

Jefferson Franklin Mesidor

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Judith Downes George C. Glover, Jr.	Vice Chair Commissioner Commissioner
Date Submissions Completed	December 2, 2013	
Date of Decision	January 6, 2014	
Submissions filed by		
Jeremy Gellis	For the Executive Director	
Jefferson Franklin Mesidor	For himself	

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. Our Findings on liability made on October 21, 2013 (2013 BCSECCOM 460) are part of this decision.
- ¶ 2 Mesidor took \$32,280 from two investors, A and B, ostensibly for foreign exchange trading (A invested \$15,000; B invested \$17,280). He used \$16,301 of the funds for that purpose, but spent \$16,000 of the funds on other things. He later returned \$1,000 to each of A and B.
- ¶ 3 We found that Mesidor perpetrated fraud, contrary to section 57 of the Act, when he used the \$16,000 for purposes other than foreign exchange trading, including cash withdrawals, purchases of groceries, restaurant meals, credit card payments, deposits to his personal bank account, and a payment to a friend for “professional consulting services”.
- ¶ 4 The executive director seeks orders:
1. prohibiting Mesidor permanently from:
 - trading in and purchasing securities,
 - acting as a director or officer of any issuer or registrant,

- acting in a management or consultative capacity in connection with activities in the securities market, and
 - engaging in investor relations activities;
2. requiring Mesidor to pay to the Commission \$14,000, being the amount obtained as a result of his contravention of section 57; and
 3. requiring Mesidor to pay to the Commission an administrative penalty of \$125,000.
- ¶ 5 Mesidor says that the sanctions sought by the executive director are “unwarranted” and that we should make no orders.

II Analysis

A Issues raised by Mesidor in his submissions

- ¶ 6 In his submissions on sanction, Mesidor says that:
- the executive director “failed to provide any factual claims to support allegations of fraud”;
 - A and B had a “plethora of experience with investments”;
 - A and B approached Mesidor about acquiring shares for investments in his company, Templeton Investments, Inc.;
 - there is no evidence that Mesidor provided Templeton financial statements to Investor B; and
 - Mesidor “acted in good faith” in investing A’s and B’s funds.
- ¶ 7 These submissions are not relevant to sanction.
- ¶ 8 It is worth mentioning that Mesidor filed no submissions in the liability portion of the hearing. At the conclusion of the June 25, 2013 hearing on liability, we directed the executive director to file submissions on liability by July 3, and Mesidor to do so by July 12. That date came and went without Mesidor’s filing any submissions. On July 15, the Secretary to the Commission sent a note to Mesidor asking him if he intended to file submissions. Mesidor did not reply. On July 18 we notified Mesidor in writing that we were extending the deadline for him to file submissions to July 25, and that after that date the panel would make its decision based on the materials then filed. Mesidor filed nothing and we issued our Findings on October 21.
- ¶ 9 Mesidor also says Investor A misappropriated money in other investment schemes and conspired with others to damage Mesidor’s reputation and to threaten him with physical harm. He offers not a shred of evidence to support these assertions and in any event they are irrelevant.
- ¶ 10 Mesidor also attributed our Findings to his lack of legal representation. This is unfounded. Mesidor had every opportunity to present his defence. He chose not to avail himself of that opportunity. The executive director tendered evidence constituting clear and convincing proof of the allegations in the notice of hearing. That evidence was the basis for our Findings.

¶ 11 The panel was also mindful that Mesidor was not represented by counsel. During the hearing, the panel chair made statements to Mesidor to assist with his understanding of the process. The following are excerpts from the transcript:

“THE CHAIR: Mr. Mesidor, before you begin, this is the part of the hearing where the panel is getting the evidence, so we're gathering [factual] information, and based on that the panel will decide whether the allegations in the notice of hearing are true, or partly true, or not true. After that determination then the panel will consider the submissions of the executive director and yourself about what sanctions or penalties are appropriate if we find that any of the allegations in the notice of hearing are true, and at that point would be the time we would hear things that are relevant to sanction, but today we're just talking about factual information that will help us to decide whether the allegations in the notice of hearing are true. Do you understand that.

A Yes, I understand that.

...

THE CHAIR: Submissions.

MR. GELLIS: I don't think it will take particularly long to prepare submissions. Today is Tuesday, I can have them done by next Wednesday. If that's agreed.

...

THE CHAIR: Mr. Mesidor, what we are talking about is the evidence is now in, and so Mr. Gellis will provide us and you with a document in which he expresses his opinion as to how the panel should interpret the evidence, and what we should draw from it, and you have an opportunity to do the same thing after you've seen what he's written. And he's putting his own in on July the 3rd, and we would give you a week or two to do that. This is all in writing, you don't have to show up here, you just do it in writing.

MR. MESIDOR: Okay.

THE CHAIR: So if we were to give you to July the 12th, how does that sound?

MR. MESIDOR: That would be fine.”

B Factors

¶ 12 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified the factors relevant to sanction at page 24 of that decision. Of those factors, the following are most relevant in this case:

- the seriousness of Mesidor’s conduct,
- the harm suffered by A and B as a result of Mesidor’s conduct,
- the extent to which Mesidor was enriched,
- mitigating and aggravating factors,
- Mesidor’s past conduct,
- the risk to investors and the capital markets posed by the Mesidor’s continued participation in the capital markets of British Columbia,

- deterrence, and
- orders made by the Commission in similar circumstances in the past.

Seriousness of the conduct

- ¶ 13 This Commission has often characterized fraud as the most serious misconduct prohibited by the Act (see, for example, *Manna Trading Corp Ltd.* 2009 BCSECCOM 595).
- ¶ 14 Fraud is so serious because, by definition, it consists of intentional deceit in combination with intentional deprivation. It violates the fundamental investor-protection objectives of the Act.
- ¶ 15 That is what happened here. Mesidor deceived A and B by telling them that their money would be used only for foreign exchange trading, but then spent \$16,000 of it on other things. The deprivation was A's and B's loss of the \$16,000 that Mesidor spent on things other than foreign exchange trading.
- ¶ 16 The executive director stated at the liability phase of the hearing that the allegation of fraud was based solely on Mesidor's use of \$16,000 of A's and B's money for things other than foreign exchange trading. In reference to the \$16,301 of A's and B's money that Mesidor used for foreign exchange trading, the executive director said, "The executive director does not allege fraud with respect to these funds. The panel can however, refer to the facts surrounding these transactions to assess the Respondent's overall credibility."
- ¶ 17 The executive director says the amount attributable to Mesidor's fraud is \$14,000, being the \$16,000 he spent on things other than foreign exchange trading, less the \$2,000 he later returned to the two of them.
- ¶ 18 We disagree. The fraud happened once both the deceit and the deprivation occurred. In this case, that was when Mesidor began spending A's and B's money for other things. That Mesidor later returned money to A and B does not vitiate the fraud. We find that the amount attributable to the fraud was \$16,000.
- ¶ 19 The executive director also says that the loss attributable to the fraud is "only part of the financial harm incurred by the investors as a result of Mesidor's misconduct". Accordingly, says the executive director, all of the money lost by A and B, (by the executive director's reckoning, \$30,280 – the \$32,280 they gave Mesidor less the \$2,000 he returned to the two of them), is the amount of the deprivation, and therefore is the relevant amount for measuring the extent of the harm to A and B and the extent of Mesidor's enrichment.
- ¶ 20 We agree that A and B lost over \$30,000 as a result of their decision to invest with Mesidor, but that is not the amount of the deprivation attributable to the fraud.
- ¶ 21 Sanctions are based on the misconduct found to have occurred. Mesidor's \$16,000 fraud was the only fraudulent misconduct alleged by the executive director. We found that Mesidor perpetrated that fraud, based solely on Mesidor's spending the \$16,000 on things

other than foreign exchange trading.

- ¶ 22 It follows that the deprivation attributable to the fraud is \$16,000. The \$16,301 in foreign exchange losses incurred by A and B are not relevant to sanction.

Harm to investors; enrichment

- ¶ 23 By definition, deprivation is an essential element of fraud. Deprivation is harm, so once fraud is found, it follows that the victims of the fraud have been harmed.

- ¶ 24 As for enrichment, the \$16,000 not invested in foreign exchange trading went to Mesidor. Mesidor says that money was spent for corporate expenses of his company, Templeton Investments Inc. This explanation is doubtful, especially in relation to the funds he deposited to his personal bank account, and the funds he used to buy groceries. In any event, we made no findings as to the nature of those expenses and, more to the point, Templeton was his company. There is no evidence that anyone other than he had any interest in Templeton. To the extent Templeton was enriched, so was he. We find Mesidor was enriched by his fraud in the amount of the \$16,000 of A's and B's funds he used for purposes other than what he promised.

Mitigating and aggravating factors

- ¶ 25 There are no mitigating factors, apart from Mesidor's return of \$2,000 to A and B, which we have recognized as described below.
- ¶ 26 We found that Mesidor prepared a false financial statement for Templeton, and delivered it to B. The executive director cites this as an aggravating factor. We agree. There is no evidence as to when B received the financial statement, whether she read it or, if she did so, the extent to which she relied on it, but Mesidor's sending it to her is an aggravating factor. It is evidence of his intention to mislead B; whether she was actually misled is not relevant.
- ¶ 27 Mesidor's failure to participate in foreign exchange trading on equal terms with A and B as he promised is an aggravating factor.

Past conduct

- ¶ 28 There is no evidence that Mesidor has any regulatory history or has engaged in past conduct that would be relevant to sanction. Mesidor was, however, previously registered to trade securities in the United States, and therefore must be taken to have some knowledge of securities regulation.

Risk to investors and markets

- ¶ 29 Mesidor's conduct was not part of a general solicitation to the public. He did not set out to raise capital *per se*. His testimony to that effect is consistent with A's evidence as to how the three of them collectively reached the decision to invest in foreign exchange trading.
- ¶ 30 However, Mesidor has shown no contrition. At the hearing, he characterized the events as "just a bad business deal all around". Although he returned \$2,000 to A and B, he lied to them about what had happened to their money, and avoided their inquiries. He said, "I

had every intention . . . to try and pay them back But . . . I kind of went quiet on them a little bit, and I did need a little space just to kind of get everything back in perspective.”

- ¶ 31 In his submissions, Mesidor says he “poses no threat in any capacity to any individual or market in British Columbia.” We disagree. In our opinion, Mesidor’s failure to take responsibility for the consequences of his misconduct shows that he poses a threat to our capital markets.

Specific and general deterrence

- ¶ 32 The sanctions we impose must be sufficiently severe to ensure that Mesidor and others will be deterred from the misconduct we found in this case.

Previous orders

- ¶ 33 The executive director cited three commission decisions (*Stiles* 2012 BCSECCOM 383; *Basi* 2011 BCSECCOM 573; and *Cho* 2013 BCSECCOM 454).
- ¶ 34 In *Stiles*, the panel imposed permanent orders and a \$35,000 administrative penalty for an attempted fraud in which there were misrepresentations but no investments were made. The attempted fraud involved internet solicitation.
- ¶ 35 In *Basi*, the panel imposed permanent orders, disgorgement of \$11,000, and a \$100,000 administrative penalty for an \$11,000 fraud where the respondent used an investor’s funds for personal purposes. The fraud involved solicitation of the investor.
- ¶ 36 In *Cho*, the panel imposed permanent orders, disgorgement of \$20,000, and a \$200,000 administrative penalty for a \$100,000 fraud. Cho solicited investors and had been previously warned by commission staff for apparent misconduct.

C Sanctions

- ¶ 37 The executive director applied for permanent orders against Mesidor, which we agree is appropriate.
- ¶ 38 The executive director applied for an order under section 161(1)(g) that Mesidor pay to the Commission the net amount of \$14,000 as the amount obtained by Mesidor as a result of his fraud. We have found that the amount of the fraud is \$16,000, so the section 161(1)(g) order we have made reflects that amount. Of the \$30,280 that A and B gave Mesidor, there is no evidence that the \$2,000 he returned to them was related to the \$16,000 attributable to the fraud. In our Findings we noted that A and B lost essentially all of the \$16,301 that Mesidor used for foreign exchange trading and, but for the \$2,000 he returned to them, they lost all of their investment. There no basis for reducing the amount of the fraud by the \$2,000 for the purposes of the section 161(1)(g) order.
- ¶ 39 In our opinion, an administrative penalty against Mesidor is appropriate having regard to all of the factors relevant to sanction. The executive director asked for an administrative penalty of \$125,000, on the basis that his conduct was more serious than Basi’s and less serious than Cho’s. As we explain below, we agree that Mesidor’s conduct was less serious than Cho’s, but we think his conduct was also somewhat less serious than Basi’s.

- ¶ 40 In our opinion, an administrative penalty somewhat lower than what the executive director seeks is appropriate.
- ¶ 41 In *Stiles*, the panel imposed an administrative penalty of \$35,000. Although the panel did not find fraud (it was not alleged, no investment having been made), it characterized his misconduct as an attempted fraud based in part on his solicitation through the internet). Here, we found fraud, and so a penalty greater than that ordered in *Stiles* is appropriate.
- ¶ 42 In *Basi* and *Cho*, the respondents solicited investors (Basi directly to a client of his mutual fund practice, and Cho through the internet).
- ¶ 43 Basi did not return any funds to the investors. After Cho's return of some funds, investors were owed \$58,000. Cho returned another \$36,000 to investors from an account the Commission had frozen. Investors were still out about \$22,000. Cho had also been previously warned by Commission staff about conduct that appeared to be contrary to the Act, once in 2002 and once in connection with conduct related to Groops Media.
- ¶ 44 Mesidor's conduct was not part of a general solicitation to the public. A's and B's investments arose from discussions among the two of them and Mesidor. It appears he formed his fraudulent intent later, when he formed the view that he was entitled to spend the \$16,000 for his own purposes.
- ¶ 45 Mesidor also repaid \$2,000 to A and B, and there was no evidence of prior regulatory misconduct.
- ¶ 46 For these reasons, we consider an appropriate administrative penalty to be in a range significantly higher than *Stiles* (where no fraud was found) and somewhat lower than *Basi*.
- ¶ 47 Mesidor says he does not have the financial ability to pay a significant administrative penalty. This is not relevant. The Commission orders administrative penalties to demonstrate the sanctions that can be expected as a result of the misconduct found.
- ¶ 48 In his submissions, Mesidor also made the astonishing statement that A and B "failed to take any responsibility for their actions". He says that if we were to make orders along the lines suggested by the executive director, the implication will be that "an individual can take any action that they see fit and if the results are not to their liking they can attempt to find a remedy in the manner that A sought through manipulative and deceitful testimony . . .".
- ¶ 49 Mesidor did not cross-examine A, and consequently has no basis now to describe her testimony as "manipulative and deceitful". His pejorative characterization of her testimony, in the absence of any evidence in support, is an aggravating factor. However, Mesidor had no legal representation, so we are indulging Mesidor to the extent that, in the absence of legal advice, he may not realize that he is ill-served by blaming his victims.

III Orders

¶ 50 Considering it to be in the public interest, we order:

1. under section 161(1)(b) of the Act, that Mesidor permanently cease trading in, and be permanently prohibited from purchasing, securities and exchange contracts;
2. under sections 161(1)(d)(i) and (ii), that Mesidor resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;
3. under section 161(1)(d)(iv), that Mesidor is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
4. under section 161(1)(d)(v), that Mesidor is permanently prohibited from engaging in investor relations activities;
5. under section 161(1)(g), that Mesidor pay to the Commission any amount obtained, or payment or loss avoided, directly or indirectly as a result of his contravention of the Act, which we find to be \$16,000; and
6. under section 162, that Mesidor pay an administrative penalty of \$75,000.

¶ 51 January 6, 2014

¶ 52 For the Commission

Brent W. Aitken
Vice Chair

Judith Downes
Commissioner

George C. Glover, Jr.
Commissioner