

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

Citation: Re Adam, 2019 BCSECCOM 75

Date: 20190304

Reciprocal Order

Mitchell Gordon Adam

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

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418 (the BC Act).
- [2] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities and the courts. The executive director of the Commission has applied for an order imposing sanctions on Mitchell Gordon Adam based on his misconduct and the sanctions imposed by the Honourable Jose L. Linares, United States District Court Judge in *United States v. Mitchell G. Adam*, 15 Cr. 349 (JLL)(D.N.J.) (Judgment in a Criminal Case).
- [3] Adam was provided an opportunity to be heard. He participated in the hearing process, by tendering evidence and making written submissions to the Commission.
- [4] Adam entered a guilty plea to conspiracy to commit securities fraud and mail fraud, in violation of Title 18, United States Code, §371. The Court sentenced him to time served (four months).
- [5] Adam admitted to the following facts as recorded in the Transcript of Proceedings Plea, July 14, 2015:
 - (a) Between July 2013 and November 2013, Adam conspired to participate in a stock market manipulation scheme involving the publicly traded stock of Lido International Corporation (the Target Stock). Others involved included an attorney located in New York, who ran a law practice and a registered broker dealer and a penny stock promoter who resided in London in the United Kingdom;
 - (b) During that time, Adam conspired to fraudulently inflate the price of the Target Stock and then sell it at the inflated price for the purpose of making a profit;
 - (c) In order to effectuate this scheme, Adam and others obtained and concealed control of a large portion of the free-trading Target Stock;

- (d) Adam and others agreed to engage in a manipulative trading of the Target Stock, creating a false appearance of market interest and thereby fraudulently inflating the price of that stock;
 - (e) Around August 2013, Adam and the others conspired to have an individual use an algorithmic trading system to manipulate the Target Stock. The algorithmic trading system was specifically developed to manipulate stock prices by placing blocks of free-trading shares in numerous offshore trading accounts in the names of third parties and then executing and coordinating trades between those accounts, which would fraudulently create the false appearance of market interest and volume in the Target Stock;
 - (f) In or about August 2013, through pre-arranged trades, Adam and others arranged to sell a majority of the free-trading Target Stock that Adam and his co-conspirators secretly controlled;
 - (g) On or about October 7, 2013, Adam or a co-conspirator directed a nominee shareholder to place a 5,000 share sell order for the Target Stock priced at 10 cents per share in furtherance of the manipulation of the Target Stock price;
 - (h) Between October 28, 2013 and November 1, 2013, in furtherance of the scheme, Adam or his co-conspirators directed that accounts of nominee shareholders execute matched or coordinated trades in the Target Stock; and
 - (i) Adam knowingly, intentionally and willfully committed these acts and entered a guilty plea because he was guilty of the crime of conspiracy to commit securities and mail fraud.
- [6] The Commission makes reciprocal orders under section 161(6) when such orders will, in the public interest, protect investors and the capital markets in British Columbia.
- [7] Conspiring to participate in a stock market manipulation is egregious conduct. However, despite the serious nature of this conduct, no investors were harmed and Adam was not enriched as a result of his conduct.
- [8] In these circumstances, the executive director initially submitted that Adam's conduct warranted permanent prohibitions from the British Columbia capital markets.
- [9] In response, Adam filed written submissions and evidence in an affidavit. Adam's position was that his participation in the conspiracy was found to be relatively minor by the United States District Attorney participating in the sentencing proceedings of the underlying criminal matter, he did not profit from his conduct, and that the United States District Attorney described Adam's punishment as substantial, as it included four months incarceration in a high security prison in the United States. Adam accepted that market prohibitions in British Columbia may be necessary in light of his guilty plea, but submitted in these proceedings that orders of a lesser severity than those requested by the

executive director were warranted, given that he had acknowledged his mistakes, was remorseful, and he and his family had already suffered considerable personal and financial hardship.

- [10] In reply submissions, after reviewing the evidence and submissions filed by Adam, the executive director amended his position, and submitted that a two year prohibition from the British Columbia capital markets was warranted given the circumstances. In support of his submissions, the executive director highlighted that Adam formerly had a long and unblemished career in the capital markets prior to his conviction, has since declared bankruptcy, no longer works in the capital markets, and has struggled to find employment since his conviction while having a young family to support. The executive director repeated the United States District Attorney's conclusion that Adam's jail sentence was adequate deterrence for him and others from committing similar crimes in the future, and would promote respect for the law.
- [11] We followed up with the parties, requesting further submissions on the suitability of market prohibitions of a two-year duration, given Adam's conduct outlined above. Both the executive director and Adam provided further written submissions, but neither were able to provide any authorities or precedents on point.
- [12] We have considered the submissions of the parties. Market manipulation and fraud require proof of intent on the part of the respondent to knowingly engage in this type of misconduct. This, combined with the significant harm to investors and the capital markets usually associated with fraud and market manipulation, means that this misconduct generally attracts lengthy prohibitions from the capital markets of this province. We have significant concerns that a market prohibition of only two years in these circumstances will not serve as adequate specific and general deterrence of similar conduct by Adam or others in the future. While we recognize that there are some compelling mitigating circumstances in this matter, and the underlying findings were for conspiracy to commit securities fraud, a two year prohibition from the capital markets is at odds with the serious nature of Adam's intentional and deliberate conduct.
- [13] Considering it to be in the public interest, and pursuant to section 161 of the Act, we order that:
- (a) under section 161(1)(d)(i), Adam resign any position he holds as a director or officer of an issuer or registrant;
 - (b) Adam is prohibited for four years:
 - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of this decision;

- (ii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant, except that he may act as a director or officer of an issuer whose securities are solely owned by him or his immediate family members (being: Adam's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, or brother or sister-in-law);
- (iii) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
- (iv) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities markets; and
- (v) under section 161(1)(d)(v), from engaging in investor relations activities.

March 4, 2019

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner