

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re ecoTECH, 2019 BCSECCOM 399

Date: 20191104

**ecoTECH Energy Group Inc., currently known as Dong Fang Hui Le Inc.,
Colin V. Hall, Rolf Eugster, and Anne Sanders**

Panel	Nigel P. Cave Audrey T. Ho George C. Glover	Vice Chair; Commissioner Commissioner Commissioner
Hearing date	October 15, 2019	
Decision date	November 4, 2019	
Appearing		
Deborah Flood	For the Executive Director	
Rolf Eugster	For Rolf Eugster and Colin Hall	
Anne Sanders	For Anne Sanders	

Decision

I. Introduction

- [1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, 1996, c. 418. The findings of this panel on liability made on June 3, 2019 (2019 BCSECCOM 199) are part of this decision.
- [2] We found that:
- a) ecoTECH breached a cease trade order of the Commission with respect to
 - i) 2,009,634 shares issued to a total of 16 investors for aggregate proceeds of \$55,100; and
 - ii) approximately 73 million shares issued to 15 persons as compensation for services rendered to ecoTECH at an effective issuance price of \$0.045 per share;
 - b) ecoTECH contravened section 50(1)(d) of the Act with respect to 2,009,634 shares issued to a total of 16 investors for aggregate proceeds of \$55,100;

- c) each of Hall and Sanders authorized, permitted or acquiesced to ecoTECH's contraventions as set out above, and therefore, pursuant to section 168.2 of the Act, they also breached the cease trade order and section 50(1)(d) in the same manner as ecoTECH; and
 - d) Eugster authorized, permitted or acquiesced to ecoTECH's contraventions set out in subparagraph (a)(i) and (b) above, and therefore, pursuant to section 168.2 of the Act, he also breached the cease trade order and section 50(1)(d) in the same manner as ecoTECH (in subparagraphs (a)(i) and (b), above).
- [3] The executive director and each of Eugster, Hall and Sanders (the Individual Respondents) provided written and oral submissions on the appropriate sanctions in this case. ecoTECH did not make any submissions on sanction and did not attend the oral hearing on sanction.

II. Position of the parties

- [4] The executive director sought the following sanctions in this case:
- a) orders under section 161 of the Act imposing broad market prohibitions, for a duration of five years, against each of the Individual Respondents;
 - b) orders against each of Sanders and Hall under section 162 of the Act in the amount of \$20,000; and
 - c) an order against Eugster under section 162 of the Act in the amount of \$17,000.
- [5] The executive director did not seek any sanctions against ecoTECH. However, the securities of ecoTECH remain subject to a cease trade order. Nothing in this decision varies or revokes that cease trade order. The executive director further submitted that he was not seeking financial sanctions against ecoTECH as any orders imposing financial sanctions against the company would indirectly harm investors who have already been harmed by the misconduct in this case. We agree with the executive director's submissions in this regard.
- [6] The Individual Respondents submitted that it was not in the public interest for us to make orders imposing sanctions on them in the circumstances of this case.

III. Analysis

A. Factors

- [7] 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.
- [8] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent's conduct,
- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

B. Application of the Factors

Seriousness of the conduct

[9] As set out in *Re Loughery*, 2019 BCSECCOM 78 at paragraph 15:

Cease trade orders are one of the Commission's most important tools in protecting the capital markets. Failure to comply with them undermine the Commission's ability to effectively regulate the capital markets. Contravening a cease trade order is therefore serious misconduct.

We agree with those views.

[10] The misconduct in this case is made more serious by virtue of the evidence that all of the Individual Respondents were aware of the existence of the cease trade order and, notwithstanding this knowledge, authorized the corporate respondent to contravene its terms.

[11] The Individual Respondents made various submissions that could be viewed as going to the seriousness of their misconduct or to the public interest in issuing sanctions against them. Those submissions can be summarized as follows:

- the issuance of the cease trade order was based on ecoTECH failing to file certain required documents. They submitted that this failure was technical in nature and did not result in ecoTECH failing to provide the necessary information to the market regarding ecoTECH's business and financial circumstances;

- all purchasers who acquired shares of ecoTECH in contravention of the cease trade order signed subscription agreements which confirmed that the purchasers were aware of the risks associated with purchasing the shares;
- the Individual Respondents did not intentionally contravene the cease trade order and were merely mistaken as to the legal effect of the cease trade order;
- ecoTECH was engaged in attempting to develop an electricity project that would have been substantial in size and benefit to the Province;
- only certain of the directors and officers of ecoTECH were the subject of enforcement proceedings by the Commission and the Commission's failure to commence enforcement proceedings against all of the directors and officers of ecoTECH constituted an unfairness to the Individual Respondents; and
- the purchasers who acquired ecoTECH shares for cash were close personal friends and family of the directors and officers of ecoTECH and the impact of the misconduct in this case could not be viewed as having caused significant damage to our capital markets.

[12] The first three of these issues were raised during the liability phase of this proceeding and we expressed our views on those issues in our findings. We reiterate those views here. These submissions by the Individual Respondents were really attempts to re-litigate issues determined in our findings.

[13] With respect to the other three submissions:

- the merits of ecoTECH's electricity project are not relevant to the issue of the Individual Respondents' misconduct – we are required to focus on the public interest as it relates to our mandate to protect the capital markets;
- that there were other directors and officers of ecoTECH at the relevant time who are not subject to enforcement proceedings by the Commission, is also not relevant to our determinations. Our responsibility, in this hearing, is to determine the appropriate sanctions for the Individual Respondents in the circumstances. Deciding who will be the parties to an enforcement proceeding is a matter of prosecutorial discretion and it is not for the panel to speculate on why parties are, or are not, made respondents in a particular matter; and
- the nature of the private placement (size and purposes and that there was no suggestion that the issuances by ecoTECH constituted contraventions of section 61 of the Act) is relevant to our deliberations and, as will be discussed below, is something that we will take into consideration in determining the appropriate sanctions in this case.

Harm suffered by investors and the enrichment of the respondents

- [14] The investors who purchased the shares of ecoTECH for cash have all suffered financial loss. The investors who received shares for past services received little or no benefit. The securities of ecoTECH are still subject to a cease trade order. Although we did not have determinative evidence of the value, if any, that the shares of ecoTECH have today – we may reasonably infer, given the lengthy period that those shares have been subject to a cease trade order, that their value is minimal.
- [15] ecoTECH has been enriched by its misconduct as the company received, in first instance, the cash proceeds raised from its contraventions of the cease trade order.
- [16] However, there is no evidence of personal enrichment by any of the Individual Respondents arising from their misconduct.

Aggravating or mitigating circumstances

- [17] There are no mitigating or aggravating circumstances in this case.

Participation in our capital markets and fitness to be a registrant or a director or officer

- [18] The intentional breach of a cease trade order demonstrates an unwillingness to comply with the directives of the regulator in a highly regulated industry. Those who breach such orders must be viewed as a significant risk to our capital markets.
- [19] In this case, the Individual Respondents were responsible for causing ecoTECH to contravene the cease trade order. This demonstrates the risk they pose to the capital markets if they were allowed to continue to act as directors or officers of an issuer.

Specific and general deterrence

- [20] The sanctions that we impose must be sufficient to establish that both the respondents and others will be deterred from breaches of cease trade orders.
- [21] Our orders must also be proportionate to the misconduct (and the circumstances surrounding it) of the respondents.

Previous Orders

- [22] The executive director directed us to three previous decisions of this Commission as helpful guidance in determining the appropriate sanctions in the circumstances: *Loughery, Cinnabar Explorations Inc. (Re)*, 2014 BCSECCOM 26 (CanLII) and *Oriens Travel & Hotel Management Corp (Re)*, 2014 BCSECCOM 91 (CanLII).
- [23] In our view, the decisions in *Loughery* and *Oriens* are most directly relevant to the circumstances of this case.
- [24] In *Loughery*, a corporation and an individual respondent were found to have issued securities of the corporate respondent in contravention of an existing cease trade order.

- [25] The corporate respondent issued \$170,000 of promissory notes to six investors. The panel found the misconduct of the individual respondent to be more serious due to his having previously been registered under the Act. The panel made orders against the individual respondent imposing broad market prohibitions of six years in duration and an administrative penalty of \$50,000.
- [26] In *Oriens*, the respondents (a corporation, its CFO and one of its directors) were found to have illegally distributed shares of the corporate respondent to three investors for proceeds of US\$ 58,500. The share issuance also contravened an existing cease trade order with respect to the securities of the corporate respondent. Finally, the respondents were found to have made misrepresentations to the investors by failing to tell them about the existence of the cease trade order. The panel made orders against the two individual respondents imposing broad market prohibitions of six years against the CFO and two years against the director (reflecting a lesser role in the misconduct) and administrative penalties of \$35,000 against the CFO and \$15,000 against the director. Importantly, the panel found that the CFO had been enriched, directly and indirectly, as a result of his misconduct.
- [27] The Individual Respondents submitted that the *Oriens* decision was not analogous to the circumstances of their case because of the lack of personal enrichment of the Individual Respondents from their misconduct.
- [28] We disagree that *Oriens* is not analogous to the matter before us. We find the Individual Respondents' misconduct as similar (in the severity of the misconduct) to that of the individual respondent's misconduct in *Loughery* and the CFO's misconduct in *Oriens*. However, we agree with the Individual Respondents' submission that this case differs from both the *Loughery* and the *Oriens* case in that there was no evidence of personal enrichment by the Individual Respondents stemming from their misconduct. Further, unlike in the *Oriens* case, there was no suggestion that the issuance of shares by ecoTECH constituted an illegal distribution. Our orders in this case must reflect these differences.

C. Analysis of appropriate orders

Market prohibitions

- [29] The executive director submitted that broad market prohibitions with a duration of five years against each of the Individual Respondents would be appropriate in the circumstances.
- [30] The Individual Respondents submitted that they had not participated in the capital markets in over five years and that a further five year period of market prohibitions was unnecessary and excessive. The Individual Respondents did not tender any evidence in support of their lack of recent involvement in the capital markets, so this submission was not founded on evidence in this proceeding.

- [31] As noted above, those who intentionally contravene a cease trade order of the Commission pose a significant risk to our capital markets. Our orders must reflect that risk.
- [32] The executive director's submission that five years would be appropriate in the circumstances is generally consistent with the orders made in the *Loughery* and *Oriens* decisions (i.e. as reflecting the somewhat less serious misconduct of the Individual Respondents). However, in our findings we determined that Eugster's role was less than that of Hall and Sanders in that we found that Eugster was not liable for contravention of the cease trade order in respect of issuances of shares for past services to the company. Our orders should reflect this difference.
- [33] Broad market prohibitions of five years, in respect of Hall and Sanders, and four years, in respect of Eugster, are necessary, in the public interest (for purposes of both specific and general deterrence) and proportionate to the misconduct in this case.

Section 162 orders

- [34] The executive director submitted that orders under section 162 of \$20,000 against each of Sanders and Hall and of \$17,000 against Eugster would be appropriate in the circumstances.
- [35] The Individual Respondents submitted that no administrative penalties should be ordered against any of them. In particular, they submitted that each of them is a senior citizen and that significant financial sanctions would be a financial hardship. In addition, Eugster submitted that he had incurred substantial costs in attending the liability and sanctions oral hearings and that we should take that into account in determining the appropriate financial sanctions.
- [36] Again, none of the Individual Respondents tendered any evidence in support of their current financial circumstances nor did Eugster tender any evidence in support of the costs incurred in attending our oral hearings. Even if Eugster had tendered such evidence, we would not have considered his cost of attending the oral hearings as part of consideration of the appropriate sanctions in this case.
- [37] The executive director's suggested amounts for orders under section 162 are significantly less than those imposed on the individual respondent in *Loughery* and the CFO in *Oriens*. We view that as appropriate due to the lack of personal enrichment by the Individual Respondents from their misconduct.
- [38] The executive director submitted that his suggested order under section 162 against Eugster was lower for the reasons set out in paragraph 32 above. As noted above, we agree with that submission.
- [39] Orders under section 162 of \$20,000 against each of Hall and Sanders and \$15,000 against Eugster are necessary, in the public interest (for purposes of both specific and general deterrence) and proportionate to the misconduct in this case.

IV. Orders

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

Colin V. Hall

- (a) under section 161(1)(d)(i), Hall resign any position he holds as a director or officer of an issuer or registrant;
- (b) Hall is prohibited for the later to occur of five years and the date that the amount in paragraph (c) is paid to the Commission:
 - (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; and
- (c) Hall pay to the Commission an administrative penalty of \$20,000 under section 162 of the Act;

Anne Sanders

- (d) under section 161(1)(d)(i), Sanders resign any position she holds as a director or officer of an issuer or registrant;
- (e) Sanders is prohibited for the later to occur of five years and the date that the amount in paragraph (f) is paid to the Commission:
 - (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; and
- (f) Sanders pay to the Commission an administrative penalty of \$20,000 under section 162 of the Act;

Rolf Eugster

- (g) under section 161(1)(d)(i), Eugster resign any position he holds as a director or officer of an issuer or registrant;
- (h) Eugster is prohibited for the later to occur of four years and the date that the amount in paragraph (i) is paid to the Commission:
 - (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; and

- (i) Eugster pay to the Commission an administrative penalty of \$15,000 under section 162 of the Act.

November 4, 2019

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

George C. Glover, Jr.
Commissioner