

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

Citation: Re Zhang, 2024 BCSECCOM 509

Date: 20241211

Meiyun Zhang

Panel	Gordon Johnson Audrey T. Ho James Kershaw	Vice Chair Commissioner Commissioner
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Submissions completed October 16, 2024

Decision date December 11, 2024

Counsel
Deborah W. Flood For the Executive Director

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 (Act). The findings of this panel on liability made on September 10, 2024, reported at 2024 BCSECCOM 394, are part of this decision.
- [2] We found that:
- a) during the Relevant Period, Zhang raised \$3,152,110 from the Investors through a fraudulent scheme; and
 - b) all elements of a breach of section 57(b) of the Act were proven.
- [3] The executive director made written submissions on the appropriate sanctions in this case. Zhang was sent copies of the materials filed by the executive director, including copies of submissions which had been translated into Zhang's first language. However, Zhang did not deliver submissions or otherwise participate in this proceeding.
- [4] This is our decision with respect to sanctions.

II. Position of the parties

- [5] The executive director submitted it is in the public interest that we impose the following sanctions:
- a) An administrative penalty of \$3 million;
 - b) An order under section 161(1)(g) of the Act that Zhang pay to the Commission \$791,642, being the amount that Zhang obtained because of her contravention of Section 57(b) of the Act; and

- c) an order that Zhang resign from any positions that Zhang holds as a director or officer of an issuer or registrant and permanently prohibiting Zhang from various activities in relation to capital markets.

III. Analysis

A. Factors

- [6] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.
- [7] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of the 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.

B. Application of the factors

Seriousness of the conduct, integrity of the capital markets

- [8] The Commission has repeatedly found that fraud is the most serious form of misconduct: *Re Durkin*, 2023 BCSECCOM 180, para 12. As was noted in *Re Manna Trading Corp Ltd.*, 2009 BCSECCOM 595 at para. 18, "nothing strikes more viciously at the integrity of our capital markets than fraud".
- [9] Although fraudulent conduct is always serious, some frauds are worse than others. For example, large scale frauds which cause losses to dozens of investors or more can have an exceptionally significant impact on investor confidence in capital markets. The fraud committed by Zhang was focused on a relatively small number of investors. However, there are several factors which place Zhang's conduct at the serious end of the scale relative to many other frauds.

[10] The executive director's submissions emphasized many of the factors demonstrating the seriousness of Zhang's conduct, and we find the following submissions from the executive director to be accurate and persuasive:

- a) Zhang demonstrated persistence both with the sheer volume of communications to investors soliciting more funds and her decisions to, at times, pay back investors, presumably to maintain the trust of investors;
- b) Zhang tailored and varied her representations to investors. Zhang played on one investor's sympathy for Chinese students in Canada. Zhang mentioned JL's own child and told JL she would gain merit for investing;
- c) Zhang targeted vulnerable investors with little to no experience in investing, who did not speak English or who spoke English as a second language;
- d) Zhang became friends with the Investors to encourage them to invest and to keep investing. They invested because of their friendship with Zhang and they trusted her;
- e) Zhang encouraged one investor to take out money for the investment from their credit cards and encouraged another investor to take out a high-interest rate loan using her property as collateral;
- f) Zhang gave regular gifts and bonuses to JL to encourage her to reinvest. Zhang lied to JL by telling her these gifts and bonuses were tokens of appreciation from the students and their families that her investment was helping;
- g) When a bank teller warned JL about transferring funds to an account on Zhang's instruction, Zhang told the investor not to return to the bank and switch to another bank;
- h) Zhang refused to allow JL to stop investing even after JL told her she wanted to stop; and
- i) When LD stopped investing, Zhang threatened LD that she would not get any of her previous investments back unless she continued to invest.

[11] Zhang's conduct took place over a long time. Her conduct was deliberate. We concluded in our liability findings that Zhang was predatory towards the Investors. Zhang befriended those Investors, recruited them to her scheme and then misled them about what she was doing with the funds the Investors entrusted to her.

Harm to investors

[12] We found that DL invested \$1,745,414 with Zhang and received \$757,735 in repayments, leaving DL out of pocket \$987,679. We found that TW invested \$227,700 with Zhang and received \$96,550 in repayments, leaving DL out of pocket \$131,150. We found that JL invested \$1,178,996 with Zhang and received \$601,962 in repayments, leaving JL out of pocket \$577,034.

[13] The Investors provided evidence that their financial losses were just the beginning of the harm they suffered. More than one Investor reported depression or anxiety and suicidal thoughts. The investors reported convincingly that they variously experienced deferred retirements, severe and ongoing changes in health and secondary financial impacts such as the need to sell

properties or cover interest expenses. We accept their evidence that they have suffered significantly.

Enrichment of the respondents

- [14] As we have noted, Zhang's breaches of the Act were largely calculated to enrich herself. Some of the funds which the Investors paid at the direction of Zhang were paid to other individuals to whom Zhang owed money, thereby benefiting Zhang. Some of the funds which the investors paid at the direction of Zhang were paid into an account of Zhang's husband. Some of the funds which the Investors paid at the direction of Zhang were paid directly to Zhang. Some of the funds which the Investors paid at the direction of Zhang were forwarded to offshore accounts and were not traceable. In addition to the untraceable funds there are other complications regarding how the funds were directed which are discussed in greater detail below in our discussion of the application of Section 161(1)(g) of the Act.

Aggravating or mitigating factors, past misconduct

- [15] The executive director does not assert that there are any aggravating or mitigating factors.
- [16] Zhang has no history of prior securities related misconduct.

Risk to our capital markets, fitness to be a registrant or director or officer of an issuer

- [17] We agree with the following submissions made by the executive director regarding some of the factors which demonstrate that Zhang is not fit to participate in the capital markets:
- a) Zhang's conduct amounted to a wholesale and widespread deceit to investors. Zhang never operated a legitimate business in connection with the fraudulent representations. Instead, she used investors' funds for other purposes, including to gamble and pay utility bills;
 - b) Zhang's high-pressure tactics and predatory conduct demonstrate a character lacking in integrity; and
 - c) Zhang showed a complete disregard for compliance with applicable laws and for markets that are honest and fair.

- [18] We conclude that there is a high risk that Zhang will be involved in similar misconduct in the future. We conclude that imposing temporary prohibitions against Zhang would not be appropriate. Permanent prohibitions are justified by the circumstances summarized in this decision.

Specific and general deterrence

- [19] The panel in *Re Smith*, 2021 BCSECCOM 486, para. 22, described specific and general deterrence as follows:

Specific deterrence and general deterrence are related but not identical concepts. Specific deterrence discourages this respondent from participating in future misconduct. General deterrence discourages others from participating in misconduct similar to that in the subject case. Both goals are legitimate in the crafting of a sanction which properly balances all of the factors which are relevant in any particular case.

- [20] Predatory, calculated fraudulent conduct of the type which we found Zhang committed here cannot be tolerated. The circumstances justify a sanction which creates a strong signal of general deterrence.

[21] In considering specific deterrence, it is necessary to consider Zhang's personal circumstances, to the extent those are known. Zhang did not participate in this proceeding beyond the early, procedural stages. There is much we do not know about Zhang's personal situation or her finances. We do know that Zhang has suffered from significant health issues which were well documented in evidence before us, and which were collectively the reason that this proceeding was conducted in an unusual manner designed to accommodate Zhang's condition. Despite uncertainties about Zhang's current condition, we conclude we should consider Zhang's health issues to some degree in crafting the sanction which we set out below. At the same time, given the seriousness of Zhang's fraudulent conduct and the other factors which we have mentioned, we consider it appropriate to prioritize general deterrence and the need to protect the public over personal health issues which might severely limit any ability of Zhang to pay a substantial administrative penalty. Considering these factors together, and alongside all of the other relevant issues, we have reduced what we would otherwise have ordered to recognize what we know about Zhang's condition.

Prior orders in similar cases

[22] The executive director has presented us with the following precedents in a chart which compares them to the sanction which the executive director recommends for Zhang:

Case Name	Quantum of Fraud	Administrative penalty	Disgorgement
<i>Re Zhang</i>	\$3,152,110	Proposed: \$3 million	Proposed: \$791,642 (quantum less amount returned to investors and amount untraceable)
<i>Re Bezzaz Holdings</i> , 2020 BCSECCOM 263	\$5,020,781 (85 investors)	\$4.5 million	\$1,619,463 (quantum less amount returned to investors)
<i>Re Oei</i> , 2018 BCSECCOM 231	\$5 million (less than 60 investors)	\$4.5 million	\$3 million (quantum less amount returned to investors)
<i>Re Bai</i> , 2018 BCSECCOM 156	\$1,401,000 (9 investors)	\$1 million	\$1,291,000 (quantum less amount returned to investors)
<i>Re Williams</i> , 2016 BCSECCOM 283	\$12 million (110 investors)	\$15 million	\$6.8 million (quantum less amount returned to investors)

[23] The executive director submits that:

All four respondents in the above cases received permanent market prohibitions for their fraud. Zhang's case is most similar in financial losses to *Re Bezzaz*. However, the number of investors in *Re Bezzaz* far exceeds the investors in Zhang. Despite that, the Investors' financial losses in Zhang far exceed the losses suffered by the individual investors in *Re Bezzaz*, making it much harder for the Investors in Zhang to ever recover from the fraud. Unlike Zhang, none of the frauds were fraudulent schemes from the outset, making this a more serious fraud.

[24] We agree with the executive director that this case falls below the level of *Bezzaz* and *Oei*, which involved larger losses to a larger number of investors. We also agree with the executive

director that because Zhang's predatory intention was present from the outset this case is more serious and justifies an administrative penalty at a level higher than the level imposed in *Bai*.

IV. Appropriate sanctions

Administrative penalties

[25] Section 162 of the Act provides the following:

- (1) If the commission, after a hearing,
 - (a) determines that a person has contravened,
 - (i) ...a provision of this Act...and
 - (b) considers it to be in the public interest to make the order,

the commission may order the person to pay the commission an administrative penalty of not more than \$1 million for each contravention.

[26] Zhang's violation of section 57(b) of the Act was not a single contravention. It was a series of repeated contraventions against the three Investors.

[27] Our view is that the executive director's recommended administrative penalty of \$3 million is on the high side relative to the precedents presented to us. In addition, the recommended administrative penalty gives insufficient allowance for Zhang's personal circumstances. We conclude that \$2,500,000 is the appropriate amount of Zhang's administrative penalty. That amount recognizes all the factors we have considered, including the serious and predatory nature of the conduct, the harm to investors, the case precedents and the individual circumstances of Zhang.

Market prohibitions

[28] Given our conclusions above regarding the continuing risk which Zhang poses to capital markets in British Columbia we conclude that it is in the public interest to impose market prohibitions which are permanent, and which have the scope requested by the executive director.

Section 161(1)(g) orders

[29] Section 161(1)(g) states that the Commission, after a hearing, may order:

[...] if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.

[30] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207 at para. 144, adopted a two-step approach from *Re SPYru Inc.*, 2015 BCSECCOM 452 at paragraphs 131 and 132, when considering section 161(1)(g) orders:

[131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).

[132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[31] The Court of Appeal in *Poonian* further adopted several principles to apply in interpreting section 161(1)(g):

- a) The purpose of s. 161(1)(g) is to deter persons from contravening the Act by removing the incentive to contravene, i.e., by ensuring the person does not retain the “benefit” of their wrongdoing;
- b) The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the Act, such as the claims process set up under Part 3 of the Securities Regulation or the s. 157 compliance proceedings in the Act;
- c) There is no “profit” notion, and the “amount obtained” does not require the Commission to allow for deductions of expenses, costs, or amounts other persons paid to the Commission. It does, however, permit deductions for amounts returned to the victim(s);
- d) The “amount obtained” must be obtained by that respondent, directly or indirectly, as a result of the failure to comply with or contravention of the Act. This generally prohibits the making of a joint and several order because such an order would require someone to pay an amount that person did not obtain as a result of that person’s contravention;
- e) However, a joint and several order may be made where the parties being held jointly and severally liable are under the direction and control of the contravener such that, in fact, the contravener obtained those amounts indirectly. Non-exhaustive examples include use of a corporate alter ego, use of other persons’ accounts, or use of other persons as nominee recipients.

[32] Finally, the Court of Appeal in *Poonian* held that the executive director need only provide evidence of the “approximate” amount obtained, directly or indirectly, by a respondent, following which the burden of proof switches to the respondent to disprove the reasonableness of the amount.

[33] In this case it is very clear that some of the funds paid by the Investors at Zhang’s direction were obtained by Zhang, directly or indirectly. It is also very clear that the second step of the test is a simple exercise given the findings we have already made about the predatory and fraudulent nature of Zhang’s conduct in breach of the Act, the severe harm caused to the Investors and the absence of any mitigating factors. It is in the public interest to make an order under section 161(1)(g), in the amount which is established based on the first step of the *Poonian* approach, excluding the funds which Zhang repaid to investors.

[34] The executive director submits that all of the Investors’ funds which were traceable (\$2,253,300) were obtained by Zhang, directly or indirectly, and that after deduction for the \$1,456,247 repayments to Investors, an amount of \$797,053 is available for disgorgement. However, the executive director seeks an order under section 161(1)(g) in the lesser amount of \$791,642.

[35] Our analysis begins with our conclusion that all of the funds which were traceable were obtained by Zhang, directly or indirectly. The largest of those amounts that were traceable was the amount of \$1,146,130 which was paid to Zhang’s husband. We conclude that such funds were

“obtained” by Zhang, at the expense of the Investors, by evaluating how such funds were used. Without being fully exhaustive, we note that:

- a) \$95,200 was paid into the accounts of Zhang;
- b) \$352,513 was taken in cash;
- c) \$74,643 was spent at a casino;
- d) \$31,880 was sent to an alternative remittance service provider that Zhang used to transfer money (including Investors’ funds) outside of traditional banking channels;
- e) \$2,400 was paid to an investor (unrelated to the Investors) who was investing through Zhang; and
- f) Perhaps most importantly, \$589,988 of the funds placed into the account of Zhang’s husband were used by Zhang to make some of the repayments to Investors which we have previously described. We found that those payments were calculated to create trust by the Investors towards Zhang. Those payments were therefore a part of Zhang’s fraudulent scheme.

- [36] The evidence is clear that Zhang used her husband’s accounts to deposit and withdraw funds for her own purposes. Regarding payment at a casino, there is also evidence that Zhang and her husband were high rollers and frequent attendees at casinos. We conclude from all the evidence that Zhang was able to use the funds paid into her husband’s accounts according to Zhang’s preferences and to her benefit, and that Zhang obtained the funds which she directed into such accounts.
- [37] The net amount (after repayments) paid by the Investors at Zhang’s direction into the accounts of Zhang’s husband was \$556,142. That amount satisfies the first step of the Poonian test.
- [38] In addition, the evidence shows that \$235,500 of the funds which the Investors paid at the direction of Zhang went to other investors who had a relationship with Zhang. The payments discharged obligations which Zhang owed to such investors, and as a result that \$235,500 was “obtained” by Zhang.
- [39] The \$235,500 amount and the \$556,142 amount obtained by Zhang together total \$791,642, which is the amount the executive director submits should be ordered paid by Zhang pursuant to section 161(1)(g) of the Act. We agree.

V. Orders

- [40] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

Meiyun Zhang

1. under section 161(1)(d)(i) of the Act, Zhang resign any position she holds as a director or officer of any issuer or registrant;

2. Zhang is permanently prohibited:

- a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, a specific security or derivative or a specified class of securities or class of derivatives, except that she may trade and purchase securities or derivatives for her own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, if she gives the registered dealer or registrant a copy of this Decision;
- b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision;
- c) under section 161(1)(d)(ii) of the Act, from becoming or acting as a director or officer of any issuer or registrant;
- d) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter;
- e) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
- f) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity;
- g) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on her own behalf in respect of circumstances that would reasonably be expected to benefit her; and

3. Zhang pay to the Commission:

- a) \$791,642 under section 161(1)(g) of the Act; and
- b) an administrative penalty of \$2,500,000 under section 162 of the Act.

December 11, 2024

For the Commission

Gordon Johnson
Vice Chair

Audrey T. Ho
Commissioner

James Kershaw
Commissioner