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

Citation: Re Oliver Barrett Lindsay, 2025 BCSECCOM 99 Date: 20250306

Order under section 161(6)

Oliver Barrett Lindsay

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] The executive director of the Commission applied on August 13, 2024 (Application), for orders reciprocating in British Columbia certain of the sanctions imposed on Oliver Barrett Lindsay (Lindsay) based on the findings and orders in:

- On August 1, 2019, Lindsay entered into a plea agreement (Plea Agreement), in *United States of America v. Lindsay*, Case No. 18CR3071-WQH, in violation of 18 U.S.C. section 371; and

- The transcript of the sentencing decision (Sentencing Decision) dated May 12, 2022 in *United States of America v. Guiguiere et al*, Case No 3:18-cr-3071-WQH.

[3] In his Application, the executive director tendered affidavit evidence and submissions to the Commission.

[4] We find that the executive director provided notice of the Application to Lindsay.

Background

[5] In the Plea Agreement, Lindsay plead guilty to conspiracy to commit securities fraud and manipulative trading, in violation of 18 U.S.C. section 371.

[6] On May 12, 2022, the Honourable William Q. Hayes of the United States District Court for the Southern District of California sentenced Lindsay to the following:

(a) 17 months in custody;

(b) A three-year period of supervised release;

(c) $100 mandatory special penalty assessment; and

(d) Restitution in the amount of $187,898.43 (jointly and severally with his co-defendant).

The reasons for Lindsay's sentence are set out in the Sentencing Decision.

[7] According to the Plea Agreement and the Sentencing Decision the circumstances of Lindsay's crime are as follows:

(a) From October 2017 through March 2018, Lindsay and his co-conspirator, Gannon Giguiere (Giguiere), carried out a fraudulent and manipulative trading scheme to create a false or misleading appearance of active trading in the stock of a corporation called Kelvin Medical Inc. (Kelvin Medical). The elements of the scheme were as follows:

(i) Together with other co-conspirators, Lindsay and Giguiere agreed to deposit Kelvin Medical stock in accounts at various U.S. domestic brokerage firms, including accounts that were controlled by Lindsay.

(ii) Lindsay and Giguiere would then engage in manipulative trading to create the illusion of active trading in Kelvin Medical stock.

(iii) Lindsay and Giguiere agreed to sell the Kelvin Medical stock into the open market at inflated prices during the period of manipulative trading.

(iv) Lindsay and Giguiere agreed to then create false pretenses to transfer proceeds of the sale to accounts controlled by Giguiere.

(b) In or about October 2017, Giguiere bought 1,500,000 shares of Kelvin Medical stock through an entity he controlled.

(c) In or about November 2017, Giguiere caused 1,500,000 shares of Kelvin Medical stock to be deposited in a brokerage account.

(d) Between October and December 2017, Giguiere obtained an additional 1,500,000 shares of Kelvin Medical stock and caused those shares to be deposited in a brokerage account Lindsay controlled through a nominee entity.

(e) On or about November 30, 2017, Lindsay and Giguiere engaged in a coordinated, open market transaction in Kelvin Medical stock. Giguiere caused one or more offers from a different brokerage account for 6,000 shares of Kelvin Medical stock at approximately $0.44 USD per share in the open market. Lindsay caused the purchase of those shares. This was done to manipulate the price of the Kelvin Medical stock.

[8] On many occasions throughout November and December 2017 and January 2018, Linday and Giguiere communicated by phone and messaging apps in order to execute the scheme to manipulate Kelvin Medical's stock price. Lindsay and Giguiere caused transactions in Kelvin Medical stock corresponding to these communications.

(a) In December 2017, Lindsay contacted a call room operator, and sought to have the call room invest in, or find investors who would invest in, Kelvin Medical stock.

(b) From approximately November 29, 2017, through approximately January 16, 2018, Giguiere sold, or caused to be sold, 1,500,000 shares of Kelvin

Medical stock from brokerage accounts for gross proceeds of $1,674,188.36 USD. These sales took place at prices that were artificially inflated by and through Lindsay's fraudulent and manipulative trading scheme.

(c) From approximately December 8, 2017, through March 15, 2018, Lindsay sold, or caused to be sold, approximately 263,000 shares of Kelvin Medical stock from brokerage accounts controlled by Lindsay for gross proceeds of $375,110.49 USD. These sales took place at prices that were artificially inflated by and through Lindsay's fraudulent and manipulative trading scheme.

(d) On approximately March 26, 2018, Giguiere sent an email to Lindsay attaching a $125,000 USD Promissory Note between nominal owners of one of the brokerage accounts Lindsay controlled to a corporation that Giguiere controlled. The purpose of the promissory note was to create false pretenses for the transfer of money from the brokerage accounts controlled by Giguiere.

(e) The gain attributed to Lindsay's role in the conspiracy was $1,484,598.54 USD.

(f) In Lindsay's statement to the court on sentencing, Lindsay said that he was "incredibly sorry …" and acknowledged that Lindsay committed it out of greed and arrogance.

(g) The founders of Kelvin Medical, who were in their sixties at the time of sentencing, were financially and psychologically devastated by Lindsay's crime.

(h) Lindsay is a Canadian citizen. Although he was a resident in Grand Cayman at the time of misconduct, Lindsay returned to Vancouver, Canada prior to the Sentencing Decision and intended to return to Vancouver, Canada following his term of incarceration.

(i) On July 9, 2021, the Securities and Exchange Commission filed a complaint against Lindsay alleging that Lindsay and his co-defendants engaged in insider trading, contrary to Sections 10(b) and Rule 10b-5 of the *Exchange Act*. This complaint arose from conduct that took place in December 2017.

(j) Lindsay consented to a March 27, 2023, judgment related to that complaint. Lindsay did not admit or deny any of the facts alleged in the complaint, but did agree to certain orders, including an order for disgorgement of any ill-gotten gains and a civil penalty. Lindsay also agreed to an injunction prohibiting him from committing any future violations of certain sections of *Securities Exchange Act* of 1934.

Position of the executive director

[9] The executive director is applying for orders against Lindsay under section 161(1) of the Act.

(a) The executive director is seeking that Lindsay resign any position he holds as a director or officer of an issuer or registrant under section 161(1)(d)(i) of the Act.

(b) Lindsay be permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except in accounts in his own name with a person registered to trade in securities under the Act if he has first provided the registered representative with a copy of this order before any trade takes place;

(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 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 Lindsay's own behalf in respect of circumstances that would reasonably be expected to benefit Lindsay.

[10] The executive director is not seeking any monetary sanctions against Lindsay.

Lindsay's submissions

[11] Lindsay submitted an affidavit dated December 9, 2024. In the affidavit, Lindsay swore that he was a resident of British Columbia, had personal knowledge of the facts of the affidavit, and attached exhibits B through F. Attached to the affidavit was a letter addressed to the executive director dated December 2, 2024, that advised that he did not have legal representation but had reviewed the executive director's correspondence. The letter also provided a personal history of Lindsay regarding his involvement with Kelvin Medical.

[12] On December 10, 2024, counsel for the executive director sent a reply advising:

(a) Little to no weight should be given to the letter in Lindsay's affidavit because it was not listed as an exhibit;

(b) Many of the assertions in the letter were contrary to the underlying Plea Agreement and Sentencing Decision; and

(c) The executive director did not contest the authenticity of the five documents lists as exhibits.

[13] On December 18, 2024, the parties attended a hearing management meeting where the panel chair discussed the process involved in an oral hearing and the differences between evidence and submissions. Lindsay stated that he would like to refile his evidence and proceed to an oral hearing which was set for February 12, 2025.

[14] Linday submitted a new affidavit sworn on January 27, 2025, that generally explained his perspective on the underlying criminal conviction. In it he advised:

(a) He was a father to six children that he needed to support;

(b) The Application was six years after his indictment and "is a further punishment after I have already paid a hefty price";

(c) He is a reformed person;

(d) He was going through an acrimonious divorce;

(e) He met with an entrepreneur from California who was active in the United States public markets;

(f) The entrepreneur convinced Lindsay to become involved with Kelvin Medical;

(g) He felt that he "had not committed any crimes and that I did not know anyone that was actively committing crimes"; and

(h) "Pleading guilty in this case was the most difficult decision I've ever made. I'll never know if I made the right decision."

The executive director's reply

[15] On January 31, 2025, counsel for the executive director submitted their reply. They stated that " Lindsay's submissions suggest a continuing lack of awareness about the seriousness of his misconduct and provide no evidentiary basis for this panel to divert from the orders sought by the Executive Director." In particular, the reply noted that:

(a) The "Application was not an opportunity to relitigate the Guilty Plea or the Sentencing Decision";

(b) The Sentencing Decision was issued on May 12, 2022, and the Application was made within the six year limitation period set forth in the Act;

(c) Linday's affidavit mentions his personal circumstances but does not explain "why he requires access to the capital markets in order to make a living"; and

(d) The proposed orders would not interfere with Lindsay's ability to engage in "simple banking" and include a proposed carve out that would allow Lindsay to "trade in securities in an account in his own name through a registered representative."

The oral hearing

[16] The oral hearing took place on February 12, 2025. It was supposed to begin at 10:00 am. Counsel for the executive director attended but Lindsay was not present at that time. Counsel for the executive director advised that she had received an email from Lindsay that stated that he had thought the hearing was to take place on February 18. Lindsay was advised that he could appear remotely which he accepted. The hearing commenced at 10:43 am.

[17] Counsel for the executive director made submissions first which largely followed the Application, the Plea Agreement, the Sentencing Decision, and the executive director's two replies. In particular she noted that if Lindsay was making an appearance to "express remorse and accept responsibility for his conduct, as he did in the American proceedings, the Executive Director submits that can and should be seen as a mitigating factor. But to the extent Mr. Lindsay persists in … deflecting responsibility for his misconduct, he detracts from that mitigating factor."

[18] Lindsay then made submissions. He stated:

(a) He had paid a "hefty price" after being incarcerated.

(b) His guilty plea was "to get out it with the least amount of damage".

(c) He took his "involvement in the matter seriously".

(d) "the elements of the manipulative trading or the scheme or whatever seem very light".

(e) "When it comes to these victims, I mean, $100,000 in trading losses for victims is hardly massive. This is described as a massive scam. That's hardly massive."

(f) "I never perceived any of this as being involved in something criminal, that's for certain. But I have pled guilty to my involvement in it, and I have paid the price. And I want to now move forward unencumbered. I want to be able to live my life; I want to be able to plan for my retirement."

(g) "I've had people over the last two years phone me up and ask me if I could consult for them since I obviously have a lot of knowledge about the space. And I've turned them down because once they start looking, it's not – they are not going to be able to justify it with these things hanging over me online."

(h) "I look forward to being a positive member in British Columbia. I would like to be able to incorporate my own company."

(i) If "this was really about protecting the markets, then probably five years ago would have been the appropriate time to bring this."

[19] Counsel for the executive director noted in reply that:

(a) Caselaw states that the triggering event for section 161(6) applications is the date of sanction in the other jurisdiction, not the date of the underlying conduct;

(b) The panel has discretion to make orders in the public interest that are not exactly the same as the underlying conviction;

(c) Any negative impact of Commission orders against Lindsay were a direct result of his misconduct; and

(d) If Lindsay "is suggesting that we shouldn't believe the plea agreement, then he's suggesting he perjured himself when he signed an oath as to the truth of the document".

Analysis

[20] 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.

[21] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges, and the courts. 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 (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 54).

[22] Under section 161(6)(c) and (b), the Commission may, after providing an opportunity to be heard, make an order in respect of a person if the person has been convicted in the United States of America of an offence involving securities or derivatives.

[23] The panel in *Re Pierce*, 2016 BCSECCOM 188, at paragraph 27, stated that, in an application that relied on section 161(6) (section 161(6)(c) in *Pierce*), the Commission:

> …should treat the originating body's order and findings of fact as facts when determining whether to issue an order in the public interest. To require the executive director to relitigate that order and findings of fact would be contrary to the legislative intent and would result in "inefficient parallel and duplicative proceedings".

[24] The executive director tendered affidavit evidence that Lindsay is a Canadian citizen. Lindsay was a resident of Vancouver, British Columbia, at the time of sentencing.

[25] The executive director submitted in his Application that Lindsay's guilty plea was a mitigating factor because it saves time and public resources. In the reasons for sentence, the judge noted that Lindsay had expressed remorse for his conduct and understood the impact of his crimes.

[26] We are persuaded by the executive director's submissions in response to Lindsay's evidence and submissions. In particular, we find that most of Lindsay's evidence is inconsistent with the findings in the Plea Agreement and the Sentencing Submission. Our decision here is based on the facts established in the Plea Agreement and Sentencing Decision. It is not appropriate for us to relitigate the factual findings which have been made.

[27] With respect to Lindsay's arguments to the effect that he has already paid a very significant price for his prior misconduct, we accept that there is some reality to his submissions. Lindsay did suffer a period of confinement and separation from his family, in part because of the sentence he was given and in part through a combination of factors related to COVID-19 and the cross border issues which Lindsay faced. However, our purpose here is not to assess whether Lindsay has been punished enough. Whatever orders we impose are not designed to punish Lindsay at all. We must assess the public interest in light of Lindsay's prior conduct, and particularly to assess what investor protection measures are in the public interest.

[28] We have considered Lindsay's submissions to the effect that even based on the Plea Agreement and Sentencing Decision, his conduct was not as serious as the executive director suggests. Lindsay can point to some findings which support his position. For example Lindsay correctly notes that there was a gain through the illegal conduct of over $1.6 million but the finding does not specify which defendant received how much of that gain. Lindsay asserts that he received a much smaller amount, and given the roles of the defendants that is quite plausible. However, we note that throughout the findings in that proceeding it is established that Lindsay agreed to the elements of the scheme which Lindsay then assisted in carrying out. It is not possible to read the facts established in that proceeding without also concluding that Lindsay intentionally assisted in a scheme which was abusive to public markets and designed to enrich Lindsay and his fellow conspirator at the expense of investors. This is conduct which we must address in considering the protections necessary for the citizens of British Columbia.

[29] The executive director cited *Re Lim,* 2017 BCSECCOM 196 (the liability decision), *Re Deyrmenjian,* 2019 BCSECCOM 93 (the sanctions decision), and *Re Hable,* 2017 BCSECCOM 340 (the sanctions decision), in support of his position that permanent market bans are appropriate.

[30] In *Re Lim*, 2017 BCSECCOM 319 (the sanctions decision), *Deyrmenjian* and *Hable* the respondents had been found to have participated in conduct that resulted in a market manipulation (amongst other findings). The panels in all three cases ordered permanent prohibitions against the respondents.

[31] The three cases relied by the executive director were market manipulations similar to the market manipulation that Lindsay plead guilty to. All three cases resulted in permanent market bans.

[32] We have considered the Application, the circumstances of Lindsay's misconduct, and the factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

[33] Lindsay noted that he has six children that he has to support and that market "restrictions lead to a great deal of difficulties". He did not provide any examples or evidence of what difficulties those may be or why he requires to be in the capital markets. Therefore, we can find no evidence of individual or other circumstances that would support orders short of a permanent market ban.

[34] Lindsay's misconduct was extremely serious. His misconduct demonstrates that he is a risk to the capital markets. We find that he is unfit to participate in the British Columbia capital markets and that permanent prohibitions are warranted.

[35] Despite Lindsay's misconduct, his securities history indicates that trading in his own accounts for his sole benefit does not pose a risk to the public and the capital markets so long as he provides a registered representative with a copy of this order. Likewise, we do not consider Lindsay's desire to incorporate his own company poses a risk to the public if he is the sole shareholder.

Order

[36] We find that it is in the public interest to order that:

(a) under section 161(1)(d)(i), Lindsay resign any position he holds as a director or officer of an issuer or registrant, except Lindsay may incorporate a company in British Columbia in his name only and he may act as a director or officer of a company of which he is the sole shareholder;

(b) Lindsay is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives the registered dealer a copy of this decision, he may trade in or purchase securities and derivatives only through a registered dealer in:

his own RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for his own benefit;

(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 Lindsay's own behalf in respect of circumstances that would reasonably be expected to benefit Lindsay.

March 6, 2025

For the Commission

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner