

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

Citation: Re Babini, 2025 BCSECCOM 546

Date: 20251218

Order under section 161(6)

Marco Giovanni Babini

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

Introduction

[1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act, RSBC 1996, c. 418* (Act).

[2] On May 29, 2025, the executive director of the Commission applied (Application) for orders imposing sanctions on Marco Giovanni Babini (Babini) under sections 161(1) and 161(6)(a) of the Act based on Babini's guilty plea to, and criminal conviction for, conspiracy to commit securities fraud and wire fraud in the United States.

[3] In particular:

- (a) On December 11, 2023, Babini pled guilty to count one of an indictment issued against him on September 10, 2015 by a Grand Jury of the United States District Court, District of Massachusetts; and
- (b) In a sentencing judgment dated March 13, 2024, signed and filed March 18, 2024, a judge of the United States District Court, District of Massachusetts imposed on Babini:
 - (i) a sentence of prison time equal to time already served,
 - (ii) eight months of supervised release, and
 - (iii) a fine of \$50,000 and a special assessment of \$100.

[4] In his Application, the executive director tendered affidavit evidence and submissions to the Commission. In particular, he relied on the following documents:

- (a) an indictment filed September 10, 2015;
- (b) a plea agreement filed December 12, 2023; and
- (c) a sentencing judgment filed March 18, 2024;

all in the United States District Court, District of Massachusetts.

[5] On June 27, 2025, Babini filed a response to the Application.

[6] On July 28, 2025, the executive director provided reply submissions. Within his reply, the executive director took issue with Babini's response and, in particular, wrote: "Although

the Executive Director acknowledges that latitude should be granted to self-represented parties, the facts alleged in the Response cannot be relied upon in the absence of sworn or affirmed evidence to support them.”

- [7] On July 29, 2025, Babini delivered an affidavit to the Commission.
- [8] On August 20, 2025, the Commission hearing office emailed the parties to provide notice that the panel intended to consider the Application on the basis of materials delivered to date, including Babini’s July 29, 2025 affidavit. The email also set out a direction from the Vice Chair of the Commission that the executive director could respond to Babini’s affidavit but had to advise the hearing office of an intention to do so, in which case Babini would be given a right of reply.
- [9] On August 21, 2025, counsel for the executive director emailed the hearing office and Babini to advise that the executive director would not reply to Babini’s affidavit.

The executive director’s position

[10] The executive director submitted that within the plea agreement, Babini admitted the following facts:

- (a) Between approximately June 2012 and March 2013 (the Relevant Period), Babini participated in a securities fraud scheme with others to sell stock that was under concealed control. Babini planned to sell the stock during a promotional campaign. Babini planned to fund the promotional campaign by executing pre-arranged trades with individuals he believed to be corrupt stockbrokers. Babini believed the corrupt brokers were willing to purchase and hold shares in exchange for kickbacks.
- (b) During the Relevant Period, Babini was a resident of Vancouver, British Columbia.
- (c) At the start of the Relevant Period, Endeavor Power Corporation (Endeavor) was a publicly-traded Nevada company with little or no operations, and Parallax Diagnostics Inc. (Parallax) was a private bio-medical company based in Massachusetts and controlled by Edward Withrow (Withrow).
- (d) Babini sold control of Endeavor to Withrow. Withrow then merged Endeavor with Parallax in or about November 2012.
- (e) After the merger, Babini held trading authority over 5% of Endeavor’s outstanding free-trading shares in concealed control accounts held in Switzerland. Babini controlled the Swiss accounts under the names of nominee entities to circumvent U.S. federal securities laws.
- (f) No reports were filed with the U.S. Securities & Exchange Commission disclosing the common ownership of the shares in the nominee accounts, as required under U.S. federal securities law.

- (g) In or about December 2012, Babini agreed to execute pre-arranged trades with an individual who, unbeknownst to him, was an undercover FBI agent (Agent). Babini believed the Agent represented a network of corrupt brokers. Babini agreed to sell Endeavor shares to the Agent's brokers in the public market. The corrupt brokers would use their client's funds to buy the Endeavor shares from Babini.
- (h) Babini entered into pre-arranged trades to generate money for a promotional campaign that would generate investor demand for Endeavor shares. Babini planned to sell the shares Babini controlled in Switzerland into the rising investor demand. Babini agreed to pay a 20% kickback to the Agent and his corrupt brokers. In exchange, the corrupt brokers would not sell the shares that they purchased from Babini so that he could sell the shares he held under concealed control in Switzerland into the rising investor demand once the promotional campaign started.
- (i) Babini, the Agent, and a co-conspirator agreed to execute a pre-arranged trade valued at \$20,000 as a test trade. It was further agreed that if the test trade was successful, the Agent would be paid the kickback and more trades would be arranged with the goal of raising at least \$200,000 to pay for the promotional campaign.
- (j) On or about December 10, 2012, Babini and the Agent attempted to execute a pre-arranged test trade of Endeavor shares valued at \$20,000.

[11] In setting out his position on the relevant factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the executive director submitted that fraud is the most serious misconduct prohibited by the Act and that attempted frauds have the same potential to seriously impair the integrity and reputation of our markets as do actual frauds, particularly if it were to appear that attempted frauds produced less serious consequences than successful ones.

[12] The executive director also stressed risk to investors and the capital markets and submitted that those who commit fraud, given the *mens rea* associated with the misconduct, represent a significant risk.

[13] The executive director also noted that participation in our securities industry is voluntary and done for profit; accordingly, and in exchange for the privilege of participating, individuals and companies must comply with securities laws. That compliance ensures the protection of the public and the integrity of the capital markets.

[14] The executive director also pointed to the importance of deterrence in helping to restore the public's confidence in our capital markets and submitted that given his dishonest conduct, Babini is ill-suited to act as a registrant, director, officer, promotor or advisor to any private or public issuer going forward.

[15] Ultimately, the executive director seeks broad and permanent prohibitions against Babini under section 161(1) of the Act, including a permanent ban on acting as a director, officer, registrant or promoter. The executive director also seeks bans on promotional

and consultative activities, and restrictions on trading and purchasing securities and derivatives.

Babini's position

- [16] Babini stressed that the misconduct in issue took place long ago and that in the time since then, he has not been fined or sanctioned by any securities regulator in any jurisdiction.
- [17] Babini submitted that the underlying attempted trade was never executed and “was canceled within minutes after irregularities were observed”.
- [18] Although he noted that his submission was not intended to re-litigate any aspect of the plea agreement nor to dispute the conviction, Babini did submit that “plea agreements often reflect negotiated facts designed to meet a legal threshold, not a full accounting of operational dynamics”.
- [19] Babini submitted that he did not receive any payment, profit or benefit from the test trade and that “there was no investor harm”.
- [20] Within a “Closing and Statement of Contrition” in his response, Babini acknowledged “the seriousness with which the Commission must view” his record and he admitted to having made errors in judgment, “...particularly in trusting individuals and participating in a structure I should have been more skeptical of”.
- [21] Babini told us that he is not asking to erase consequences but to seek a proportionate outcome. Ultimately, he asked the Commission to consider a probationary period instead of a permanent ban and he submitted that he should be permitted to provide consulting services, including to issuers.

Analysis

The purpose of orders under section 161(6)

- [22] The Commission is established under the Act to regulate the capital markets in British Columbia. Central to the Commission’s mandate under the Act is to protect the investing public from those who would take advantage of them, and to preserve investor confidence in the regulated capital markets.
- [23] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges, and the courts. As noted by the Supreme Court of Canada in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, if the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia.
- [24] The Commission makes reciprocal orders under section 161(6) of the Act when such an order will, in the public interest, protect investors and the capital markets in British Columbia.

The parties' positions and factors for our consideration

[25] We have considered the materials provided by the parties, the circumstances of Babini's misconduct, and considered Babini's individual circumstances as identified in *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

[26] We have also considered Babini's position that some form of probationary order will suffice as well as the executive director's submission in reply that this panel is not authorized to impose a probationary period under section 161(1) of the Act and that, in any case, permanent bans are the appropriate order in this case. We have also considered Babini's request that he not be prohibited from providing consulting services.

The Eron factors

[27] The panel in *Re Eron Mortgage Corporation (supra)* provided a non-exhaustive list of factors for the Commission to consider "in making orders under sections 161 and 162". Those factors are:

- 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.

Seriousness of the conduct, harm suffered by investors, and enrichment

[28] As is discussed below, we find that the conduct in question was serious. As the executive director noted, quoting *Manna Trading Corp Ltd. (Re)*, 2009 BCSECCOM 595, "nothing strikes more viciously at the integrity of our capital markets than fraud". The fact that Babini's scheme did not result in enrichment to himself or harm to investors does not lessen the seriousness of his conduct.

Mitigating factors

[29] Babini submitted that his time in custody and house arrest and voluntary surrender for extradition are mitigating factors. They are not. They are the consequences of his fraudulent acts.

Risk to investors and markets and fitness to be a registrant, director, officer, or adviser

[30] Babini's scheme was deliberate, fraudulent, and dishonest and demonstrates, as discussed below, that he is currently a risk to investors and the capital markets and should not be involved in certain aspects of the business of any issuer.

Deterrence

[31] Serious misconduct such as Babini's must attract sanctions that deter him and others from similar conduct in the future. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132, our role "is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets".

Previous orders

[32] The executive director provided two prior Commission decisions as precedent for an attempted fraud: *Stiles (Re)*, 2012 BCSECCOM 383, and *Allaby (Re)*, 2012 BCSECCOM 399. The respondents did not attend either of these hearings. Both of the decisions involved respondents who advertised investment opportunities on Craigslist with Commission investigators posing as investors. In both decisions, the panels found that the respondents made "blatant and serious misrepresentations" and ordered permanent capital market prohibitions.

[33] Babini provided the following Canadian precedents:

- *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557, for the principle that the "Commission's role is to act in the public interest, not to punish",
- *Lines v. British Columbia (Securities Commission)*, 2012 BCCA 316, for the principles that the "Commission must independently assess whether a reciprocal order is justified" and that "foreign sanctions are not automatically mirrored",
- *Re Mithras Management Ltd.* (1990), 13 OSCB 1600, for the principle that a Commission's (in this case the Ontario Securities Commission) "role is protective, not punitive" and that "sanctions must address future risk", and
- *Davis (supra)* for the principle that a tribunal "must consider proportional alternatives to permanent bans where livelihood is at risk".

[34] He also provided a number of cases from the United States that considered sanction and intent which have limited precedential value in British Columbia.

Discussion

[35] For the reasons set out below, we have decided that this is a case in which an order under section 161(6) is in the public interest. Given Babini's residence in this province at the time of the misconduct, we have jurisdiction to issue orders.

[36] We accept, as did the United States District Court, the facts set out in the plea agreement that Babini entered. These facts are very concerning to us.

[37] That said, our conception of the orders that are necessary in the public interest differs in specifics and duration from the broad and permanent prohibitions sought by the executive director.

[38] While Babini's misconduct is very serious, we do not accept that nothing short of broad and permanent bans are necessary to protect the capital markets and the confidence of the public in them. We say this for several reasons.

[39] First, there is no evidence of misconduct since 2012. That is a significant period of time. The executive director submits that this period is insufficient to justify sanctions less than permanent bans. He relies on this Commission's decision in *Re Gozdek*, 2022 BCSECCOM 10, in which the hearing panel stated:

[41] ... we recognize that the underlying conduct was almost 6 years ago and there is no evidence of other misconduct since then. Although this is not a specific mitigating factor, it is part of our overall assessment of the risk to the public and the public interest. However, Gozdek's period of good conduct since the provincial court process has not been sufficiently long to persuade us that he no longer poses any risk...

[40] We distinguish *Gozdek* both because the relevant period of time here is significantly longer than in that earlier decision and because, in any event, we are not relying on the period of time to conclude that Babini no longer poses *any* risk to the capital markets. To the contrary, we conclude that he does pose a risk. We are simply not convinced that the risk is so severe that only broad and permanent bans will address it.

[41] Second, although we agree with the executive director that Babini attempts to minimize his misconduct by pointing to the absence of investor harm, a completed transaction, or personal gain, we accept that Babini has expressed some contrition.

[42] In his affidavit, Babini expressly acknowledges his conviction. In his written response, Babini acknowledges "...the seriousness with which the Commission must view my record". While this is certainly not a full-throated acceptance of responsibility, we accept that Babini at least acknowledges his misconduct.

[43] Finally, we see some utility in narrowing the scope of certain prohibitions based on Babini's positions that:

- (a) he is not currently involved in any promotional activity or public market participation, but acts as a private consultant to early-stage companies on operational strategy; and
- (b) he seeks "sell-only" restrictions with respect to account transactions.

[44] Babini's misconduct relates to fraud and trading. With limited exemptions, bans of significant length that are targeted to that misconduct are appropriate.

[45] We prohibit Babini from involvement with issuers in trading or capital raising, including while acting as a consultant. However, we do not intend to prohibit him from providing employment or consulting services to issuers regarding operational issues. The orders below allow Babini to act in a consultative capacity, so long as that work is limited to operations.

[46] In addition, while we agree with the executive director that Babini should be able to trade in or purchase securities in registered accounts through a registered dealer for his own benefit, we also accept that the public interest does not require us to prevent him from making liquidating trades in other accounts, in accordance with the terms of our order below.

Order

[47] We find that it is in the public interest to order, pursuant to section 161 of the Act, that:

- (a) under section 161(1)(d)(i), Babini resign any position he holds as a director or officer of any issuer or registrant;
- (b) Babini is prohibited for 15 years:
 - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives a registered dealer a copy of this decision:
 - (A) he may trade in or purchase securities only through a registered dealer in RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for his own benefit; and
 - (B) he may make liquidating trades in accounts for which he is the owner or the primary shareholder of the owner;
 - (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 advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
 - (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity; and

(vii) under section 161(1)(d)(vi), from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected to benefit him.

December 18, 2025

For the Commission

Gordon Johnson
Vice Chair

Noordin Nanji, KC
Commissioner