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

Citation: Re Bezzaz Holdings, 2019 BCSECCOM 415 Date: 20191121

Bezzaz Holdings Group Ltd. dba BGI Canada and BGI Investment, Nexus Global Trading Ltd. dba Nexus Distribution Group, Todd Norman John Bezzasso, Wei Kai Liao, also known as Kevin Liao, and Fiorino Corsi

Panel	Nigel P. Cave	Vice Chair
	George C. Glover, Jr.	Commissioner
	Audrey T. Ho	Commissioner
Hearing Dates	May 27-31, June 3, 4, 6, 10-12, 2019	
Submissions Completed	October 15, 2019	
Date of Findings	November 21, 2019	
Appearing		
Mila Pivnenko Deborah Flood Isaac Filate	For the Executive Director	
Lisa Ridgedale Scott Marescaux Ravneet Arora	For Wei Kai Liao (aka Kevin Liao)	
Joven Narwal Angela Boldt	For Fiorino Corsi	

Reasons for Decision and Findings

I. Introduction

[1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

[2] On August 1, 2018, the executive director issued a notice of hearing against the respondents (2018 BCSECCOM 219).

[3] On March 22, 2019, the executive director amended the original notice of hearing (2019 BCSECCOM 102), such that the executive director alleged that:

a) between February 2015 and March 2016, Todd Norman John Bezzasso (Bezzasso) raised approximately $5 million from 85 investors through a fraudulent scheme operated through his companies Bezzaz Holdings Group Ltd. (Holdings) and Nexus Global Trading Ltd. (Nexus);

b) each time that the 85 investors invested funds or reinvested funds in the scheme, Bezzasso, Holdings and Nexus contravened section 57(b) of the Act;

c) as the sole director and officer of Holdings and Nexus, Bezzasso authorized, permitted or acquiesced in Holdings' and Nexus' contraventions of section 57(b) of the Act and therefore, also contravened section 57(b) of the Act pursuant to section 168.2 of the Act;

d) Fiorino Corsi acted as a finder for Holdings and Nexus and on November 26, 2015 raised $15,000 for Nexus, from one investor, at a time when Corsi knew that Holdings and Nexus were having problems paying investors. Corsi did not disclose this to the investor. In this manner, Corsi contravened section 57(b) of the Act;

e) Wei Kai Liao (Liao) acted as a dealer and an advisor and referred to Holdings 27 investors who invested a total of approximately $1.6 million in Holdings. In so doing, Liao was in the business of trading and advising without being registered to do so, in contravention of sections 34(a) and 34(b) of the Act; and

f) between September 24, 2015 and December 2, 2015, Liao raised $382,000 for Holdings, from investors making 14[1] investments, at a time when Liao knew that Holdings was having problems paying investors. Liao did not disclose this to these investors. In this manner, Liao contravened section 57(b) of the Act.

[4] On May 9, 2019, Liao applied for an adjournment of the hearing that was to commence on May 27, 2019. The executive director opposed that application. The remaining respondents took no position on that application. That application was heard in writing. On May 17, 2019, we dismissed that application with reasons to follow. Our reasons for that decision are set out below.

[5] At the commencement of the hearing on May 27, 2019, counsel (for the limited purpose of an adjournment application) for Bezzasso appeared and applied for an adjournment (the Bezzasso Adjournment Application) of the hearing. The executive director opposed that application. Corsi opposed that application. While indicating that he was ready to proceed with the hearing, Liao made oral submissions in support of the Bezzasso Adjournment Application. On May 27, 2019, at the completion of the submissions on the Bezzasso Adjournment Application, we dismissed the application with reasons to follow. Our reasons for that decision are set out below.

[1] During the hearing, the executive director confirmed that this allegation actually related to 14 investors who made a total of 15 investments.

[6] Following our decision on the Bezzasso Adjournment Application, none of Bezzasso, Holdings or Nexus attended or was represented during the hearing or made any oral or written submissions on liability.

[7] The executive director called 15 witnesses (a Commission investigator, a forensic accountant employed by the Commission, an employee of Nexus, a finder and investor (TM) employed by Bezzasso and 11 other investors) and made written and oral submissions on liability.

[8] On June 6, 2019, at the completion of the executive director's case, Corsi applied to have the matter against him dismissed, arguing the executive director had not made out a case against him, in the form of a non-suit application. Each of Corsi and the executive director filed written submissions in respect of that application. On June 10, 2019, we heard oral submissions from Corsi and the executive director on that application. On June 11, 2019, we granted Corsi's application, with reasons to follow. As a consequence of that decision, all of the allegations against Corsi were dismissed. Our reasons for that decision are set out below.

[9] Liao testified and called two further witnesses (two investors whom he introduced to Bezzasso) and made written and oral submissions on liability.

[10] At the completion of the hearing of oral submissions on liability, we offered Liao the opportunity to make further written submissions by way of sur-reply. Liao filed sur-reply written submissions on October 15, 2019. We have considered those submissions in our deliberations.

[11] Our findings with respect to liability of the remaining respondents – Bezzasso, Holdings, Nexus and Liao, are set out below.

II. Liao Adjournment Application

[12] On May 9, 2019, Liao filed an application for an adjournment of the hearing set to commence on May 27, 2019.

[13] Liao submitted that he required an adjournment to ensure the fairness of the hearing, as he needed more time to review and consider the supplemental disclosure of documents that the executive director had made to him on April 26, 2019 and May 3, 2019.

[14] The history of the disclosure of documents made by the executive director to Liao in this matter was as follows:

- on September 11, 2018, the executive director delivered his initial disclosure to Liao;

- on January 4, 2019, the executive director delivered supplemental disclosure to Liao;

- on April 26, 2019, the executive director delivered supplemental disclosure to Liao – consisting of 185 documents on 1,105 pages; and

- on May 3, 2019, the executive director delivered supplemental disclosure to Liao – consisting of 13 documents on 18 pages.

[15] Liao submitted that the volume of the supplemental disclosures made by the executive director on April 26 and May 3 prejudiced his right to a fair hearing.

[16] The executive director submitted that the supplemental disclosures and the timing of delivery thereof had not been prejudicial to Liao as:

- 31 of the documents (representing 774 pages of the 1,105 pages delivered to Liao on April 26) were schedules prepared by Commission staff that were summaries of information and documents that were previously disclosed to Liao;

- 16 of the documents were cover e-mails and miscellaneous communications between investors and Commission staff;

- 48 of the documents were correspondence or documents that Liao would have already had in his possession as they involved documents provided by Liao to investors and/or communications between Liao and investors or between investors and third parties that Liao was copied on; and

- 97 of the documents were correspondence and documents between third parties and investors which would not have been in Liao's possession but those investors were not part of the executive director's allegations against Liao.

[17] The executive director submitted that there were only 31 documents which involved correspondence and/or documents involving investors which were part of the allegations against Liao and which were new to Liao.

[18] Although Liao submitted that he had insufficient time between the date of the supplemental disclosures and the commencement of the hearing to review and consider the disclosure provided by the executive director, he did not provide any evidence of any specific prejudice (e.g. any specific steps that he would take or any specific evidence that he had insufficient time to procure) that would impair the fairness of the hearing.

[19] The amount of material which represented potentially "new disclosure" to Liao was limited to 31 documents. We determined that the length of time between the disclosure of these materials to Liao and the commencement of the hearing was not insufficient or that there would be actual prejudice to Liao's right to a fair hearing by commencing the hearing on May 27, 2019.

[20] As a consequence of all of the above, we dismissed Liao's adjournment application on May 17, 2019.

III. Bezzasso Adjournment Application

[21] On May 27, 2019, counsel for Bezzasso attended the commencement of the hearing and made oral submissions in furtherance of the Bezzasso Adjournment Application. During those submissions, counsel for Bezzasso confirmed that they were on a limited retainer with respect to acting solely for Bezzasso, for the purpose of making the adjournment application only and that the application was not being made on behalf of the corporate respondents.

[22] Corsi objected to the Bezzasso Adjournment Application but did not make substantive submissions in respect of the application.

[23] Liao confirmed that he was ready to proceed with the hearing on May 27, 2019 but made submissions in support of the Bezzasso Adjournment Application.

[24] Counsel for Bezzasso submitted that an adjournment was necessary to allow Bezzasso time to retain counsel who could attend and represent him at the hearing and to allow that counsel adequate time to prepare for the hearing.

[25] Counsel for Bezzasso acknowledged that they had first been contacted by Bezzasso with respect to the Bezzasso Adjournment Application on May 24, 2019 and that they had only been retained on May 26, 2019.

[26] Counsel for Bezzasso acknowledged that Bezzasso did not have an absolute right to counsel in Commission proceedings. However, they submitted that administrative law requirements of a right to a fair hearing required the Commission to allow Bezzasso an opportunity to retain counsel. In particular, they submitted that:

- these proceedings, while not criminal in nature, attract an enhanced level of procedural fairness (in the administrative context) and that an adjournment to allow Bezzasso to retain counsel was particularly necessary because the allegations against him were that he had committed fraud (the most serious misconduct under the Act), the nature of the case was particularly complex and that the sanctions to which he was potentially exposed at the conclusion of the hearing could be significant;

- Bezzasso had not previously applied for an adjournment and that there was no evidence that he was exercising his right to obtain counsel in anything other than an honest and diligent manner;

- a short adjournment would not be prejudicial to any party and that there would be substantial benefits to the proceedings by his being represented by counsel; and

- the Commission has granted adjournments in other proceedings to allow respondents the opportunity to retain counsel.

[27] The executive director submitted that the Bezzasso Adjournment Application should be dismissed because:

- Bezzasso provided no evidence of actual prejudice to his right to a fair hearing (in fact, no affidavit of any kind was filed in connection with the application); and

- the executive director had, at all times, complied with his obligation to notify Bezzasso of the steps being taken in the proceeding and Bezzasso had chosen not to participate (prior to May 27, 2019) in these proceedings.

[28] Liao submitted that the nature of the fraud allegations against him were that he had participated or aided in Bezzasso's fraudulent scheme and that the facts in relation to the allegations against Liao would be clearer if Bezzasso were a participant in the hearing.

[29] We did not agree that Bezzasso's failure to provide evidence of actual prejudice was fatal to his application. It is axiomatic that the assistance of legal counsel in administrative proceedings is beneficial to the parties and to the proceedings themselves.

[30] However, Bezzasso's failure to provide any evidence of why he had failed to procure legal assistance at some point earlier than the day prior to the commencement of the hearing was significant.

[31] The notice of hearing in this matter was issued on August 1, 2018. A set date hearing was held on September 11, 2018. The executive director filed an affidavit confirming that he had provided Bezzasso with notice of the hearing in compliance with the Act, which included the allegations made against him, prior to the set date hearing on September 11, 2018. Although he was provided notice, Bezzasso did not attend the set date hearing nor was he represented at that hearing. A hearing management meeting was held on January 31, 2019. Similarly, Bezzasso did not attend that meeting nor was he represented at that meeting.

[32] Counsel for Bezzasso indicated that they believed that he was no longer a resident in the Province and that he may not have received notice of these proceedings. However, no evidence in support of this submission was tendered and, without any evidence, this submission was merely speculation. Even if Bezzasso was no longer a resident of the Province, that fact would not explain why he had not participated in these proceedings at any point prior to May 27, 2019.

[33] In this application, we had the executive director and one respondent who opposed the adjournment. In addition to Bezzasso, we also had Liao who supported the granting of an adjournment. Therefore, we were required to weigh the potential benefits to two of the respondents of granting an adjournment against the potential prejudice to another respondent and the executive director that would result from delaying proceedings.

[34] We dismissed the Bezzasso Adjournment Application because the balance of interests in proceeding with the hearing clearly outweighed the merits of granting the Bezzasso Adjournment Application. We reached that conclusion because:

- we had no evidence to explain why Bezzasso did not procure legal representation to attend and represent him at the hearing prior to the day before the commencement of the hearing. (Bezzasso did have counsel represent him in 2016 during the early part of the Commission's investigation into this matter);

- there was no evidence to suggest that Bezzasso would, in fact, retain counsel and attend the hearing (i.e. counsel for Bezzasso who attended were very clear that they had not been retained for this purpose);

- there was potential prejudice, through delay, to another respondent in granting the adjournment;

- the potential benefits to Liao, by having Bezzasso attend the hearing, were speculative – there was no guarantee that Bezzasso would attend the hearing or that any evidence (other than that which would already be tendered) would be entered in this proceeding as a result; and

- there is a strong public interest in proceeding with enforcement matters in a timely and efficient manner.

IV. Background

A. The Respondents

[35] During the relevant period, Bezzasso was a resident of Richmond, British Columbia. Early in the Commission's investigation of this matter, Bezzasso, through counsel, responded to the Commission's request for some information relevant to the matters in the notice of hearing. The executive director stated that Bezzasso did not undergo an interview with Commission staff or otherwise provide information to the Commission in its investigation of this matter.

[36] Holdings was incorporated as a British Columbia corporation on February 26, 2010. Bezzasso was the sole officer and director of Holdings at all times during the relevant period. Although the evidence during the hearing did not include a share registry of Holdings, the testimony of several witnesses suggested that Holdings was wholly owned by Bezzasso.

[37] Bezzasso used letterhead referencing "BGI Canada" and "BGI Investments" and made other communications which referenced one or other of these names. Bezzasso, through counsel, confirmed that both these names were used by him in reference to Holdings as trade names, although neither appears to have been legally registered as a "doing business as" name.

[38] Nexus was incorporated as a British Columbia corporation on June 28, 2011. Nexus was dissolved on December 19, 2016 for failing to file the required corporate records to keep it in good standing. Bezzasso was the sole officer and director of Nexus during its existence. Although the evidence during the hearing did not include a share registry of Nexus, all of the marketing material (discussed below) relating to the corporate respondents and the testimony of several witnesses (to their knowledge and belief) suggested that Nexus was a wholly owned subsidiary of Holdings.

[39] Corsi is a resident of Richmond, British Columbia. Corsi was an employee of Nexus during the relevant period.

[40] Liao is a resident of Richmond, British Columbia. Liao was registered as an insurance agent from April 2009 through May 2017. He has never been registered under the Act. Liao acted as a finder for Bezzasso and Holdings.

B. The businesses of Bezzasso, Holdings and Nexus

[41] Bezzasso began soliciting investors in late 2013 or early 2014.

[42] Bezzasso prepared, or had prepared at his direction, promotional materials relating to the investment opportunity that he was offering.

[43] Those promotional materials described Holdings as having various business interests including ownership of Nexus, liquor distribution, the sale of products related to liquor consumption, the sale of health supplements, a door manufacturing business and, in some versions of the promotional materials, the sale of products relating to e-cigarettes. Starting in the fall of 2015, the promotional materials added references to an investment in a restaurant franchise.

[44] Commission investigators asked Bezzasso, through his counsel, whether he had financial statements or other financial records for Holdings and/or Nexus. He confirmed that he had neither. Pursuant to a demand made of Bezzasso for financial records, an accounting firm was retained to prepare financial statements for the corporate respondents. The accounting firm was ultimately unable to complete this assignment due to a lack of financial records for the corporate respondents.

[45] Evidence in the hearing confirmed that Nexus held liquor distribution licenses issued by the government of British Columbia. Testimony from an employee of Nexus (VY) confirmed that Nexus had commissioned salespersons conducting liquor distribution business. Nexus also had at least 14 contracts to distribute certain brands of alcohol within British Columbia.

[46] VY was also involved, independently from his work with Nexus, in a door manufacturing business. VY testified that none of Bezzasso, Nexus or Holdings had any reason or right to raise money on behalf of that business nor any basis to promote that business within their promotional materials. VY testified that, at the relevant time, he was not aware that

Bezzasso was making reference to the door manufacturing business in the corporate respondents' promotional materials.

[47] With respect to all of the remaining business lines, we had no evidence whether (or in what manner) any of Bezzasso, Nexus or Holdings had any actual interest in or right to promote those products or businesses. As will be discussed in greater detail below, Commission staff conducted a review of the banking records of Nexus and Holdings and those records confirm the receipt of payments from an entity whose business included the sale of health supplements – however, there was no further evidence to suggest the basis or reason for those payments to Nexus and/or Holdings.

C. General structure of investments

[48] Bezzasso solicited investors directly but he also retained finders to solicit investors on his behalf. Two of the finders were Liao and TM. Liao and TM testified during the hearing. Both Liao and TM testified that they received commissions for finding investors and referring them to Bezzasso and the corporate respondents. Corsi also referred investors to Bezzasso but he testified that he did not receive any direct compensation for investments made through those referrals.

[49] With one exception, discussed in further detail below, the general structure of each investment made by the investors in Bezzasso's investment scheme was similar, although the precise economic terms of each investment differed somewhat.

[50] All investors loaned money to Holdings, as evidenced, in most cases, by an unsecured promissory note of Holdings or a document issued by Holdings called a promissory application. A "promissory application" appears to have had an identical legal effect to a promissory note – it also included a form of promissory note as part of the materials.

[51] In a few cases, Commission investigators were unable to locate or obtain a copy of a promissory note or promissory application for some investors. However, they were able to locate the deposit of funds by those investors to a bank account of one of the corporate respondents and corresponding monthly payments to those investors which were commensurate with the promissory note structure, as the payments mirrored similar payments to investors where a promissory note was entered into evidence. Given the substantial number of similar investment transactions in this case, we find that these transactions were also part of the Bezzasso investment scheme even though the respective promissory note or promissory application was not entered as an exhibit in the hearing.

[52] In return for their invested funds, investors were promised varying rates of return (between 5% and 30%), over varying terms to maturity. Although the evidence showed that investments were made with terms to maturity of between one and six months, the vast majority of the investments were structured as investments for six months, where, every month, the investor would receive a payment equal to their promised monthly interest and a repayment of a portion of their principal. The remaining principal (usually 50%) was to be repaid at the maturity date. Because the promised interest rates were for 5-30% over the term of the investment, the promised annualized returns on the invested

funds were substantial. Investors also generally received, at the time of their investment, post-dated cheques in the amounts of the promised monthly payments under the loan arrangement.

[53] The promissory notes and promissory applications were signed by Bezzasso on behalf of Holdings and, in one case, Nexus. Evidence from VY confirmed that, on occasion, Bezzasso asked him to prepare and/or deliver documentation relating to the investments to investors or finders (on behalf of their investors) but that, in all cases, this was at the express instruction of Bezzasso.

[54] As will be discussed below, during the period of February 2015 through March 2016 there were 85 investors who invested or reinvested funds with the corporate respondents. Fourteen of those investors testified during the hearing. Their testimony about what they were told by Bezzasso and/or the finders (on behalf of Bezzasso and Holdings) about the nature of Holdings' business and about the investment itself was generally consistent. They testified that they were given or shown a promotional brochure regarding Holdings and were told that Holdings had a portfolio of businesses/products (their memory of the specific products or businesses varied to some degree) and that their investments were to be used in those businesses and their products.

[55] All of this testimony was consistent with the descriptions of the investment opportunity set out in the Holdings' promotional brochures. The investor witnesses also testified that they understood that, in return for their invested funds, they would receive post-dated cheques for their promised interest payments and repayment of their principal.

[56] In addition to the investors who testified during the hearing there was a substantial number of investors who spoke to Commission investigators. Several of them were interviewed under oath. These transcripts were entered as evidence at the hearing. Where the investors were not interviewed under oath but merely spoke with Commission investigators, notes taken by Commission investigators were entered as exhibits. That evidence, with respect to what they understood the business of Bezzasso and the corporate respondents to be and with respect to the structure of the investment, was consistent with the testimony of the investors during the hearing.

[57] From all of this evidence, we find that a consistent description of the investment opportunity in Holdings was provided to all of the 85 investors. They were all told substantially similar things with respect to Holdings, its business and products, the investment opportunity, the use of their invested funds and how revenues would be earned in order to make the promised payments to investors.

D. History of the investment scheme

[58] As noted above, Bezzasso commenced soliciting investors in early 2014.

[59] TM testified – he was both an early investor and a finder for Bezzasso. He and Bezzasso had mutual friends and TM was solicited by Bezzasso to invest in Holdings in 2013. TM invested $10,000 in Holdings in February 2014 (he made subsequent investments (or

reinvestments) in Holdings in November 2014, April 2015, May 2015 and September 2015).

[60] TM testified that his initial investments performed as set out in the investment documentation (i.e. that he received his expected payments). Based on his previous relationship with Bezzasso and the success of his original investment, TM commenced acting as a finder for Bezzasso in early 2014. TM received all payments on all of his loans to Holdings according to the terms of those investments other than his last loan to Holdings made in September 2015. On that last loan he did not receive a repayment of the principal or any payment of the promised interest.

[61] In the spring of 2014, TM introduced Liao to Bezzasso. In late May 2014, Liao invested $20,000 with Holdings (he too made subsequent investments (or reinvestments) in Holdings in November 2014 and May 2015).

[62] Liao testified that his initial investment performed as expected. Bezzasso also introduced Liao to one of the founders (J) of the health supplement business that Bezzasso purportedly had some business arrangement with in the corporate respondents' portfolio of investments. Liao testified that he researched J and believed him to be a successful businessman.

[63] Liao testified that, shortly after his initial investment and his meeting with J, he commenced acting as a finder for Bezzasso. Liao told Commission investigators that the initial financial arrangement for acting as a finder was that he was to receive 3% of the amounts invested by investors as a referral fee. Liao also told Commission investigators that in some cases the commissions were actually higher than that (up to 10%), but that additional amounts were paid at the discretion of Bezzasso. The evidence shows that in or around June 2015 payments of some of Liao's outstanding referral fees were deferred by Bezzasso (due to Bezzasso's cash flow problems, discussed below).

[64] As noted above, Corsi was an employee of Nexus. He performed various administrative functions on behalf of Nexus, Holdings and Bezzasso. He also performed services for Nexus connected to its liquor distribution business. Corsi referred a small number of investors who eventually invested with the corporate respondents. In February 2014, Corsi invested a total of $5,000 with Holdings and made subsequent investments (or reinvestments) in January 2015, May 2015, July 2015 and September 2015.

[65] On February 5, 2015, a large financial institution, which held bank accounts for Bezzasso, Holdings and Nexus, advised Bezzasso that it was closing those accounts because they believed that the accounts were being used to "kite" cheques. Contemporaneous correspondence from Bezzasso to that financial institution indicated that he anticipated that decision and had already opened new accounts for Holdings and Nexus at another large financial institution. The date that these accounts were closed at the first financial institution is the date of commencement of the relevant period for the purposes of the executive director's allegations of fraud against Bezzasso and the corporate respondents.

[66] Commission investigators obtained bank account records of Holdings and Nexus from the new financial institution, as well as credit card records for Bezzasso, Corsi, Holdings and Nexus, all for the period February 5, 2015 to March 7, 2016. A review of those records was performed by a forensic accountant employed by the Commission. The nature of that review as well as the summary findings of that review are discussed in more detail below.

[67] In June 2015, Bezzasso informed Liao that he was not able to pay him the referral fees that he had earned under their referral fee arrangement. Liao testified that he understood the problem to be a temporary liquidity issue for Bezzasso and the corporate respondents and that he was not concerned about the quality of Bezzasso's investment opportunity as a consequence. He testified that he believed many successful and growing businesses had temporary cash flow problems.

[68] Both TM and Liao testified that during the summer of 2015 they became aware that several of the investors that they had referred to Bezzasso had trouble cashing some of the post-dated cheques from their investments in Holdings. TM and Liao were also asked by Bezzasso to tell certain of their investors to delay depositing their cheques. Several investors who testified were among the investors affected by these problems. They testified to having had cheques bounce or being asked to withhold depositing cheques. However, these investor payments appear to have been made eventually, although delayed in many cases, through the July and August 2015 time period.

[69] In July 2015, Bezzasso asked Liao to provide him with a "short term" $30,000 personal loan, which Liao did do. This was a loan made to Bezzasso personally and not to either of the corporate respondents and is not part of any of the allegations in the notice of hearing. Liao testified that he believed that Bezzasso needed the loan to relieve short term liquidity problems that he and the corporate respondents were experiencing.

[70] In August 2015, Liao introduced his father to the Bezzasso investment opportunity. Liao's father ultimately invested US$100,000 into Holdings.

[71] In September 2015, some of the investors again had some of their post-dated cheques from Holdings bounce. Several of the investors who testified said that they were told by Liao that a bank account of Holdings had been "hacked" and that this was the reason for the payment problems. Liao also told them that they needed to have post-dated cheques that they had previously been provided in relation to their investment in Holdings, exchanged for new post-dated cheques. Liao testified that he told the investors these things at the instruction of Bezzasso. In some cases, these new cheques cleared and in others they did not.

[72] Sometime between September and November 2015, TM advised Bezzasso that he was no longer going to refer further investors into Bezzasso's investment scheme. TM testified that he made this decision because a number of investors whom he had referred to Bezzasso were having problems getting payments from Holdings on their investments.

[73] Corsi told Commission investigators that in October 2015 Bezzasso made a decision to start making interest only payments to investors on their investments in Holdings. The evidence is not clear as to how many investments this decision was to apply to or in what manner.

[74] On November 3, 2015, a letter was prepared for distribution to some, but not all, of the investors. While who was the original drafter of the communication was not clear from the evidence, the evidence was clear that all of Bezzasso, Liao and Corsi were aware of the communication, as copies of this letter were sent to and from their respective e-mail addresses. Liao also testified that he knew of the letter on or about November 3, 2015. The letter was addressed "Dear Lender(s)", signed by Bezzasso and set out, among other things, as follows:

> We are postponing for payment for 60 days to December 31, 2015 or sooner, due to the restriction of cash flow from the returns of applied funds to new and existing companies in our portfolio….

[75] On November 27, 2015, a second letter was prepared and sent to some, but not all, of the investors. The letter was also addressed "Dear Lender(s)", signed by Bezzasso and set out, among other things, as follows:

> We are postponing for payment for 35 days to December 31, 2015 or sooner, due to the restriction of cash flow from the returns of applied funds to new and existing companies in our portfolio….

[76] On December 10, 2015, a third letter was prepared and sent to some, but not all, of the investors. That letter was also addressed "Dear Lender(s)", signed by Bezzasso and set out as follows:

> Further to my letter of November 03, 2015, we are continuing to focus on driving returns to our Lenders in these exciting and growing opportunities.
>
> We are on pace to fulfill our commitment for payments to be applied by December 31, 2015 or sooner….

[77] In fact, Holdings did not recommence making payments to investors on or before December 31, 2015.

[78] There was evidence (including the testimony of one investor) of two new investments made by investors in Holdings in 2016 (that are included in the allegations in the notice of hearing).

[79] In evidence were copies of communications in the early part of 2016 between Liao and Bezzasso, Liao and some investors and Bezzasso and some investors in which Holdings' failure to repay investors were discussed. Those communications suggest that Bezzasso provided a number of reasons for the non-payments to the investors including Bezzasso

suggesting that he was in various places abroad pursuing large investors. Communications relevant to the allegations in the notice of hearing involving Bezzasso and third parties appear to have ceased in the late spring of 2016.

E. Summary of financial information

[80] As noted above, Commission staff analyzed the bank accounts and credit card records of Bezzasso, Holdings and Nexus during the period commencing on February 5, 2015 through March 7, 2016.

[81] Bezzasso was a signing authority on each of the bank accounts for Holdings and Nexus. All of Corsi, Liao and VY confirmed that Bezzasso made all of the decisions with respect to the investments in Holdings (i.e. terms, timing, etc.), payments to investors and cash flows. This evidence was not challenged by the executive director.

[82] In addition to the bank account records of Holdings and Nexus, Commission staff also had access to:

- records of promissory notes and promissory applications issued by Holdings to investors;
- one promissory note of Nexus;
- three investor lists provided to the Commission by Bezzasso and several more investor lists provided by TM and Liao; and
- telephone calls with investors and in-person interviews with investors.

[83] From all of that evidence, we find that, between February 5, 2015 and March 7, 2016, a total of 85 investors made an aggregate of 157 investments with Holdings for aggregate proceeds of $5,005,781[2]. A number of these investments constituted a reinvestment of all or part of the principal and/or interest from a previous investment in Holdings. As will be discussed below, there was one investment in Nexus during this period for $15,000.

[84] As noted above, Commission investigators prepared summaries of all of the investments made by investors (including reinvestments). They also prepared a summary of all repayments to investors (based upon a review of the bank accounts of Bezzasso and the corporate respondents as well as information provided by investors). The total amount repaid to investors, during the relevant period, was $3,401,318.

[85] Commission staff also conducted a review of all (not just those related to the investors) of the payments and credits to each of the bank accounts of Holdings and Nexus. That review indicated that there were substantial intercompany cash flows between Holdings and Nexus. Corsi and VY told Commission investigators that, from their knowledge of

[2] Certain of the investments were made in US$. This figure includes a number of US$ investments that were converted by Commission investigators for purposes of summaries into CDN$ at the average annual exchange rate for the applicable calendar year.

the operations of Holdings and Nexus, Bezzasso treated the two companies as if they were one and the same. The number of transactions between the two companies support this conclusion. We find that Bezzasso treated Nexus and Holdings as one and the same economic entity for the purposes of the allegations of fraud against Bezzasso and the corporate respondents.

[86] From the review of the payments and credits in the bank accounts of Holdings and Nexus, Commission investigators were able to identify:

- deposits associated with investments made by investors;
- payments associated with payment obligations to investors under promissory notes and promissory applications;
- revenues from Nexus' liquor distribution business;
- intercompany payments and netting those transactions;
- payments associated with the health supplements business (for which there was no clear explanation as to the nature of those payments); and
- substantial cash deposits and withdrawals.

[87] Commission investigators prepared a table summarizing the payments (on a quarterly basis) into the accounts of the corporate respondents which "could be" characterized as revenues from the portfolio of businesses promoted to investors. They also summarized the quarterly payment obligations to investors on their investments during the same periods. The reason that the expression "could be" is appropriate is that, for the purposes of the following table, Commission investigators assumed that all of the payments from the health supplements business and all of the cash deposits were revenues associated with the portfolio of businesses (even though there was no supporting documentation to confirm that such payments were actual revenues from the businesses). This is the most favourable, from the perspective of Bezzasso, Holdings and Nexus, interpretation of those deposits possible (in the context of the allegations of fraud made against these respondents). That table is as follows:

	Jan 1-Feb 5, 2015	**Quarter ending Mar 31, 2015**	**Quarter ending June 30, 2015**	**Quarter ending Sept 30, 2015**	**Quarter ending Dec 30, 2015**	**Quarter ending Mar 31, 2016**
Revenue (including payments from a health supplement entity and cash)	77,160	247,268	377,198	485,541	369,652	135,904
Investor repayments	217,041	790,076	1,071,620	1,316,873	452,289	3,400
Difference	**(139,881)**	**(542,808)**	**(694,422)**	**(831,332)**	**(82,637)**	**132,504**

F. Nexus investment

[88] The allegations of fraud relating to Corsi relate to one investor (Investor OM) who was a close friend of Corsi's. Investor OM had also met Bezzasso on several social occasions, through Corsi, prior to his investing with Bezzasso and through the corporate respondents.

[89] Investor OM received an inheritance that he intended ultimately to use as a down payment on a real estate purchase. However, he was interested in investing with Bezzasso prior to needing the inheritance for his purchase.

[90] Although Corsi originally spoke to Investor OM about investing with Bezzasso in late 2014, Investor OM first met with Corsi and Bezzasso to discuss an investment in January 2015. During that first meeting he was told about Bezzasso's investment opportunity and it was described in a general way and in a manner consistent with that set out in sections B and C of these Reasons, above.

[91] Investor OM ultimately invested $20,000 in Holdings near the end of January 2015. The term of this loan was for six months with an interest rate of 10% (over the six month term of the loan). Investor OM received a promissory note from Holdings and he made his $20,000 cheque for his investment payable to Holdings.

[92] Investor OM was able to cash all of the cheques associated with that first investment. When his first investment came to maturity in July 2015, he entered into a new loan arrangement for $50,000 (representing a reinvestment of $10,000 of the original loan amount plus an additional $40,000) with an interest rate of 17% (over the six month term of the loan). This second investment was again with Holdings and Investor OM provided a cheque for $40,000 payable to Holdings. Investor OM was able to cash two post-dated cheques associated with this second investment. He was unable to cash the remaining post-dated cheques related to this second investment.

[93] In November 2015, Investor OM was contacted by Corsi about making a further investment with Bezzasso. On November 5, 2015, Investor OM made a third investment (adding a further $33,333 to his second investment amount – bringing his total investment with Bezzasso to $75,000) with an interest rate of 17% (over the six month term of the loan). This third investment was again with Holdings and Investor OM provided a bank draft for $33,333 payable to Holdings.

[94] Neither Corsi nor Bezzasso told Investor OM that on November 3, 2015, some of the investors had received a communication from Bezzasso telling them that Holdings would cease making any payments on investments until December 31, 2015. Investor OM testified that he was never told, at any time, that Bezzasso and the corporate respondents were having cash flow issues that were resulting in some investors' cheques bouncing and not being paid as set out in their investment agreements.

[95] Investor OM tried to cash the first post-dated cheque associated with his third investment in early December 2015 but it bounced. He was given a replacement cheque and he was able to cash that cheque. Investor OM was unable to cash the remaining post-dated cheques associated with this third investment.

[96] On November 26, 2015, Corsi sent Investor OM the following text:

> We are close to getting the inventory for the lighter, about 20-30k. If you know anyone that can put in 10-15, I can give a one month term at 10%.

Investor OM asked if he might make the investment.

[97] Investor OM testified that he and Corsi had several conversations about this investment. Investor OM testified that he was told that this new investment had a very specific use of proceeds – that Bezzasso, through Nexus, wished to acquire some additional inventory of a lighter product for sale during the Christmas shopping season. Investor OM was told that Nexus was a subsidiary of Holdings. Investor OM was told that he was to provide a bank draft made out to Nexus for the $15,000 investment.

[98] On November 27, 2015, Investor OM entered into a fourth investment for $15,000 with a one month term and with a 15% interest rate. As noted above, he made his bank draft payable to Nexus and it is clear that from all the loan documentation that this investment was made in Nexus and not in Holdings. However, the post-dated cheque that Investor OM received in connection with this investment was a cheque of Holdings and not of Nexus.

[99] Investor OM was not sent either the November 27, 2015 or December 10, 2015 communications to investors in which Bezzasso set out his cash flow problems and that investor repayments were on hold as a consequence.

[100] Investor OM was given a post-dated cheque for December 27, 2015 as the repayment for the Nexus investment. On or about that date, Investor OM was contacted by Bezzasso and told that he was experiencing cash flow difficulties and asked Investor OM to delay cashing the cheque.

[101] There were subsequent conversations, through the first few months of 2016, between Investor OM and Corsi and Investor OM and Bezzasso about the repayment of the third and fourth investments. In all of those conversations it was clear that Investor OM, Corsi and Bezzasso considered the Holdings loan and the Nexus loan to be different (in terms of the use of proceeds of the loan and the respective borrower).

[102] Investor OM did not receive any payments on his Nexus investment.

G. Liao's involvement with investors September – November 2015

[103] The allegations of fraud against Liao relate to the time period September 24, 2015 through December 2, 2015 (Liao Period).

[104] During the Liao Period, the executive director alleged that Liao dealt with 14 investors who made a total of 15 investments (or reinvestments) in Holdings in the aggregate amount of $382,000[3].

[105] Of the 14 investors who invested (or reinvested) during the Liao Period, five testified during the hearing. All of them confirmed that Liao did not tell them at the time of their investment (or reinvestment) that Holdings was having difficulty paying investors or that cheques to other investors had bounced.

[106] Two of the 14 investors invested after the November 3, 2015[4] letter was sent to some, but not all, investors, informing them that payments by Holdings would cease for 60 days due to cash flow problems. Neither of these investors received a copy of that letter (or the November 27, 2015 letter), nor were they told about its contents.

[107] One of these investors invested after the November 27, 2015 letter was sent to some, but not all, investors, informing them that payments by Holdings would cease for 35 days due to cash flow problems. This investor did not receive a copy of that letter, nor was he told about its contents.

[108] The executive director set out that the commencement of the Liao Period was tied to problems that an investor (Investor X), referred to Bezzasso by Liao, had in receiving payments on her investment in Holdings.

[3] Certain of the investments were made in US$. This figure includes a number of US$ investments that were converted by Commission investigators into CDN$ at the average annual exchange rate for the applicable calendar year.

[4] Liao submitted that he was not responsible for referring one of these investors to Bezzasso. We consider the evidence relevant to those submissions in paragraphs 123-125 below.

[109] Investor X testified during the hearing. She first heard about the investment opportunity in Holdings from a car dealer she was dealing with in connection with purchasing a vehicle. The car dealer referred her to Liao.

[110] Investor X and Liao met several times to discuss an investment in Holdings. She testified that Liao advised her to make the investment in Holdings. She originally invested $20,000 in Holdings in March 2015. She received post-dated cheques for this investment. Although one of the cheques bounced when she attempted to deposited it, she eventually received the first six of the amounts to which she was entitled under the terms of her first investment.

[111] In September 2015, Investor X met with Liao to discuss a second investment. She testified that she initially rejected the idea of making a second investment in Holdings but that she changed her mind after meeting with Liao to discuss a second investment. She testified that she told Liao that she had just sold a house and had further money to invest but that she might need the money repaid sooner than the typical six month term of the promissory notes in Holdings. Investor X testified that Liao told her that she could get her money repaid sooner than six months on this second investment. Investor X invested $200,000 with Holdings on September 14, 2015.

[112] In a September 16, 2015 e-mail from Liao to Bezzasso, Liao indicated that Investor X had called him on that date and told him that she needed some of her $200,000 investment returned in two or three months in order to cover certain expenditures related to her home. She had enquired with Liao if she should cancel her September 14, 2015 investment but Liao told Bezzasso that he had suggested to Investor X that she leave her funds invested with Holdings and ask for a repayment in two or three months when she needed the funds. Liao indicated to Bezzasso that he had made that suggestion so that "…this way you would have it at least for the next few months to smoothen all things out."

[113] On September 25, 2015, Investor X attempted to deposit the seventh cheque associated with her first investment and it bounced. Investor X provided notes to Commission investigators relating to her investments in Holdings. Those notes indicate that after some negotiation she received this final payment on her first investment.

[114] On September 25, 2015, Investor X asked Liao for a return of her second investment. Investor X testified that Liao told her that he would speak to Bezzasso about repayment.

[115] On October 16, 2015, Investor X attempted to deposit the first cheque associated with her second investment and it too bounced. She was given a replacement cheque and on October 23, 2015 she tried to deposit that cheque and it too bounced. On October 26, 2015, she testified that she went with Liao to the bank where he deposited a payment of $20,000 in respect of her second investment. That is all that she has had repaid from her second investment.

[116] Investor W testified. She and her husband were long time family friends of Liao and his father. In June 2015, Liao had solicited Investor W and her husband to invest in Holdings. In June 2015, they had invested $120,000 with Holdings. Investor W and her husband received a promissory application in connection with her investment and post-dated cheques that were commensurate with their promised payments under the promissory application.

[117] Investor W testified that they were able to cash the first few post-dated cheques associated with their investment in Holdings. However, on October 22, 2015, Liao e-mailed Investor W and asked her not to deposit any more of the post-dated cheques that they had received from Holdings. He told her that the cheques needed to be replaced. Investor W testified that she was told that Holdings' account had been "hacked" or had some similar problem. Liao told Commission investigators that he had asked Investor W to withhold cashing her original post-dated cheques at the direction of Bezzasso. Liao also told Commission investigators that he was asked by Bezzasso around this time to go to several other investors and ask them to withhold cashing their post-dated cheques and to exchange those cheques for new ones.

[118] On October 27, 2015, Bezzasso sent Liao an e-mail setting out a list of possible leads on financing sources. Bezzasso acknowledged in the e-mail that they were all "low on confidence" and that the leads were "the only way that they were going to get anywhere". Liao told Commission investigators that the reference to "low on confidence" was in relation to Investor X. Investor X had been asking for her money back on a daily basis and Liao indicated that he was similarly pushing Bezzasso to fulfill the repayment obligations to her. Liao also told Commission investigators that he understood that Bezzasso had not repaid Investor X (for over a month after her initial request for repayment) because Bezzasso did not have the funds to repay her.

[119] On November 17, 2015, Liao solicited an investor (Investor AO) to reinvest with Holdings.

[120] Investor AO testified. Investor AO and her fiancé had saved some money in preparation for a year of traveling abroad. Liao was her insurance agent. Liao originally solicited AO to invest in Holdings in May 2015. Investor AO invested $80,000 in Holdings at that time. Investor AO testified that she received payments as promised on that first investment. Investor AO invested a further $20,000 in Holdings in August 2015.

[121] In November 2015, Investor AO's original investment was coming to maturity. Investor AO was abroad at the time. Investor AO and Liao exchanged e-mails, in which Liao solicited Investor AO to renew her investment in Holdings. Investor AO agreed and gave Liao authorization to access to her bank accounts to transfer almost US$38,000 to Holdings on November 17, 2015. Liao did not tell Investor AO about the communication that had been sent on November 3, 2015 to some investors advising that Holdings would suspend payments until December 31, 2015. Nor did he tell Investor AO that Investor X had not been repaid her investment amount or that other investors were being told not to deposit their post-dated cheques.

[122] On November 26, 2015, Liao send an e-mail to Corsi, copying Bezzasso, in which he discussed the upcoming payment obligations to investors that Liao had referred to Bezzasso. In that e-mail, under a heading which referred to Investor AO and another investor whom Liao had referred to Bezzasso and who had invested on October 20, 2015, Liao set out the following:

> If Todd [Bezzasso] can manage to get money in by next Tuesday, then these two ladies can cash their cheques on time. If not, then next week. Will need to send an e-mail to these two ladies as well. Note, these two girls were the ones that did the early renewal and the 40 K that solved the bank account problem, thus I really don't want to startle them at all.

[123] There was a dispute between the parties with respect to the evidence of Liao's involvement with one investor (Investor VR). Commission investigators found records relating to an apparent $25,000 investment made by Investor VR in Holdings in June 2015 (including a promissory note, his name appearing on investor lists prepared by the respondents and payments made by Holdings to Investor VR). However, Commission investigators were unable to locate evidence of Investor VR having made a payment to Holdings for $25,000.

[124] Liao provided Commission investigators with notes of a meeting between him and Investor VR dated September 28, 2015. Those notes suggest that Liao and Investor VR discussed several investments including an investment in Holdings. Commission investigators asked Liao about Investor VR. Liao said that Investor VR was a friend of Bezzasso and that Bezzasso had asked him to talk to Investor VR to explain how the investment worked. Liao said that he met with Investor VR once and that Investor VR otherwise dealt directly with Bezzasso. Liao told Commission investigators that Investor VR told him that he would be making a further investment. Commission investigators located records that indicate that Investor VR made a payment to Holdings of US$76,671 on December 3, 2015. They also found a promissory note dated September 30, 2015 suggesting that Investor VR made a further investment in Holdings in the amount of $63,000.

[125] The executive director submitted that the payment made by Investor VR on December 3, 2015 related to his promissory note dated September 30, 2015. Given Liao's description of what Investor VR told him about making a further investment in Holdings on September 28, 2015, we find that the payment on December 3, 2015 related, in whole or in part, to a further investment by Investor VR in Holdings. However, we also find that there was no evidence to suggest that Liao had any dealings with Investor VR, other than their meeting on September 28, 2015 (the significance of which will be discussed below).

[126] Liao testified. He acknowledged knowing that, starting in June 2015, some post-dated cheques made out to investors bounced. He made arrangements to defer the payment of commissions owed to him as referral fees. He made the personal loan to Bezzasso during the summer described in paragraph 69 above. He testified that, notwithstanding these problems, he believed that an investment in Holdings was a good investment and that

temporary cash flow problems were not unusual for businesses. In support of this belief, he pointed to his investment and that of his father in Holdings in July and August 2015.

[127] Liao testified that he was aware of further investor repayment problems in September and October 2015, including those of Investor X. He said that he was asked by Bezzasso to ask certain investors to delay depositing cheques and to exchange certain cheques due to a problem with a bank account of Holdings.

[128] Liao testified to being on a call with Bezzasso and J in October 2015 wherein J advised Bezzasso to notify investors of repayment problems. He said that this conversation led to the November 3, 2015 letter. He testified that this letter was sent to some but not all of the investors. He testified that he continued to believe that temporary cash flow problems were not unusual for growing businesses.

H. Evidence relating to the section 34 allegations against Liao

[129] The executive director alleged that Liao contravened section 34 (a) (the requirement to be registered under the Act when "trading" in a security) and section 34(b) (the requirement to be registered under the Act when "advising" someone to trade in a security), when he referred 27 investors to invest in Holdings. Those 27 investors are alleged to have made an aggregate of 44 investments in Holdings for gross proceeds of $1,616,059.

[130] The evidence in relation to the allegations of Liao's contraventions of section 34 was comprised of:

- the testimony of seven of the investors during the hearing;
- lists of investors referred to Bezzasso/Holdings by Liao, where such lists were compiled and provided by Liao;
- lists of investors provided by Bezzasso;
- documentary evidence, including notes of meetings with investors taken by Liao, promissory notes and promissory applications and, in some cases, investor risk profiles;
- copies of interview transcripts with investors, investor questionnaires (sent to some investors by Commission staff) and copies of notes of telephone calls between Commission staff and some investors;
- copies of transcripts of four interviews of Liao by Commission staff;
- evidence of how Liao referred to his services on his Linked-In profile and his business card; and
- Liao's testimony during the hearing.

[131] We find that the totality of that evidence sets out that Liao was responsible for referring, soliciting or, in some other manner, aiding in the sale of securities of Holdings to all 27 of the investors alleged by the executive director. As noted above, Liao contested his role in relation to the investment of Investor VR in Holdings. As described above, the evidence does not indicate that Liao solicited Investor VR. However, Liao did meet with Investor VR with respect to his investment and discussed the investment opportunity with him.

[132] The evidence of what advice or what recommendations that Liao made to each of the 27 investors with respect to an investment in Holdings is less clear.

[133] On Liao's business card and Linked-In profile, he described himself as a financial advisor. Several of the 27 investors testified and described Liao as their "financial advisor". A number of the 27 investors were clients of Liao's in his insurance business.

[134] Some of these 27 investors testified, told Commission investigators or completed investor questionnaires indicating that Liao specifically recommended that they invest in securities of Holdings.

[135] With respect to others of the 27 investors, there was no evidence of Liao having made a specific recommendation to invest in Holdings but there was other evidence of his having answered very specific questions relating to investing in Holdings or having engaged in an analysis of that investor's other investments and financial needs.

[136] Finally, with respect to the remainder of these 27 investors, there was only evidence of Liao having referred the investor to purchase their investments in Holdings, without any evidence whether Liao gave advice in respect of the investment or not.

[137] As a result of this divergence in evidence, we are not able to find, on a balance of probabilities, that the conduct that Liao engaged in (that is relevant to the allegations of his advising clients) with respect to each of the 27 investors was substantially similar.

V. Corsi's motion for non-suit

[138] On June 6, 2019, Corsi filed a motion for non-suit. On June 10, 2019, the panel heard oral submissions from Corsi and the executive director. On June 11, 2019, the panel granted the motion.

[139] At the commencement of the hearing of Corsi's motion, we heard submissions from the parties about whether Corsi, in making his application, should be required to make an election about whether, in the event that his application was unsuccessful, he was going to call any evidence.

[140] The executive director filed written submissions that outlined that in the Supreme Court Civil Rules an applicant who files a "no evidence" motion is not required to make an election but an applicant who files an "insufficient evidence" motion is required to make an election prior to proceeding with that application.

[141] The Commission does not have rules of procedure that govern applications of this type and the Supreme Court's Civil Rules do not apply to our proceedings. However, applications of this type have been brought before securities commissions in other jurisdictions. In *ATI Technologies Inc. et al.*, 2005 ONSEC 7, the Ontario Securities Commission determined that, as a body with power to determine its own procedures and practices and there being numerous precedents of other administrative tribunals hearing applications for non-suit, it had the jurisdiction to hear such an application. The OSC also determined that the application was not frivolous or vexatious or designed to delay the proceedings. On that basis, they determined that as an administrative tribunal they were not bound to require the applicant to make an election whether to call evidence prior to proceeding with the application.

[142] Corsi clarified in his oral submissions that he was proceeding on a "no evidence" basis.

[143] Prior to proceeding with the merits of his application, we ruled that Corsi was not required to make an election whether he was going to call evidence (in the event his application was unsuccessful) prior to making his application because:

- Corsi confirmed that he was proceeding on a "no evidence" basis; and

- more importantly, we agreed with the decision in *ATI*, that as an administrative tribunal we have the power to determine our own procedures and practices and that, in the circumstances of this application, we did not see the public interest in prohibiting the admission of relevant evidence.

[144] Corsi submitted that, in order for the executive director to prove that he had committed fraud, as described in the notice of hearing, the executive director had to prove the following:

- Holdings was having problems paying investors;

- Corsi was aware Holdings was having problems paying investors;

- Corsi was aware that Investor OM had not been informed of the problems;

- Corsi was aware that these problems with Holdings were material to the short-term, one-time loan for inventory that Corsi made to Nexus (Nexus Loan);

- Corsi had a duty to inform Investor OM of the problems;

- Corsi was aware of his duty to inform Investor OM; and

- Corsi failed to do so purposefully with the requisite *mens rea* for fraud.

[145] Corsi submitted that the Court of Appeal decision in *I.C.B.C. v. Mehat*, 2018 BCCA 242, set out the applicable test for determining an application for nonsuit. In particular that:

- in a civil "no evidence" application, the trial judge determines only whether there is any evidence "capable of" supporting the plaintiff's claim, without evaluating the quality of that evidence;

- the relevant question is whether a reasonable trier of fact "could" find in the plaintiff's favour, not whether the trier of fact "would" do so;

- even if there is some circumstantial evidence, to defeat a "no evidence" application, the evidence must be "reasonably capable" of supporting the inferences that are necessary to prove the plaintiff's case. This may require the court to engage in a limited weighing of the evidence; and

- it has also been held that, when considering the evidence on a "no evidence" application, the judge should give the evidence the most favourable meaning in determining whether it is capable of supporting the inferences of fact required for the plaintiff to prove its case, without determining whether the competing inferences available to the defendant do in fact rebut the plaintiff's case.

[146] The executive director submitted that Corsi's application should be dismissed because:

- Corsi was asking the panel to apply the incorrect test to his non-suit motion – in particular, that Corsi's application was asking the panel to weigh the evidence and that his application would lead the panel to an inefficient duplication of a consideration of the evidence (first to consider his non-suit application and then, if such application were unsuccessful, to consider it again at the conclusion of the liability phase of the hearing);

- there was clearly evidence led by the executive director against Corsi, relevant to the allegations against him, and therefore the non-suit motion was frivolous and vexatious; and

- there was sufficient evidence against Corsi to satisfy a *prima facie* standard.

[147] We agree that the decision in *Mehat* sets out the appropriate approach to a non-suit motion before the Commission. That approach required us to consider whether there was evidence, given its most favourable interpretation (from the perspective of the executive director), upon which the panel "could" find that the allegations in the notice of hearing against Corsi had been made out. The panel may engage in a limited weighing of the evidence where the case for the executive director is dependent upon circumstantial evidence or requires a panel to make an inference or inferences.

[148] The executive director submitted that the *actus reus* of the fraud (that he alleged against Corsi) was that Corsi was aware, at the time he solicited Investor OM to make the Nexus Loan, that Holdings and Nexus were having difficulty repaying investors and that Corsi failed to advise Investor OM of that fact.

[149] In support of this, the executive director submitted that the Nexus Loan was no different, for all practical purposes, from the three previous investments made by Investor OM (and other investors) in Holdings and that the Nexus Loan was all part of the same investment scheme promoted by Bezzasso. Further, we could infer that Corsi had the requisite *mens rea* for fraud with respect to the Nexus Loan because he had actual knowledge of the payment problems that other investors in Holdings were having and would recognize the risk of deprivation in the circumstances.

[150] We did not agree with the submissions of the executive director for several reasons:

- there was no evidence that Nexus was having problems paying investors (prior to Investor OM's investment on November 26, 2015) because there had been no evidence of previous investments made by investors into Nexus;

- the Nexus Loan was clearly different from all of the other loans that were made by investors in Holdings. The Nexus Loan was made on the basis of a very specific use of proceeds (the alleged acquisition of inventory for the Christmas season) and it was the only loan made directly to Nexus (a separate legal entity from Holdings);

- the evidence was clear that both Investor OM and Corsi knew and understood that this was a loan made to Nexus;

- Investor OM and Corsi knew that this loan was to be made to a different legal entity and that the use of proceeds for this loan was purported to be different from Investor OM's three previous loans to Holdings;

- as there was no direct evidence of Nexus having previous problems paying investors and no direct evidence of Corsi's knowledge with respect to the ability of Nexus to repay the Nexus Loan, we were required to do a limited weighing of the evidence to determine if we could infer that he had the requisite *mens rea* for fraud with respect to the Nexus Loan; and

- we were not able to draw the inference that Corsi knew that Nexus would not be able to repay the Nexus Loan. In fact, the contrary was true: the financial information that Commission investigators tendered during the hearing confirmed that Nexus had an operating business and that that business generated significant monthly revenues. From that financial information, we were not able to infer that Corsi would have known that Nexus would be unable to repay the Nexus Loan and, as a consequence, we had no evidence on which we could make the

necessary finding that Corsi had the requisite *mens rea* for fraud.

[151] Applying the test in *Mehat* to the circumstances of this case, we determined that there was no evidence upon which we could make a finding that Corsi had the necessary *mens rea* for fraud with respect to the $15,000 investment made by Investor OM in Nexus on November 27, 2015. On this basis, we granted Corsi's non-suit motion.

VI. Analysis and Findings

A. Applicable law

Standard of Proof

[152] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada held (at paragraph 49):

> 49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[153] The Court also held (at paragraph 46) that the evidence must be "sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test.

[154] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, paragraph 35.

Definition of "security"

[155] Section 1(1) of the Act defines "security" to include:

> (a) a document, instrument or writing commonly known as a security,
> (b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person,
> (d) a bond, debenture, note or other evidence of indebtedness, share, stock... and
> (l) an investment contract.

Definition of "trade"

[156] Section 1(1) of the Act defines "trade" to include:

> (a) a disposition of a security for valuable consideration, and
> (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e).

Registration Requirements

[157] Section 34(a) of the Act states "A person must not… trade in a security… unless the person is registered in accordance with the regulations…"

[158] Section 34(b) of the Act states "A person must not… act as an adviser… unless the person is registered in accordance with the regulations…"

[159] Section 1(1) of the Act defines "adviser" to mean "a person engaging in, or holding himself, herself or itself out as engaging in the business of advising another with respect to investment in or the purchase or sale of securities or exchange contracts."

[160] BC Policy 31-601 defines "advising" as follows:

> **3.3 Advising**
> (a) Advising is offering an opinion about the merits of, or recommending the purchase or sale of, securities or exchange contracts. It includes making investment decisions for another person. A person that engages in, or holds himself or herself out as engaging in, the business of advising is an adviser and must be registered or exempt from registration.
>
> (b) The provision of factual information about an issuer is not advising as long as it is not accompanied by a recommendation regarding, or an opinion about the merits of, the issuer's securities.

[161] National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) includes further detail on the circumstances under which persons are required to be registered to trade in securities. This National Instrument sets out the registration requirements and the Companion Policy to NI 31-103 (CP 31-103) contains interpretations of the National Instrument by the Canadian Securities Administrators. The Canadian Securities Administrators comprises the securities regulators of all of the provinces and territories of Canada.

[162] Section 7.2 of NI 31-103 sets out that persons who give "specific advice" must be registered as advisers. It also sets out that advice is specific when it is tailored to the needs and circumstances of a client or a potential client.

[163] Section 8.4(1) of NI 31-103 sets out an exemption from the requirement in section 34(a) that a person must be registered to trade in securities:

> 8.4(1) In British Columbia…, a person…is exempt from the dealer registration requirement if the person…
> (a) is not engaged in the business of trading in securities…as principal or agent, and
>
> (b) does not hold himself, herself or itself out as engaging in the business of trading in securities…as a principal or agent.

[164] This means that although the requirement is often thought of as "persons are required to be registered under the Act when they are in the business of trading in securities", the technical structure of the regulatory provisions is that a person is always required to be registered if they are trading in securities *unless* they are *not* in the business of trading in securities.

[165] The following from CP 31-103 are factors that regulators consider relevant to the determination of whether a person is trading for a business purpose:

- engaging in activities similar to a registrant – including whether the person is acting as an intermediary between the buyer and seller of securities;

- directly or indirectly carrying on the activity with repetition, regularity or continuity – including the frequency of transactions (but the activity does not have to be the sole or even the primary endeavour of the person) and whether the activity is carried out with a view to making a profit, the person's various sources of income and amount of time allocated to the activity;

- being compensated for the activity – receiving or expecting to be compensated for carrying on the activity indicates a business purpose; and

- directly or indirectly soliciting – contacting potential investors to solicit securities transactions suggests a business purpose.

[166] Companion Policies do not have the force of law. Their function is to inform market participants of the regulators' interpretation of certain aspects of securities law. We find the statements of policy in CP 31-103, outlined above, to be appropriate to the interpretation of some of the factors to be considered in determining whether a person is required to be registered under the Act.

Fraud

[167] Section 57 of the Act states, in part:

> A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct
>
> . . .
>
> (b) perpetrates a fraud on any person.

[168] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at page 20):

> ... the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Liability under section 168.2

[169] Section 168.2(1) of the Act states that if a corporate respondent contravenes a provision of the Act, an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual "authorizes, permits, or acquiesces in the contravention".

[170] There have been many decisions which have considered the meaning of the terms "authorizes, permits or acquiesces". In sum, those decisions require that the respondent have the requisite knowledge of the corporate contraventions and have the ability to influence the actions of the corporate entity (through action or inaction).

B. Analysis

Fraud allegations – Bezzasso, Holdings and Nexus

[171] The notice of hearing alleges that:

a) between February 2015 and March 2016, Bezzasso raised approximately $5 million from 85 investors through a fraudulent scheme operated through his companies Holdings and Nexus; and

b) each time that the 85 investors invested funds or reinvested funds in the scheme, Bezzasso, Holdings and Nexus contravened section 57(b) of the Act.

[172] The executive director submitted that:

- the promissory notes and promissory applications issued by Holdings (and in one case by Nexus) are "securities" as defined under the Act;

- Bezzasso, Holdings and Nexus acted deceitfully when they told investors that their investments would be used in Bezzasso's portfolio of businesses (held by the corporate respondents) and those businesses would generate returns to meet the payment obligations under the promissory notes and promissory applications – when, in fact, they knew that they were running a Ponzi scheme by paying earlier investors with the funds raised from subsequent investors;

- Bezzasso had the requisite *mens rea* of both the deceit and the deprivation (including risk of deprivation) associated with that deceit for fraud; and

- Bezzasso, as the controlling mind and management of the corporate respondents, thereby imbued those entities with the requisite *mens rea* for fraud.

[173] We agree with the submissions of the executive director on all of the above listed issues.

Security

[174] The promissory notes issued by Holdings were "notes or other evidence of indebtedness" within the enumerated definition of "security". Although the financial terms of the promissory notes differed, the basic terms and structure of the promissory notes were the same. These notes were issued with a clear investment purpose and the investors' money was given to Holdings with the intention that it be used by Holdings to earn a return for the investors. These promissory notes clearly fit within the types of notes that are "securities" under the Act (see *Re FS Financial Strategies*, 2017 BCSECCOM 238).

[175] The one promissory note issued by Nexus was substantively the same in its basic terms and structure as the promissory notes issued by Holdings. We find that it too was a "security" under the Act.

[176] The promissory applications contained within them a form of promissory note. All of the evidence confirmed that the basic terms and structure of the promissory applications were the same as the promissory notes. The promissory applications were also "securities" under the Act.

[177] Finally, there were some investors for whom the executive director was unable to obtain a copy of either a promissory note or a promissory application in connection with their alleged investments in Holdings. However, the executive director tendered other evidence (bank deposits, copies of investor lists provided by one or more of the respondents and copies of interview transcripts or notes of telephone calls with investors) from which we are able to find that these investors made investments in Holdings through the promissory note structure and, therefore, these investors also invested in "securities".

Actus Reus

[178] Thirteen investors testified during the hearing. Corsi and VY, employees of Nexus, testified during the hearing. Liao and TM, finders for Bezzasso, testified during the hearing. Copies of interview transcripts and notes of telephone calls with many other investors were tendered as exhibits. Copies of several versions of a brochure or pamphlet describing Bezzasso's portfolio of business ventures, given or shown to investors, were entered as exhibits.

[179] The investor witnesses were consistent in describing what they were told about the investment opportunity and the use of their invested funds. That testimony was supported by the evidence of Corsi, VY, Liao and TM and the voluminous documentary evidence.

[180] From all of that evidence, we find that investors were told that their funds would be used by the corporate respondents in their portfolio of business ventures and those ventures would generate the returns that were promised to investors. What investors were told was untrue. Although Nexus carried out some business activities that generated some revenue, on the most generous interpretation of the financial records, the portfolio of

business ventures generated only a small fraction of the returns necessary to pay investors during the relevant period (see paragraph 87 above). The financial records make clear that funds raised from later investors were necessary for Holdings to pay earlier investors and were used for that purpose. In short, Bezzasso and the corporate respondents were engaged in a Ponzi scheme.

[181] With respect to the operation of the Ponzi scheme, we find that Bezzasso and the corporate respondents were all involved in a common enterprise. The financial records (i.e. bank records and credit card information) set out a vast array of intercompany payments between the two corporate respondents and between Bezzasso's credit cards and the corporate respondents. That evidence establishes that, with respect to the operation of the Ponzi scheme, Bezzasso intermingled funds as between himself and the two corporate respondents and that the two corporate respondents were really corporate alter egos of Bezzasso.

[182] As is often the case with Ponzi schemes, early investors did not suffer deprivation, except to the extent that they reinvested or further invested later. In fact, several early investors were net "winners" (i.e. they received full repayment of their promissory notes and their promised interest). Later investors (including many reinvestors) were generally significant net "losers" (i.e. they received no or only partial repayment of the promissory notes and their promised interest). Notwithstanding that not all investors suffered actual deprivation (i.e. they actually lost money) through their investments in the corporate respondents, all investors suffered a risk of deprivation from the deceit engaged in by Bezzasso and the corporate respondents from the moment of the investors' investment in the corporate respondents. A large portion of the investors' funds were not being used as they were promised but were, instead, being used to pay earlier investors – this caused each investor a significant risk of deprivation.

[183] As a consequence of the above, we find that each of Bezzasso, Holdings and Nexus engaged in the *actus reus* of fraud with respect to 85 investors who made a total of 158 investments for aggregate proceeds of $5,020,781.

Mens rea

[184] The evidence from each of Corsi, Liao and the other employee of Nexus was that Bezzasso controlled all aspects of the operations of the corporate respondents and his investment scheme.

[185] In particular, Bezzasso:

- was the sole director of each of Holdings and Nexus;
- engaged the finders to solicit investors;
- made all decisions regarding investments (term, interest, payments, etc.);

- determined the content for the promotional materials provided to investors describing his portfolio of business ventures;

- signed the promissory notes and promissory applications;

- controlled the bank accounts of Holdings and Nexus;

- knew that, at the commencement of the relevant period for the allegations in the notice of hearing, a financial institution had closed personal and corporate bank accounts of his and the corporate respondents because the financial institution believed that the accounts were being used to "kite" cheques;

- knew that cheques to investors were bouncing as early as June 2015; and

- would have known the quantum of the revenues produced by the various business ventures in his portfolio.

[186] The totality of that evidence enables us to find that Bezzasso, throughout the relevant period, had the necessary knowledge of both the deceit carried out on investors (i.e. that instead of using investor funds in his business ventures he was really engaged in a Ponzi scheme) by him and the corporate respondents and the risk of deprivation to investors that this deceit caused.

[187] This finding is consistent with Bezzasso's own e-mail to Liao of October 27, 2015 (see paragraph 118 above). In that e-mail, Bezzasso expressly states that the only way he could repay earlier investors would be to identify leads on new investors and to raise additional funds. It is clear from that e-mail that Bezzasso knew that he was using funds from new or reinvesting investors to make interest and principal payments to earlier investors: the fundamental characteristic of a fraudulent Ponzi scheme.

[188] When considering allegations of fraud against a corporate respondent, panels of this Commission have consistently found that a corporation will be deemed to have the requisite *mens rea* for fraud when those who control (or are the "mind and management" of) the corporate respondent have the requisite *mens rea* for fraud (see *Re Figueiredo*, 2016 BCSECCOM 233).

[189] In this case, the evidence was clear that Bezzasso was the mind and management of both Holdings and Nexus. In fact, the evidence was clear that the corporate respondents were mere corporate alter egos of Bezzasso. As a consequence of finding that Bezzasso had the requisite *mens rea* for fraud, we also find that each of Holdings and Nexus had the requisite *mens rea* for fraud.

[190] Therefore, we find that each of Bezzasso, Holdings and Nexus contravened section 57(b) of the Act with respect to 158 investments by 85 investors for aggregate proceeds of $5,020,781.

Section 168.2 liability for Holdings' and Nexus' misconduct - Bezzasso

[191] As a consequence of our findings above, a finding with respect to Bezzasso's liability under section 168.2 of the Act in respect of Holdings' and Nexus' contraventions of section 57(b) is, strictly speaking, unnecessary. However, we do find that Bezzasso, as the controlling mind and management of Holdings and Nexus, authorized their respective contraventions of section 57(b) and, pursuant to section 168.2 of the Act, that he also thereby contravened section 57(b) of the Act.

Fraud allegations - Liao

[192] The amended notice of hearing alleges that, between September 24, 2015 and December 2, 2015, Liao raised $382,000 for Holdings from investors making 14 investments at a time when Liao knew that Holdings was having problems paying investors. Liao did not disclose this to these investors. In this manner, Liao contravened section 57(b) of the Act.

[193] We note that at the hearing the executive director amended that allegation to state that he was alleging contraventions of section 57(b) by Liao with respect to 15 investments made by 14 investors.

[194] The executive director submitted that:

a) the promissory notes and promissory applications issued by Holdings that arose from Liao's referrals of investors to Bezzasso and the corporate respondents are "securities" as defined under the Act;

b) Liao knew that Bezzasso and the corporate respondents were having cash flow problems and that investors were having difficulties getting the payments owed to them under the applicable promissory notes or promissory applications;

c) Liao carried out a deceit (through omission) by not telling investors about these problems; and

d) Liao had the requisite *mens rea* of both the deceit and the deprivation (including risk of deprivation) associated with that deceit for fraud.

[195] Liao submitted that:

a) the executive director did not prove on a balance of probabilities that he had committed fraud contrary to section 57(b) of the Act; and

b) the totality of the evidence in the hearing demonstrated that he did not act dishonestly and did not appreciate the consequences of his conduct.

[196] More specifically, Liao submitted that the totality of evidence demonstrated that he:

a) did not have knowledge that a fraud was being perpetrated by Holdings, Nexus and Bezzasso during the relevant time, nor is there any evidence of that;

b) was not aware of the true state of affairs of Nexus or Holdings and, therefore, he could not have known that Bezzasso was perpetrating a fraud;

c) merely relayed information he obtained from Bezzasso to investors. Bezzasso manipulated and controlled all the information provided to Liao and investors regarding Holdings and Nexus;

d) was not the controlling mind, part of the management, or an employee of Holdings or Nexus. He did not have access to accounting records, financial statements, or any other financial records relating to Holdings and Nexus. The extent of his involvement in the scheme was acting as a finder for Holdings;

e) believed that Holdings' liquidity and cash flow issues were temporary, which was reasonable in the circumstances. These issues are not unusual for small businesses and, in particular, new venture capital businesses such as those run by (directly or indirectly) Holdings;

f) did not appreciate the risk to investors' funds, which was demonstrated when he persuaded his father to invest USD $100,000 in Holdings even after learning that it was experiencing temporary liquidity issues;

g) was repeatedly reassured by Bezzasso that Holdings was working in partnership with various successful enterprises and businesspeople; and

h) was repeatedly reassured by the explanations for the delays in repaying investors given by Bezzasso, which he believed, and did not have the means to verify otherwise.

[197] The *actus reus* of the fraud alleged to have been committed by Liao was different from that alleged to have been committed by Bezzasso, Holdings and Nexus. Rather than engaging in a Ponzi scheme to defraud investors, Liao is alleged to have deceitfully omitted to inform investors of Holdings' cash flow problems resulting in difficulties in making payments to investors (in accordance with the terms of the various investments).

[198] That the *actus reus* of the fraud was alleged in this manner makes several of Liao's submissions irrelevant. What Liao did know or ought to have known (given his role as a finder and not as a member of the mind and management of the corporate respondents) about Bezzasso's fraudulent scheme is not relevant because Liao is not alleged to have participated in Bezzasso's fraudulent Ponzi scheme. With respect to Liao, he is alleged to have engaged in his own, distinct, fraudulent behavior by failing to tell investors of

Holdings' cash flow issues and the problems that other investors in Holdings were having in getting payments on their investments.

[199] Both the executive director and Liao gave us detailed submissions on our ability to find a respondent liable for fraud under section 57(b) of the Act based upon a state of knowledge of the deceit or prohibited act of less than actual knowledge (i.e. willful blindness or recklessness). As will be discussed in greater detail below, we did not find those submissions to be relevant. Again, the evidence was clear that Liao had actual knowledge of Holdings' cash flow issues and investor repayment problems. We did not find it necessary to consider states of knowledge other than actual knowledge in the circumstances of this case.

[200] As set out in *Anderson* (based on the *Theroux* decision), the *actus reus* of fraud will be established with proof of the prohibited act, "be it an act of deceit, a falsehood or some other fraudulent means".

[201] The Commission has previously found that fraud, under the "other fraudulent means" part of that test, may occur when there is non-disclosure of an important fact (see *Lathigee (Re)*, 2014 BCSECCOM 264).

[202] In *Lathigee*, the panel set out a three part test for determining whether the non-disclosure of certain facts constitutes a prohibited act:

a) whether the non-disclosed information is an important fact (one that would affect a reasonable investor's investment decision);

b) whether the respondent failed to disclose the important fact; and

c) if the respondent failed to disclose the important fact, whether that was dishonest.

[203] Liao essentially acknowledged that the first two aspects of this test were not in issue in this case. He did not dispute that the problems that Holdings was having with cash flow and that investors were having in receiving their promised payments under their investments was an important fact and that he did not tell investors this fact. In essence, Liao was acknowledging that from June 2015, when he first became aware of investor payment problems, he engaged in misrepresentations (through omission) with investors. However, Liao disputed that the third aspect of the *Lathigee* test was made out on the evidence in this case.

[204] In *R. v. Zlatic*, [1993] 100 DLR (4th) 624, 2 S.C.R. 29, the Supreme Court of Canada considered the third category of fraud claims based on "other fraudulent means", including based on non-disclosure of important facts, and said this about the determination of dishonesty (at p.44):

> The fundamental question in determining the *actus reus* of fraud within the third head of the offence of fraud is whether the means to the alleged fraud can properly be stigmatized as dishonest: *Olan, supra*. In determining this, one applies a standard of the reasonable person. Would the reasonable person stigmatize what was done as dishonest? Dishonesty is, of course, difficult to define with precision. It does, however, connote an underhanded design which has the effect, or which engenders the risk, of depriving others of what is theirs. J. D. Ewart, in his *Criminal Fraud* (1996), defines dishonest conduct as that "which ordinary, decent people would feel was discreditable as being clearly at variance with straightforward or honourable dealings" (p.99). Negligence does not suffice. Nor does taking advantage of an opportunity to someone else's detriment where that taking has not been occasioned by unscrupulous conduct, regardless of whether such conduct was willful or reckless.

[205] Liao submitted that the evidence does not support a finding that he had the requisite dishonesty for the *actus reus* of fraud. Therefore, the central issue in this allegation against Liao is whether a reasonable person would find that his non-disclosure of Holdings' cash flow issues and investor repayment problems was dishonest.

[206] The executive director submitted the following with respect to this issue:

a) that Liao only mentioned the positive aspects of an investment in Holdings to investors and that the omission to tell investors about problems Holdings was having with cash flow and paying investors was deceitful; and

b) that the totality of the evidence in the hearing established that Liao's non-disclosure was intentional, with the dishonest intention of inducing investors to invest in Holdings.

[207] Liao pointed to the following as evidence in support of his contention that his non-disclosure lacked the required element of dishonesty:

a) his testimony during the hearing in which he said that he believed that cash flow problems were common for many businesses;

b) his own investment and that of his father in Holdings, in late May and August 2015 - immediately preceding the Liao Period;

c) although some investors were experiencing problems with cheques bouncing and other payment problems, other investors were still, in many cases, getting paid;

d) he believed that Bezzasso was engaged in business with people like J, whom Liao believed to be a successful businessman; and

e) Bezzasso was providing him with explanations for the problems that he was having with cash flow and in repaying investors and that Liao believed those explanations and, without access to Bezzasso's financial records, had no basis to challenge them.

[208] Applying a "reasonable person" test to the evidence to assess whether Liao's non-disclosure was dishonest, leads us to different conclusions on this issue with respect to the period between September 24, 2015 through November 3, 2015 and the period after November 3, 2015.

[209] On November, 3, 2015, Bezzasso acknowledged in a letter sent to many (but not all) investors that he was having cash flow problems and that payments to investors would cease until December 31, 2015. Liao was aware of this communication at the time of its drafting and instructed Corsi which of the investors Liao had found should receive this letter.

[210] This suspension of payments by Holdings as of November 3, 2015 meant that Holdings would not comply with the terms of any new investment or reinvestment made by an investor who invested or reinvested during the month of November (as was the case with Investor AO) and which would have required Holdings to make the first monthly payment on that investment or reinvestment during December. We find that a reasonable person would conclude that a failure to disclose this important fact to new investors or reinvestors that there was no intention to make the promised payment on even the first instalment of a new or renewed investment was dishonest in the circumstances.

[211] The evidence supports this finding. On November 26, 2015, Liao communicated his discomfort that two investors (one of whom was Investor AO) who had recently invested (and were not told of the November 3, 2015 communication) might not be paid their first payment on their investments. His communication makes clear that he knew that they would be "spooked" by any failure to be paid and that they would have to receive a communication to address that failure.

[212] We find that Liao's non-disclosure of Holdings' cash flow issues and problems in repaying investors constitutes "other fraudulent means" within the prohibited act portion of the test for fraud with respect to all of his dealings with investors and reinvestors after November 3, 2015.

[213] As the important fact that was not disclosed to investors and reinvestors related to cash flow issues and problems that Holdings was having in paying investors, it is evident that Liao's non-disclosure would result in risk of deprivation to any investor or reinvestor who invested or reinvested without being told this important fact. In this case, the non-disclosure also resulted in actual deprivation.

[214] We find that Liao carried out the *actus reus* of fraud with respect to all investors and reinvestors whom he dealt with in respect of an investment or reinvestment in Holdings after November 3, 2105.

[215] The evidence with respect to whether Liao's non-disclosure was dishonest during the September 24, 2015 through November 3, 2015 period is less clear. As he submitted, Liao testified to having a belief that cash flow problems were not unusual for growing businesses and that investors would be paid.

[216] Non-disclosure of the cash flow issues and problems Holdings was having paying investors was clearly a misrepresentation to investors.

[217] However, some of the facts listed in paragraph 207 might lead a reasonable person to conclude that Liao's non-disclosure was not dishonest during this earlier period. In contrast, the mounting repayment problems that Holdings was experiencing (that continued to worsen after September 24, 2015) might lead a reasonable person to conclude that the non-disclosure was dishonest.

[218] We find either to be a reasonable interpretation of the evidence during this period. To pick a date between September 24, 2015 and November 3, 2015 as the moment in time where Liao's non-disclosure became certain in its dishonesty, without further evidence, would require the panel to speculate, rather than make a reasonable inference based on the totality of the evidence. As the executive director has the onus of proving allegations on a balance of probabilities, we must conclude that the executive director has failed to meet this onus for establishing that Liao engaged in the *actus reus* of fraud with respect to his dealings with investors during the period September 24, 2015 through November 3, 2015.

[219] The executive director alleged that Liao carried out the *actus reus* of fraud with respect to two investors (Investor AO and Investor VR) who invested in Holdings after November 3, 2015. However, as set out in paragraph 124 above, the evidence was that Liao met with Investor VR on September 28, 2015. Even though Investor VR paid for his investment on December 2, 2015, there is no evidence that Liao met with Investor VR after their meeting in September. As a consequence, we do not find that Liao carried out the *actus reus* of fraud with respect to Investor VR. We do find that Liao carried out the *actus reus* of fraud with respect to one investment by Investor AO on November 17, 2019 for aggregate proceeds of US$37,887.73.

[220] We also find that Liao had the requisite *mens rea* for fraud with respect to this one transaction.

[221] As noted above, the analysis with respect to whether Liao had the requisite *mens rea* for fraud is simplified in this case. Liao had actual knowledge of the cash flow issues and the problem with repaying investors that are at the heart of his non-disclosure. He had actual knowledge of the letter sent to investors on November 3, 2015. He therefore had actual knowledge of the "other fraudulent means" aspect of the *actus reus*.

[222] Liao submitted that, as he did not have access to financial information relating to Holdings (or Bezzasso), he could not have been in a position to assess whether investors would suffer deprivation from his failure to disclose cash flow issues and investor repayment problems.

[223] We do not agree with this submission. The facts are that Holdings was having cash flow issues and investor repayment problems. Liao knew this. On November 3, 2015, Bezzasso communicated to some, but not all, investors that he was stopping payments on their investments. Liao knew this. The investment made by Investor AO on November 17, 2015 would have had a first payment due on December 17, 2015, at a time when Bezzasso had already communicated to other investors that he was not making payments on their investments. Liao knew this. Liao did not have to have an understanding of the financial status of Holdings and Bezzasso to appreciate that if Holdings had ongoing cash flow issues and other investors were having problems being repaid and Bezzasso had told many investors that he was ceasing making payments on their investments, that Investor AO's funds were at risk. Therefore, we also find that Liao was aware of the risk of deprivation that his non-disclosure exposed Investor AO to in making her investment.

[224] We find that Liao contravened section 57(b) of the Act with respect to one investor for proceeds of US$37,887.73.

Section 34 contraventions - Liao

[225] The executive director alleged that Liao contravened sections 34(a) and 34(b) when he referred to Holdings 27 investors who invested a total of approximately $1.6 million in Holdings.

[226] Liao submitted that the executive director had failed to lead sufficiently reliable evidence with respect to all of the 27 investors and Liao's role in "trading" in securities and "advising" with respect to each of those investors' investments in Holdings.

[227] We will address the allegations of a breach of section 34(a) and section 34(b) separately.

[228] The evidence of Liao's involvement with investors who ultimately invested in Holdings was largely provided to Commission investigators by Liao himself. He provided lists of investors whom he referred to Bezzasso/Holdings and he was asked about many of these investors during one (or more) of his interviews with Commission staff.

[229] The totality of the evidence in relation to the allegations of Liao's contraventions of section 34 was that described in paragraph 130 above.

[230] Not all of that evidence should be given equal weight. For example, a number of the transcripts of interviews with investors were not conducted under oath, nor were those witnesses subject to cross examination during the hearing. Similarly, copies of notes of telephone calls between Commission staff and investors suffer from problems of hearsay and other evidentiary frailties, meaning that we gave them less weight than oral testimony of witnesses at the hearing.

[231] However, all of the above listed evidence was corroborative of the basic fact that Liao was responsible for introducing and referring 26 of the 27 investors (that the executive director alleged to have been referred) to Bezzasso/Holdings and who then subsequently invested in Holdings. During his testimony at the hearing, Liao only really took issue

with whether he had referred one of the 27 investors (Investor VR). As noted above, the evidence does not support that Liao introduced Investor VR to Bezzasso. However, it is clear that Liao did meet with Investor VR (at Bezzasso's request) to explain to Investor VR how the Holdings investment worked and to discuss the investment opportunity.

[232] In *Re Liu*, 2018 BCSECCOM 372, a panel of this Commission held that a finder, whose conduct was limited to referring investors to an investment opportunity and receiving a significant commission for so doing, was engaged in "acts in furtherance of a trade" in securities which triggered the requirement to be registered to trade in securities under section 34(a) of the Act.

[233] The evidence in this case was that Liao, in many cases, did far more than just refer investors to Bezzasso/Holdings. The evidence was clear that Liao did, at a minimum, refer each of 26 of the 27 investors to Bezzasso/Holdings and that these investors then invested in securities of Holdings. Liao received a significant commission or finder's fee for doing so (even if he agreed to defer payment with respect to some of these fees). In so doing, Liao was, similar to the individual respondent in *Liu*, engaged in acts in furtherance of trades in securities of Holdings to each of the 26 investors which triggered an obligation to be registered under section 34(a) of the Act.

[234] With respect to the 27th investor, Investor VR, the evidence was also clear that Liao engaged in acts in furtherance of Investor VR's purchase of a security of Holdings. The notes of the meeting (taken by Liao) between Liao and Investor VR and Liao's answers to Commission staff during an interview about that meeting all suggest that Liao discussed with Investor VR the attributes of an investment in Holdings. That meeting took place in advance of Investor VR's last investment in a security of Holdings and can be seen to be part of the solicitation to make an investment in Holdings. We find that Liao engaged in an act in furtherance of a trade with respect to Investor VR's investment in a security of Holdings.

[235] There are exemptions provided in NI 31-103 from the requirement to be registered to trade in securities. However, once the executive director has satisfied the onus of proving, on a balance of probabilities, that a respondent was required to be registered to trade, then the onus shifts to the respondent to prove that they had an applicable exemption. In this case, Liao did not submit that there was an exemption that was applicable to him or his circumstances.

[236] Therefore, we find that Liao contravened section 34(a) with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059.

[237] As set out above, the evidence with respect to whether Liao contravened section 34(b) generally and with respect to each of the 27 investors is less clear.

[238] Again, the evidence tendered by the executive director in support of this allegation is described in paragraph 130 above. Unlike the allegations of contraventions of section 34(a), where we are able to determine that a certain minimum conduct was uniformly

carried out (i.e. the act of referring investors) with respect to all 27 investors, the evidence demonstrates that different conduct relevant to the advising allegation was carried out by Liao with different investors.

[239] The executive director submitted that Liao acted in a manner that contravened section 34(b) of the Act by:

- meeting with investors, gathering information about the investors' individual financial circumstances, financial needs and future plans;
- completing financial planning questionnaires with some of the investors;
- completing investment summaries, investor profile questionnaires and other forms designed to discuss investor goals and risk tolerances;
- providing more than just factual information about the Holdings investment opportunity – instead, Liao tailored specific advice to some of the investors;
- comparing the Holdings investment to other investment opportunities; and
- recommending to certain clients that they liquidate other investments in order to invest in Holdings.

[240] We agree that this conduct amounts to giving specific advice and that in order to engage in this conduct a person must be registered under section 34(b) of the Act.

[241] The difficulty in this case is that the executive director did not have evidence of all of the conduct set out in paragraph 239 with respect to each of the 27 investors. Some of the 27 investors were existing clients of Liao's in his insurance business, others were not. Some of the 27 investors were Liao's family members or personal and family friends. Unsurprisingly, Liao's interactions with the 27 investors differed and we are not able to infer that all of the interactions included indicia of specific advice or recommendations to invest in a security of Holdings.

[242] Although there was some evidence of Liao holding himself out as a "financial advisor", given his role in selling insurance products, we are not persuaded that that evidence, by itself, would be sufficient to require that Liao be registered under section 34(b) of the Act. In the circumstances of this case, we think that the evidence of Liao holding himself out as a "financial advisor", when combined with one or more of the elements of conduct described in paragraph 239 (which go to circumstances in which Liao can be seen to have provided specific advice), is what required Liao to be registered under section 34(b) of the Act.

[243] We conducted a thorough review of all the evidence relating to each of the 27 investors to identify those that had clear evidence of Liao engaging in the specific conduct described in paragraph 239 above (i.e. providing specific advice). After performing that analysis,

we find that for 15 investors who invested an aggregate of $617,670.87 in 22 separate investments, we had insufficient evidence to determine that Liao engaged in conduct that required registration under section 34(b) of the Act.

[244] With respect to the remaining 12 investors who invested an aggregate of $998,387.73 in 22 separate investments, we find sufficient evidence that Liao engaged in providing advice to the investors which required registration under section 34(b) of the Act. This evidence included specifically recommending investments in Holdings, providing advice that an investment in Holdings would help an investor achieve their goals faster, and recommending that other investments be liquidated, or equity be taken from an investor's home, to invest in Holdings. As a result of this analysis, the 12 investors where we found sufficient evidence of unregistered advising are identified in various exhibits in the proceedings, including Exhibit 4476, as investors 1, 3, 7, 10, 11, 13, 16, 17, 19, 20, 22 and 24.

[245] There are exemptions from the requirement to be registered under section 34(b) of the Act. However, as discussed above, the onus is upon a respondent to prove that one or more exemptions was applicable to the impugned conduct. In this case, Liao did not submit that any exemption was applicable to him or his circumstances in this case.

[246] As a consequence, we find that Liao contravened section 34(b) of the Act with respect to 12 investors who invested an aggregate of 22 times for aggregate proceeds of $998,387.73.

VII. Conclusion

[247] We find that:

a) each of Bezzasso, Holdings and Nexus contravened section 57(b) of the Act with respect to 158 investments by 85 investors for aggregate proceeds of $5,020,781;

b) Liao contravened section 57(b) of the Act with respect to one investment by one investor for aggregate proceeds of US$37,887.73;

c) Liao contravened section 34(a) of the Act with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059; and

d) Liao contravened section 34(b) of the Act with respect to 12 investors who made a total of 22 trades in securities for aggregate proceeds of $998,387.73.

VIII. Submissions on Sanctions

[248] We direct the parties to make their submissions on sanction as follows:

By January 7, 2020	The executive director delivers submissions to the respondents and the Hearing Office.

By January 21, 2020	The respondents deliver response submissions to the executive director and the Hearing Office. Any party seeking an oral hearing on the issue of sanctions so advises the Hearing Office. The Hearing Office will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
By January 28, 2020	The executive director delivers reply submissions (if any) to the respondents and the Hearing Office.

November 21, 2019

For the Commission

Nigel P. Cave
Vice Chair

George C. Glover, Jr.
Commissioner

Audrey T. Ho
Commissioner