

Reply to:

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## By Regular Mail

October 9, 2024

Dear Mr. Panyavong:

### **Johnny Panyavong Reciprocal Order Application**

I am writing this letter on behalf of the Executive Director of the British Columbia Securities Commission (the Executive Director).

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director is applying for orders against you under sections 161(6)(a) and 161(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act). The Executive Director is not seeking any financial penalty against you.

The Executive Director is making this application based on your criminal convictions for theft of \$40,000 from an individual victim and for uttering forged documents.

### **CRIMINAL CONVICTION**

1. On November 18, 2022, you entered guilty pleas to one count of theft over \$5,000 and one count of forgery, contrary the *Criminal Code*.
2. On November 22, 2022, the Honourable Judge D. Albert of the Provincial Court of British Columbia sentenced you to (a) time served in jail equivalent to 15 days, (b) probation for 18 months, and (c) restitution in the amount of \$30,000.
3. The reasons for your sentence are set out in *R. v. Panyavong*, Surrey Registry, File No. 234583-1.
4. The following facts are contained in the oral reasons for sentence:
  - (a) You developed a relationship with Mr. Xia, the victim, and misrepresented yourself as a successful business person involved in real estate development and realty transactions.

Oral Reasons for Sentence, para 3

- (b) You used forged documents to represent yourself to Mr. Xia as someone with special Immigration status or ability to impact a person's Immigration status.

Oral Reasons for Sentence, para 3

- (c) You convinced Mr. Xia to provide you \$40,000 for a purported investment he believed you would be making on his behalf.

Oral Reasons for Sentence, para 4

- (d) You used forged documents to lead Mr. Xia to believe his investment was successful, when his funds were never used towards any investments.

Oral Reasons for Sentence, para 4

- (e) You failed to return any funds to Mr. Xia despite his persistent demands to return his funds.

Oral Reasons for Sentence, para 5

- (f) Mr. Xia continued to believe that you had some influence with the Immigration Board and could potentially assist his brother immigrate to Canada.

Oral Reasons for Sentence, para 6

- (g) Mr. Xia eventually recovered \$10,000 from one of your banks. He did not recover the remaining \$30,000 from his initial investment and reported your fraudulent activity to the Commission.

Oral Reasons for Sentence, paras 6-7

- (h) The investigation conducted by the Commission verified that all the representations you had made to Mr. Xia with regards to your real estate business experience and special immigration status were fraudulent.

Oral Reasons for Sentence, para 7

**THIS APPLICATION**

- 5. With this letter, the Executive Director is applying to the Commission for orders against you under section 161 of the Act. I have enclosed a copy of section 161 of the Act for your reference.
- 6. In making orders under section 161 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities.
- 7. Orders under section 161(1) of the Act are protective, preventative and intended to be exercised to prevent future harm.

[Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39, and 56

- 8. In *Re Eron Mortgage Corporation*, and in subsequent decisions, the Commission identified the factors to consider when determining orders under section 161(1).
- 9. The following factors from *Re Eron* are relevant in this application:
  - (a) the seriousness of your conduct,
  - (b) the harm suffered by investors as a result of your conduct,
  - (c) the damage done to the integrity of the capital markets in British Columbia by your conduct,

- (d) the extent to which you were enriched,
- (e) factors that mitigate your conduct,
- (f) the risk to investors and the capital markets posed by your continued participation in the capital markets of British Columbia,
- (g) your fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- (h) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- (i) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (j) orders made by the Commission in similar circumstances in the past.

[Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22

**Application of the Factors**  
***Seriousness of the Conduct***

- 10. You were convicted of one count of theft and one count of forgery, contrary to the *Criminal Code*. Your conduct resulting in this conviction was fraudulent in nature. You engaged in fraudulent activities to obtain and misappropriate funds from Mr. Xia.
- 11. Fraud is one of the most serious types of misconduct prohibited by the Act.

[Manna Trading Corp. Ltd. et al.](#), 2009 BCSECCOM 595, para. 18

- 12. You devised and entered into an extremely elaborate and sophisticated scheme, involving the use of falsified banking and immigration documents to support your misrepresentations.

Oral Reasons for Sentencing, paras 2-4

- 13. Your conduct was prolonged over a long period of time, and Mr. Xia spent “an enormous amount of time” in an effort to recover a portion of his funds from you.

Oral Reasons for Sentencing, para 6

***Harm suffered by investors***

- 14. Mr. Xia suffered a financial loss of \$30,000 as a result of your conduct.

***Damage done to the integrity of the B.C. capital market***

- 15. British Columbia has a reputation as a safe place to invest and conduct business. Fraud negatively impacts investor perceptions of our markets and causes immeasurable harm by deterring investors from participating in our markets.

[Re White](#), 2024 BCSECCOM 137, paras. 28-29

- 16. Your conduct damaged the integrity of our markets.

***Enrichment***

- 17. You were directly enriched by the funds provided to you by Mr. Xia for the purported investment.

***Mitigating factors***

18. There are mitigating factors, including your admission of guilt by entering a guilty plea and your expression of remorse to the court.

Oral Reasons for Sentencing, para 9

***Risk to investors and capital markets in British Columbia***

19. Fraud violates the fundamental investor-protection objectives of the Act. Investors must be confident that the markets are properly regulated.

[\*Mesidor \(Re\)\*](#), 2014 BCSECCOM 6 (CanLII), paras. 13 and 14

20. Those who commit fraud of any kind represent a very serious risk to our capital markets.

[\*Re Braun\*](#), 2019 BCSECCOM 65, para. 21

21. Although you currently reside in Ontario, both you and Mr. Xia were residing in BC at the time of your conduct, which took place in BC.

22. Your conduct shows a complete disregard for the Act's mandate of investor protection. Your participation in our markets, given the fraudulent conduct for which you were convicted, would present a significant ongoing risk to investors and our capital markets.

***Fitness to be a registrant, director, officer or advisor***

23. Honesty is a critical part of being a registrant or a director or an officer of an issuer. In fact, it is part of the basic duties of those positions.

[\*Re SBC Financial Group Inc.\*](#), 2018 BCSECCOM 267, para 34

24. Your conduct demonstrates that you are not fit to participate in our capital markets. You pose an ongoing risk to our markets and are ill-suited to act as a registrant, director, officer, promoter or advisor to any private or public issuers.

***Deterrence***

25. The market as a whole must understand that a finding of fraud will result in a significant penalty.

[\*Re Thow\*](#), 2007 BCSECCOM 758, para 74

26. Your misconduct warrants significant sanctions for purposes of both specific and general deterrence.

27. Through the orders we are seeking, we intend to demonstrate the consequences of fraudulent conduct you committed, and deter you and others from engaging in similar misconduct in the future. Lifetime market bans are proportionate to your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

***Previous orders***

28. Your conduct is analogous to that of fraud under section 57 of the Act. We therefore looked to previous Commission decisions that imposed sanctions for fraudulent conduct for guidance on the appropriate sanction for your conduct.

29. The Commission has imposed permanent market bans in many different fraud related decisions involving similar conduct, including the following:
- (a) [Re Davis](#), 2018 BCSECCOM 284
    - (i) The Commission found that the respondent perpetrated fraud contrary to section 57(b) of the Act on one investor in the aggregate amount of \$7,000. The respondent misrepresented to the investor that he owned the shares that he was transferring to her. In actuality, he did not own the shares and he spent the investor's funds on personal expenditures. The respondent continued his deceit when he told the investor her investment was sound and intact.
  - (b) [Re Figueiredo](#), 2016 BCSECCOM 233
    - (i) The Commission found that the respondents perpetrated fraud contrary to section 57(b) of the Act in the amount of \$81,000. The respondents received funds from investors to use for their purported real estate business but instead used the funds for unrelated expenses. The respondents provided an investor with a forged trust statement.
  - (c) [Re Schouw](#), 2017 BCSECCOM 168
    - (i) The respondent perpetrated fraud against one investor in the amount of \$74,612. Schouw misappropriated a portion of funds provided by an investor and used those funds for personal use. The panel imposed permanent market prohibitions.

***The Davis Consideration***

30. In the Court of Appeal decision in [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149, the Court identified that it is incumbent upon a tribunal to consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public where a person's livelihood is at stake.
31. Some of your personal circumstances are outlined in the oral reasons for sentencing. You are a Canadian citizen with Laotian heritage. You were born in Quebec and raised near Abbotsford, British Columbia. You graduated from Grade 12 and obtained a real estate licence and worked for a bank as a teller and a credit advisor. While working at the bank you were assaulted during a robbery. That had a significant impact on you and caused you to leave the bank. You then worked in real estate, but only for a year. The Court accepted a representation from your lawyer, without documentation, that you suffered from mental health issues, depression and post-traumatic stress disorder and that you were abusing alcohol in and around the time of this conduct, but that you are now living with family in an alcohol free home.

Oral Reasons for Sentence, para 14-17

32. Considering that you do not rely on any activities in the capital markets as a regular or significant source of income, permanent prohibitions will not deprive you of your livelihood.

**ORDERS SOUGHT**

33. Your criminal sentence imposed by the Court did not restrict your access to the capital markets.
34. The Commission can impose sanctions that are similar to or different from the sanctions imposed by a court, but the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.

35. In seeking orders under 161(1) of the Act, the Executive Director has taken the following factors into consideration when applying for orders in this proceeding:
- (a) the circumstances of your misconduct;
  - (b) the factors from *Eron* and *Davis*;
  - (c) the sanctions ordered in previous cases cited above; and
  - (d) the public interest.
36. Based on all of these factors, the Executive Director seeks the following orders pursuant to section 161(1) of the Act:
- (a) under section 161(1)(d)(i), you resign any position you hold as a director or officer of an issuer or registrant;
  - (b) you are permanently prohibited:
    - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;
    - (ii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
    - (iii) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
    - (iv) 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;
    - (v) 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;
    - (vi) under section 161(1)(d)(vi), from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit you;
    - (vii) under section 161(1)(d)(vii), from voting a security or exercising a right attaching to a security or a derivative; and
    - (viii) under section 161(1)(d)(viii), from engaging in any activity in relation to the administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark.
37. The Executive Director is not seeking any monetary sanctions against you.

#### **SUPPORTING MATERIALS**

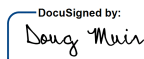
38. In making this application, the Executive Director relies on the following, copies of which are enclosed:
- (a) Guilty Plea dated November 18, 2022;

- (b) Oral Reasons for Sentence dated November 22, 2022;
- (c) [\*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)\*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII);
- (d) [\*Re Eron Mortgage Corporation\*](#), [2000] 7 BCSC Weekly Summary 22;
- (e) [\*Manna Trading Corp. Ltd. et al.\*](#), 2009 BCSECCOM 595;
- (f) [\*Re White\*](#), 2024 BCSECCOM 137
- (g) [\*Mesidor \(Re\)\*](#), 2014 BCSECCOM 6 (CanLII);
- (h) [\*Re Braun\*](#), 2019 BCSECCOM 65
- (i) [\*Re SBC Financial Group Inc.\*](#), 2018 BCSECCOM 267;
- (j) [\*Re Thow\*](#), 2007 BCSECCOM 758;
- (k) [\*Re Davis\*](#), 2018 BCSECCOM 284;
- (l) [\*Re Figueiredo\*](#), 2016 BCSECCOM 233;
- (m) [\*Re Schouw\*](#), 2017 BCSECCOM 168
- (n) [\*Davis v. British Columbia \(Securities Commission\)\*](#), 2018 BCCA 149.

#### YOUR RESPONSE

39. You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Secretary to the Commission by **Monday, November 18, 2024**.
40. The contact information for the Commission Hearing Office is:
- Commission Hearing Office  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
12<sup>th</sup> Floor, 701 West Georgia Street  
Vancouver, BC V7Y 1L2  
E-mail: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca)  
Telephone: 604-899-6500
41. **If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice.**
42. The Commission will send you a copy of its decision.
43. If you have any questions regarding this application, please contact Ms. Heesoo Kim, at 604-899-6878, or [hkim@bcsc.bc.ca](mailto:hkim@bcsc.bc.ca).

Yours truly,

DocuSigned by:  


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Douglas B. Muir  
Director, Enforcement

HK/crc  
Enclosures  
cc: Hearing Office (by email to [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca))