemption. There was no evidence tendered by the respondent to suggest that any trade to investors qualified for an exemption. Therefore, the respondents have failed to satisfy this onus.

[78] However, the executive director acknowledged that Investor BN was a registrant at the time of the issuance of securities to him. As a consequence, Investor BN was an "accredited investor", as defined under National Instrument 45-106 *Prospectus Exemptions*. Under NI 45-106, distributions to accredited investors are exempt from the prospectus requirements and therefore there was no contravention of section 61(1) for that trade.

[79] In addition, each of the other investors, other than investor T, worked in some capacity for one or more of the corporate respondents. Under section 2.24 of NI 45-106 there is an exemption for issuing securities to an "employee, senior officer, director and consultant" if "participation in the distribution is voluntary".

[80] The executive director says that this exemption does not apply because each of Investor VH, B, W and Y were enticed to invest by Spangenberg with the prospect of positions with the corporate respondents. In addition, the executive director says that certain of the positions (e.g. Investor VH becoming a director of geoTreasuries) were never made effective and that the investors were never really employees as they were unpaid for their work and that the respondents did not carry on a real business. Finally, the executive director says that the decision by the investors to invest could not be deemed to be voluntary as that decision was induced by fraud and that fraud vitiates consent.

[81] The executive director's first two arguments raise issues that we do not need to address at this time, as we agree with his final submission that participation in the investment by the investors cannot be voluntary where the entire investment scheme is fraudulent. The purpose of the exemption in section 2.24 of NI 45-106 is based in part on the theory that certain people (i.e. directors, senior officers and certain employees), by virtue of their positions, will have access to the information about the issuer necessary to make an informed decision without the need for a prospectus. Further, the Companion Policy to NI 45-106 sets out that further support for the exemption is the alignment of economic interests between an issuer and its employees. This policy rationale cannot exist where fraud is the basis of the relationship between employee and issuer. We do not find the exemptions in sections 2.24 of NI 45-106 applicable to the circumstances of this case.

[82] We find that the respondents contravened section 61 of the Act in the following manner:

a) Spangenberg and Odyssey contravened section 61 with respect to the issuance of securities to Investor VH for $69,996; and

b) Spangenberg and geoTreasuries contravened section 61 with respect to the issuance of securities to each of Investors VH, B, W, Y, and T, for $91,450.

iii) Liability for corporate contraventions

[83] The executive director submits that Spangenberg should be held liable under section 168.2 for Odyssey's and geoTreasuries' contraventions of section 57(b) and 61.

[84] Under section 168.2, an officer or director of a corporate entity may be liable for the contraventions of that corporate entity 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 entity's contraventions and ability to have influence over the actions of the corporate entity (through action or inaction).

[85] In this case, Spangenberg was the sole controlling mind of the corporate respondents. Spangenberg had control of the bank accounts of the corporate entities. Spangenberg had control of the capital raising process. Only Spangenberg carried out the activities on behalf of the corporations that constitute the misconduct in this case. Spangenberg clearly had the requisite level of knowledge and ability to influence the activities of Odyssey and geoTreasuries in order to have authorized, permitted or acquiesced to their contraventions of the Act. We find Spangenberg liable under section 168.2 with respect to both Odyssey's and geoTreasuries' contraventions of sections 57(b) and 61.

iv) Public Interest

[86] The executive director submits that the respondents attempted to obtain further investments from Investors W and BN and that that conduct amounted to attempted

fraud. He says that attempted fraud, which is not a contravention of the Act, is conduct contrary to the public interest.

[87] In describing the respondents' conduct as an "attempted fraud," we take those submissions to mean that the respondents carried out deceits against the investors with a view to causing deprivation – however, they were unsuccessful in their attempts to obtain the further investments and therefore deprivation did not occur.

[88] As we have found that the further solicitations for investments from Investors W and BN were all part of the fraudulent scheme (i.e. further acts of deceit) carried out against Investors W and BN, we do not need to consider whether that conduct forms the basis for a separate order in the public interest.

[89] We direct the parties to make their submissions on sanction as follows:

By March 31, 2016	The executive director delivers submissions to the respondents and to the secretary to the Commission
By April 7, 2016	The respondents deliver response submissions to each other, the executive director 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. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
By April 14, 2016	The executive director delivers reply submissions (if any) to the respondents.

March 11, 2016

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Suzanne K. Wiltshire
Commissioner