

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

Citation: Re Bochinski, 2017 BCSECCOM 300

Date: 20171005

Reciprocal Order

Randi A. Bochinski

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Introduction

- [1] The executive director of the Commission applied on November 9, 2015 for an order under sections 161(1) and 161(6)(c) of the *Securities Act*, RSBC 1996, c. 418, reciprocating in British Columbia sanctions imposed by the United States Securities and Exchange Commission (SEC) against Bochinski, in its August 20, 2014 order under section 15(b) of the United States *Securities and Exchange Act of 1934*.
- [2] We find that executive director provided the respondent notice of its application. Although the respondent was provided the opportunity to make submissions, he did not participate in the hearing.

Background

- [3] The SEC accepted a settlement offered by Bochinski, that formed the basis of the findings by the SEC, including that:
1. From at least November 30, 2004, through January 2010, Bochinski contravened US securities laws by acting as an unregistered broker with respect to the offer and sale of securities.
 2. Bochinski acted as an unregistered broker, solicited investors, provided investors with fictitious account records, and collected funds directly from investors.
 3. Bochinski induced at least 12 investors to invest more than \$3.5 million in a series of purported high yield investment programs between November 30, 2004 and January 2010. These investment programs did not exist and Bochinski misappropriated the funds.
 4. Bochinski was extradited from Canada to the US, where on May 13, 2013, he entered a guilty plea to three counts of wire fraud, three counts of mail fraud and one count of money laundering in relation to the findings outlined above.
- [4] The SEC imposed sanctions agreed to in the settlement offered by Bochinski, and made an order:

1. barring Bochinski from association with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
 2. barring Bochinski from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for the purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.
- [5] The executive director is applying for orders here in British Columbia under sections 161(6)(c) and section 161(1) of the Act, that include trading and market prohibitions that are beyond the scope of the sanctions imposed by the SEC.

Analysis

- [6] In the application before us, Bochinski is subject to an order from the SEC, another securities regulatory authority as outlined in section 161(6). He was provided the opportunity to be heard in this proceeding, but did not participate in the hearing process. At the time of the conduct that forms the basis for the SEC proceedings, Bochinski was a resident of British Columbia.
- [7] In the SEC order dated August 20, 2014, Bochinski admitted the underlying facts outlined above solely for the purpose of the SEC proceedings, and any subsequent proceedings brought by or on behalf of the SEC, or to which the SEC is a party. The question before the panel in this application is to what extent, if any, we may rely on them in a 161(6) application, where the executive director is seeking more onerous orders than those imposed in the underlying proceeding.
- [8] A similar matter was considered by the British Columbia Court of Appeal in *Lines v. British Columbia (Securities Commission)*, 2012 BCCA 316. In *Lines*, the Court considered a reciprocal order issued by the Commission under section 161(6), based on a *nolo contendere* settlement – where there was no admission of wrongdoing. The Court found that, in that instance, the evidence relied on by the Commission to impose the order under section 161(6), could not justify a more onerous order than the one in the settlement. However, the Court was also clear that such a finding would not necessarily be the case in every instance where a more onerous sanction was sought by the Executive Director than the one imposed in the underlying proceedings:

I do not say that the Commission may never impose a sanction under s. 161(6)(d) that is materially more onerous than the terms of the agreement on which it is based: that question is for another day. It seems to me, however, that justice as well as transparency and intelligibility require that the Commission have evidence or an admission of a defendant's wrongdoing – and of course that the defendant be in a position to challenge such evidence at a hearing – before such an order could reasonably be made under s. 161(6)(d).

Lines, supra, at para. 33

[9] There is a fundamental distinction between the facts in the *Lines* matter, and those before us in these proceedings. In *Lines*, there was no admission of wrongdoing by the respondents. That is not the case here. Bochinski not only admitted to the facts outlined above, he pled guilty to the parallel criminal conduct that led to his incarceration in the United States. To be clear, Bochinski admittedly participated in a fraudulent scheme involving non-existent securities, that saw him misappropriate millions of dollars in investor funds.

[10] The Commission has held that a plain reading of section 161(6) demonstrates that the legislature intended that a panel could make orders different, and in some circumstances more onerous, than that of the originating body. As stated in *Re Pierce*, 2016 BCSECCOM 166 at para. 26:

Our mandate under the Act is to protect investors and to promote fair and efficient capital markets. We agree with the executive director that to narrowly interpret section 161(6) would, in certain circumstances, abrogate our ability to fulfill that mandate. Considering the legislative purpose of sections 161(1) and 161(6), we conclude that we are not limited to or by the originating body's order, and must always consider whether protective and preventative orders are necessary in the public interest in the circumstances of each application.

[11] The egregious nature of Bochinski's conduct, as found by the SEC, warrants permanent prohibitions in our jurisdiction. In *International Fiduciary Corp* 2007 BCSECCOM 107, the Commission found that it was appropriate and in the public interest to prohibit permanently from the capital markets of British Columbia persons who participated in, and significantly profited from, a fraudulent investment scheme that promoted fictional investments to the public. We find that the facts underlying the application before us similar. It is therefore appropriate and in the public interest to issue permanent orders against Bochinski under section 161(6) of the Act, relying on the SEC proceedings. These orders are to ensure the protection of the securities markets and the public in British Columbia by preventing Bochinski from engaging in similar conduct here.

Order

[12] After providing Bochinski an opportunity to be heard, and considering the executive director's submissions, and considering it to be in the public interest, we order:

1. under section 161(1)(b) of the Act, that Bochinski cease trading in and is prohibited from purchasing any securities, permanently;
2. under section 161(1)(d)(i) of the Act, that Bochinski resign any position he holds as a director or officer of any issuer or registrant;
3. under section 161(1)(d)(ii) of the Act, that Bochinski is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
4. under section 161(1)(d)(iii) of the Act, that Bochinski is permanently prohibited from becoming or acting as a registrant or promoter;

5. under section 161(1)(d)(iv) of the Act, that Bochinski is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
6. under section 161(1)(d)(v) of the Act, that Bochinski is permanently prohibited from engaging in investor relations activities.

October 5, 2017

For the Commission

Nigel P. Cave
Vice Chair

Don Rowlatt
Commissioner