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

Citation: Re Furman, 2019 BCSECCOM 214 Date: 20190610

William Wade Furman

Panel	Nigel P. Cave	Vice Chair
	Audrey T. Ho	Commissioner
	Suzanne K. Wiltshire	Commissioner
Submissions Completed	May 9, 2019	
Decision date	June 10, 2019	

Appearing

Nicholas Isaac	For the Executive Director

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 April 3, 2019 (2019 BCSECCOM 107) are part of this decision.

[2] We found that that the respondent contravened section 57(b) of the Act in respect of 12 investments for total proceeds of at least $452,000.

[3] The parties were given an opportunity to make written and oral submissions with respect to the appropriate sanctions for the respondent's misconduct. The executive director provided written submissions. We did not receive any submissions from the respondent. There was no oral hearing with respect to this matter.

[4] This is our decision on sanction.

II. Position of the Parties

[5] The Executive Director sought the following orders under sections 161 and 162 of the Act:

(a) Furman be permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;

(iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

(iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

(v) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

(vi) under section 161(1)(d)(v), from engaging in investor relations activities;

(b) Furman pay to the Commission $410,847.97 pursuant to section 161(1)(g) of the Act; and

(c) Furman pay to the Commission an administrative penalty of $500,000 under section 162 of the Act.

III. Analysis

A. Factors

[6] 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.

[7] 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:
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> - 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

[8] The 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".

[9] The respondent's fraudulent misconduct was significant. This case involved the respondent misappropriating a significant portion of investor funds Furman promised that investor funds would be used in his day trading activities but, instead, used a portion of those funds for other purposes. He also deceived investors about his experience and registration status in the securities industry.

[10] The deception on investors was exacerbated by, in many cases, the respondent preparing fraudulent account statements which, long after investments were made, purported to show that the investors' funds were performing in a manner consistent with the respondent's promises. Finally, the respondent then communicated to a number of investors a further litany of lies and deceits designed to delay their discovery of the loss of their invested funds.

[11] This case is on the upper end of the seriousness of fraudulent misconduct that comes before the Commission.

Risk to investors and the markets and fitness to be a director or officer

[12] It is sufficient to note that the respondent used two corporations as part of his fraudulent misconduct and that the length and breadth of his lies and deceits make him a serious risk to investors and our capital markets and completely unfit to be a director or officer of an issuer or a registrant.

Harm to investors/ Enrichment

[13] The respondent's misconduct has resulted in substantial harm to investors and substantial enrichment to the respondent.

[14] The respondent raised $452,000 from investors through his fraudulent misconduct. The evidence during the hearing was that a portion of that amount was invested in trading accounts and then lost and the remainder was used by the respondent on unrelated expenditures. Although a portion was used for trading activities, we find that the respondent was enriched by the full amount of the funds raised from his misconduct. We make this finding on the basis that the entire amount of the funds raised from investors was obtained via the respondent's deceit and that all of those funds were then expended as determined by the respondent.

[15] The evidence was that investors received a total of $41,152.03 from the respondent in repayments of invested funds or as fictional "returns". All other investor funds have been lost or expended by the respondent.

[16] We heard testimony during the hearing from investors as to the significant financial and emotional harm caused by these losses.

Mitigating or aggravating factors; past misconduct

[17] The respondent does not have a history of securities regulatory misconduct. There are no aggravating or mitigating circumstances in this case.

Specific and general deterrence

[18] The sanctions that we impose must be sufficient to establish that both the respondents and others will be deterred from engaging in conduct similar to that carried out by the respondents.

[19] Our orders must also be proportionate to the misconduct (and the circumstances surrounding it) of the respondents.

Prior orders in similar circumstances

[20] The executive director directed us to five decisions of the Commission as guidance as to the appropriate sanctions in this case: *Re Spangenberg*, 2016 BCSECCOM 180, *Re Nickford*, 2018 BCSECCOM 57, *Re Zhong*, 2015 BCSECCOM 383, *Re Braun*, 2019 BCSECCOM 65 and *Re The Falls Capital Corp.*, 2015 BCSECCOM 422.

[21] All of these decisions offer general support for the executive director's submissions on sanction. However, several of these decisions are distinguishable, to an extent, due to the existence of findings of additional contraventions of the Act (over and above a finding of fraudulent misconduct). The two most analogous decisions are *Braun* and *Nickford*.

[22] In *Braun*, the individual respondents were found to have committed fraud with respect to two investors with investments totaling $450,000. The panel found that the misconduct in that case was exacerbated by the predatory nature of the misconduct against a vulnerable investor. With respect to the individual respondent A. Braun, the panel made orders against him imposing permanent market prohibitions, a disgorgement order of $325,000 (being the amount that he obtained from his misconduct) and an administrative penalty of $450,000.

[23] In *Nickford*, the respondent was found to have fraudulently misappropriated $318,000 from a total of 13 investors. Those investors included clients, friends and members of her religious community. The panel imposed permanent market prohibitions against Nickford and made a disgorgement order of $318,000 (being the amount that she obtained from her misconduct) and an administrative penalty of $300,000.

C. Analysis of appropriate orders

Market prohibitions

[24] The executive director sought orders imposing permanent market prohibitions against the respondent.

[25] As set out above, we consider the respondent's misconduct to have been significant. He caused significant investor harm and he was substantially enriched by his misconduct. Finally, as a consequence of the length and breadth of the dishonesty engaged in by the respondent, we consider him to be a significant future risk to our capital markets. We consider permanent market prohibitions to be necessary in the circumstances.

Section 161(1)(g) orders

[26] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, recently adopted a two-step approach to considering applications for orders under section 161(1)(g) (para 144):

> I now turn to apply these principles to the three appeals before this Court. I agree with and adopt the two-step approach identified by Vice Chair Cave in *SPYru* at paras 131-132:
>
> > [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
> >
> > [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[27] The Court of Appeal in *Poonian* further adopted several principles to apply in interpreting section 161(1)(g) (para 143):

> 1. The purpose of s. 161(1)(g) is to deter persons from contravening the *Act* by removing the incentive to contravene, i.e. by ensuring the person does not retain the "benefit" of their wrongdoing.
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> 2. The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the *Act*, such as the claims process set up under Part 3 of the *Securities Regulation* or the s.157 compliance proceedings in the *Act*.
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> 3. There is no "profit" notion, and the "amount obtained" does not require the Commission to allow for deductions of expenses, costs, or amounts other persons paid to the Commission. It does, however, permit deductions for amounts returned to the victim(s).
>
> 4. The "amount obtained" must be obtained *by that respondent, directly or indirectly*, as a result of the failure to comply with or contravention of the

Act. This generally prohibits the making of a joint and several order because such an order would require someone to pay an amount that person did not obtain as a result of that person's contravention.

5. However, a joint and several order may be made where the parties being held jointly and severally liable are under the direction and control of the contravener such that, in fact, the contravener obtained those amounts *indirectly*. Non-exhaustive examples include the use of a corporate *alter ego*, use of other person's accounts, or use of other persons as nominee recipients.

[28] Finally, the Court of Appeal in *Poonian* approved an approach to determining the amounts obtained, directly or indirectly, by a respondent that requires the executive director to provide evidence of an "approximate" amount, following which the burden of proof switches to the respondent to disprove the reasonableness of this number.

Step 1 – Can a section 161(1)(g) order be made?

[29] The evidence established that the respondent obtained the $452,000 raised from investors through his fraudulent misconduct as these funds were deposited into bank accounts controlled by the respondent. Accordingly, we could make an order under section 161(1)(g) of the Act against the respondent in that amount.

[30] However, as noted in *Poonian,* in determining the quantum of an order under section 161(1)(g) we may take into account amounts returned by the respondent to investors. In this case, the evidence established that the respondent returned $41,152.03 to investors. We will reduce our order under section 161(1)(g) by that amount to $410,847.97.

Step 2 – Is it in the public interest?

[31] It is in the public interest to make an order under section 161(1)(g) against the respondent in the amount set out above. That is the amount that Furman obtained as a consequence of his fraudulent misconduct.

Administrative penalties

[32] The executive director asked that we make an order under section 162 against the respondent in the amount of $500,000.

[33] We view the seriousness of the respondent's misconduct in this case as falling somewhere between that of the respondents in *Nickford* and *Braun*. Furman did not engage in predatory behavior against vulnerable investors as was the case in *Braun*. However, the quantum of the misconduct, the extensive efforts of Furman to produce fraudulent account statements and his lies to delay detection of his misconduct make his misconduct more serious than that of the respondent in *Nickford*.

[34] As set out above, we view the respondent's misconduct as serious and a significant risk to our capital markets. For reasons of both specific and general deterrence a sizeable order under section 162 is appropriate in the circumstances. We find an order under section 162 in the amount of $350,000 to be in the public interest and proportionate to the misconduct.

IV. Orders

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

(a) under section 161(1)(d)(i), Furman resign any position he holds as a director or officer of an issuer or registrant;

(b) Furman is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;

(iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

(iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

(v) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

(vi) under section 161(1)(d)(v), from engaging in investor relations activities;

(c) Furman pay to the Commission $410,847.97 pursuant to section 161(1)(g) of the Act; and

(d) Furman pay to the Commission an administrative penalty of $350,000 under section 162 of the Act.

June 10, 2019

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Suzanne K. Wiltshire
Commissioner