COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *British Columbia (Securities Commission) v. Liao,*
2021 BCCA 470

Date: 20211215
Docket: CA46964

Between:

British Columbia Securities Commission and the Executive Director of the British Columbia Securities Commission

Respondents

And

Wei Kai Liao also known as Kevin Liao

Appellant

Before: The Honourable Mr. Justice Harris
The Honourable Mr. Justice Voith
The Honourable Mr. Justice Marchand

On appeal from: Decisions of the British Columbia Securities Commission, dated November 21, 2019 (Liability Decision) and July 15, 2020 (Sanctions Decision) (*Re Bezzaz Holdings,* 2019 BCSECCOM 415 and 2020 BCSECCOM 263).

Counsel for the Appellant: L.D. Ridgedale
F. Karimi

Counsel for the Respondents: L.L. Bevan
S.B. Hannigan

Place and Date of Hearing: Vancouver, British Columbia
November 3, 2021

Place and Date of Judgment: Vancouver, British Columbia
December 15, 2021

Written Reasons by:
The Honourable Mr. Justice Harris

Concurred in by:
The Honourable Mr. Justice Voith
The Honourable Mr. Justice Marchand

Summary:

This is an appeal from an order of the securities commission imposing sanctions for contraventions of the Securities Act. The appellant contends that the hearing was procedurally unfair because he did not have proper notice that acknowledgments he made during the liability stage of the proceedings would be relied on improperly at the sanctions stage. Held: Appeal dismissed. The commission relied on the appellant's acknowledgment that he had failed to disclose material information only in relation to the contraventions of the Act found at the liability hearing, and not in relation to possible contraventions that had not been alleged and in respect of which no findings of liability had been made. He had full notice of those alleged facts. The commission was entitled to rely on those acknowledgments as they were relevant facts bearing on his conduct in relation to the proven allegations. No issue of procedural fairness is engaged on the facts.

Reasons for Judgment of the Honourable Mr. Justice Harris:

Introduction

[1] The appellant, Mr. Liao, appeals from an order imposing sanctions for contraventions of the *Securities Act*, R.S.B.C. 1996, c. 418 [*Act*]. Mr. Liao was found to have contravened the *Act* by committing fraud in relation to one investor, contrary to s. 57(b) of the *Act*, and in acting as an unregistered advisor and trader, contrary to ss. 34(a) and (b) of the *Act*. He says that the commission relied improperly on his acknowledgment that he had failed to disclose material facts to investors in imposing sanctions based on statutory misrepresentation, an allegation of which he had no notice. He contends that in so doing, the commission breached principles of natural justice and procedural fairness. In his submission, he did not have proper notice that the commission might rely on that acknowledgment, made in the context of the liability hearing, when it considered sanctions. He also argues that the commission erred in law in considering the facts he had admitted in imposing sanctions. He says those facts were not material to those sections of the *Act* he was found to have contravened. At the heart of both the submissions is the proposition that the commission treated his "admission" as amounting to breaching the statutory prohibitions against misrepresentation, when that was not the basis of his liability.

[2] For the reasons that follow, I would dismiss the appeal. The appeal is founded on a false premise. The commission did not impose sanctions for statutory misrepresentation, either implicitly or explicitly. To the contrary, it was clear that sanctions were being imposed only in respect of contraventions of those sections for which he was liable (one finding of fraud, and multiple acts of

unregistered trading and advising). Mr. Liao's acknowledgment that he failed to disclose material information to investors was relied on only to inform the commission's assessment of his conduct in relation to those contraventions of the *Act* established at the liability stage of the proceeding. There is no question that Mr. Liao had notice of the factual allegation that he had failed to disclose important information to investors. He does not argue otherwise, so far as the liability hearing is concerned. Similarly, it is clear that those acknowledged facts formed a relevant part of his conduct in contravening the *Act*, and properly informed the commission's analysis of appropriate sanctions.

[3] In this appeal, Mr. Liao presents a nuanced argument. What he contends is that he did not have procedurally fair notice of the significance of his acknowledgment of non-disclosure as it affected the sanctions stage of the proceedings, and the use that the commission might make of it in imposing sanctions. As I have foreshadowed, that argument rests on a false premise. Accordingly, it is necessary to set out in some detail the background to the proceedings, so that his argument can be set in proper context.

[4] In my view, it is most convenient to examine what was alleged against Mr. Liao, what sections of the *Act* he was found to have contravened, and then to examine what use the panel made of his admissions in imposing sanctions.

<u>Analysis</u>

[5] The underlying proceedings involved a $5 million fraudulent Ponzi scheme. Mr. Liao was not the architect of the scheme, that role was played by a Mr. Bezzasso (sole director and officer of Bezzaz Holdings Group Ltd. ("Bezzaz")), but Mr. Liao became involved in it by acting as an agent finding investors in Bezzaz in return for commissions.

[6] It appears to be common ground that Mr. Liao did not know the scheme was a Ponzi scheme perpetrating a fraud on investors. He was naïve and inexperienced. He was not registered under the *Act* as an advisor, or to trade securities on behalf of others.

[7] On August 1, 2018, the executive director issued a notice of hearing to Mr. Liao. That notice stated:

> The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:
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> …
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> 5. [Liao] was a finder for Bezzaz. Despite not being registered under the Act, he acted as an advisor to 27 investors, 16 of whom were his insurance clients. These individuals invested a total of approximately $1.6 million in Bezzaz. Liao raised $382,000 of the $1.6 million after he knew that Bezzaz was having problems paying investors. He did not disclose what he knew to these investors.
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> …
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> 21. Between September 24, 2015 and December 2, 2016, Liao raised $382,000 for Bezzaz from 14 investments. At that time, Liao knew that Bezzaz was having problems paying investors. He failed to disclose this to his investors.

[8] As is apparent, Mr. Liao was provided with notice that it was alleged he had acted as an advisor to 27 investors, and that he had failed to make disclosure of what he knew about the problems Bezzaz was having paying investors.

[9] Also on August 1, 2018, the executive director issued a letter to Mr. Liao providing further particulars of the allegations in the notice of hearing. The letter of particulars stated that any of the facts described in it, and any of the documents disclosed to Mr. Liao, could be used to prove any of the allegations in the notice of hearing.

[10] In the letter of particulars, the executive director particularized the allegations of fraud against Mr. Liao as follows:

> Liao solicited investors to invest in Bezzaz, including his insurance clients, on commission basis. He presented promotional materials to investors, witnessed some of the Bezzaz promissory notes and promissory applications, collected investment cheques and provided post-dated interest cheques to investors. He raised money from investors from September to December 2015 despite knowing that Bezzaz had problems making all the monthly payments to investors, but omitting to disclose to the investors that they may not be able to receive all the promised payments.

[11] The notice of hearing was amended on March 22, 2019. As a result of this amendment, Mr. Liao had notice that he was alleged to have contravened ss. 34(1)(a) and (b) of the *Act*, which prohibit unregistered trading in securities and

advising. As well, he was on notice of an alleged contravention of s. 57(b) of the *Act*, which prohibits participating in conduct in relation to securities that perpetrates fraud on any person. The factual basis of the allegation, that Mr. Liao knew Bezzaz was having problems paying investors, and that Mr. Liao did not disclose what he knew to 27 investors he had referred to Bezzaz, did not change.

[12] The liability decision was rendered on November 21, 2019, and indexed as 2019 BCSECCOM 415. The commission found that Mr. Liao had contravened s. 57(b) of the *Act* in respect of one investment for aggregate proceeds of US$37,887.73; s. 34(a) with respect to 27 investors who made 44 trades valued at $1,616,059; and s. 34(b) with respect to 12 investors who made 22 trades valued at $998,387.73.

[13] The commission dismissed 13 of the 14 fraud allegations against Mr. Liao, and dismissed the unregistered advising allegations with respect to 15 investors. In summary, the commission found that:

> [203] … He did not dispute that the problems that Holdings [Bezzaz] 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

[14] For the purposes of the appeal, it is important to note that it had not been alleged that Mr. Liao had committed statutory misrepresentations. Accordingly, no finding of liability on the basis of statutory misrepresentation was made against him. The liability panel is explicit in specifying the sections of the *Act* it found Mr. Liao had contravened. Those sections do not include the prohibitions against statutory misrepresentation.

[15] Subsequently, the commission heard submissions on sanctions. During argument, a commissioner asked Mr. Liao’s counsel how the history of non-disclosure should inform sanctions for those contraventions that had been found by the panel, but which did not include a finding of statutory misrepresentation. Counsel denied that this conduct should inform sanctions even though it was a relevant factor in terms of his overall honesty and integrity and may be part of the factual matrix.

[16] It is important to examine how the commission dealt with this issue in its sanctions decision released July 16, 2020, and indexed as 2020 BCSECCOM 263. I have, for reference, included the passages of the reasons material to this issue as an Appendix to this judgment.

[17] First, at para. 49, the panel identified the sections of the *Act* Mr. Liao was alleged to have breached: namely ss. 34(a) and (b) and s. 57(b). It then summarized its liability conclusions, identifying the contraventions it had found. These contraventions included only unregistered trading and advising and one finding of fraud. It noted that although non-disclosure of material facts had occurred in a number of cases, only in one case was the non-disclosure found to be dishonest. This was the critical basis underlying finding fraud only in one case.

[18] At para. 53, the panel expressly acknowledged that there were neither allegations nor findings of liability for misrepresentation against Mr. Liao. Here, it is clear that the reference to misrepresentation is to statutory misrepresentation. The panel then commented that Mr. Liao's failure to disclose important facts over an extended period of time is "part of the factual circumstances relevant to our analysis of the appropriate sanctions for his contraventions of the Act":

> While there were neither allegations nor findings of liability for misrepresentations against Liao, Liao's failure to disclose important facts to investors over an extended period of time is part of the factual circumstances relevant to our analysis of the appropriate sanctions for his contraventions of the Act.

[19] Here, in my view, on any fair reading, the panel is unambiguously clear that it is not imposing sanctions for statutory misrepresentations. It acknowledges, correctly, that it can take account of non-disclosure only as a circumstance relevant to proven contraventions of the *Act*.

[20] The panel had to consider sanctions of various kinds arising out of the proven allegations. Broadly, those included a market ban, a disgorgement order, and an administrative penalty. In respect of each of these matters, Mr. Liao's contravention of the unregistered trading and advising prohibition is a relevant factor. The sanctions are crafted as a response to those statutory breaches, as well as to fraud. Nowhere in its reasons can I find any suggestion that the panel was imposing sanctions in respect of a contravention of the *Act* (statutory misrepresentation) that had not been alleged or proven. To the contrary, at most,

the panel did what it said it could do. It took the history of non-disclosure into account as a circumstance relevant to the conduct that had been found to be a contravention of the *Act*.

[21] I have found it necessary to outline what the sanctions panel did in order to identify what issues arise on this appeal. The panel is clear. It is not imposing sanctions for statutory misrepresentation (an unalleged statutory contravention). It is relying on non-disclosure only to the extent it informs appropriate sanctions for proven contraventions. There is nothing confusing or unclear about the approach taken by the panel. On this aspect of the appeal, the only legitimate question is whether the pattern of non-disclosure was properly considered in relation principally to the s. 34 violations.

[22] It is incontrovertible that the commission has a mandate to act in the public interest in protecting investors and ensuring the integrity of capital markets. I do not think there can be any doubt that the commission may properly consider a wide range of conduct relating to contravention of the *Act* in crafting appropriate sanctions to protect the public interest and deter and penalise behaviour that could undermine that mandate. The range of considerations relevant to this task were recently endorsed by this Court in *R. v. Samji*, 2017 BCCA 415, at paras. 93–96:

> [93] In my view, the appellant's characterization of what factors are relevant to a consideration of deterrence is far too narrow and not supported by the authorities. A consideration of factors such as the seriousness of the appellant's conduct and the damage done to the capital markets are matters that the Commission is entitled to weigh in determining a penalty that will be a meaningful deterrent to others.
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> [94] In *Cartaway* [*Cartaway Resources Corp. (Re)*, 2004 SCC 26], LeBel J. held that a penalty imposed under s. 162 of the *Act* should take into account the entire context as well as the preservation of the public interest. At paras. 65–66, he considered that an increased fine sent a "clear message to other actors in the British Columbia securities market" that a breach of the prospectus requirements would be dealt with severely, noting that
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>> [t]he Commission stressed the seriousness of the respondents' conduct and the damage done to the integrity of the capital markets, and found that when making an order that is in the public interest, "[w]e are obliged to take whatever remedial steps we determine are appropriate to maintain the public's confidence in the fairness of our markets"…
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> [95] He considered the penalty to be reasonable globally, noting as well that the Commission "weighed the aggravating and mitigating factors" in

> determining the appropriate penalty.
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> [96] It is also my view that the factors set out in *Eron Mortgage* [*Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22] are in accordance with the principles in *Cartaway*. They are reproduced in the trial judge's decision at para. 114:
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>> In making orders under section 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. [Relevant factors include]:
>>
>> - the seriousness of respondent's conduct,
>> - the harm suffered by investors as a result of the respondent's conduct,
>> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
>> - the extent to which the respondent was enriched,
>> - factors that mitigate the respondent's conduct,
>> - the respondent's past conduct,
>> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
>> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to issuers,
>> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
>> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
>> - orders made by the Commission in similar circumstances in the past.

[23] The panel, in crafting the administrative penalty, considered (at para. 81) a number of factors including Mr. Liao's lack of knowledge of the scheme, his naïveté in believing the investments would be successful, the fact he did not use investors' funds for personal use, his personal circumstances, and his failure to disclose important facts. These considerations supported an administrative penalty of $100,000.

[24] The disgorgement order considered (at paras. 65–74) the evidence about commissions received in breach of the sections of the *Act*, the uses made of the

commissions and other fees, the basis of the executive director's calculations, and the absence of rebutting evidence, to reach a conclusion about the benefit received by Mr. Liao from his breaches of the *Act*.

[25] In relation to the market ban, again the panel considered multiple factors including Mr. Liao's conduct generally. Having considered these issues, the commission imposed the following sanctions, summarized at para. 82:

> 8. Liao is prohibited under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision, until the later of 15 years from the date of this Decision and the date upon which Liao has made the payments to the Commission as set out in sub-paragraphs 10 and 11 below; and
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> 9. Liao is prohibited:
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> (a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of this Decision;
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> (b) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
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> (c) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and
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> (d) under section 161(1)(d)(v), from engaging in investor relations activities;
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> until the later of 15 years from the date of this Decision and the date upon which Liao has made the payments to the Commission as set out in sub paragraphs 10 and 11 below.
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> 10. Liao pay to the Commission $68,530, pursuant to section 161(1)(g) of the Act [the disgorgement order] ; and
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> 11. Liao pay to the Commission an administrative penalty of $100,000 under section 162 of the Act [the administrative penalty].

[26] I can see nothing in the panel's articulation of the reasons for its sanctions award for the proven contraventions that supports a view that relying on the history of non-disclosure was inappropriate. The non-disclosure occurred as part of Mr. Liao's conduct in acting as an unregistered advisor and trader. That conduct is serious, it relates to the harm suffered by investors as a result of his conduct, and it necessarily damaged the integrity of British Columbia's capital markets. It also bears on a number of the other *Eron Mortgage* factors it would be redundant

to recite. I fail to see any meritorious argument that the panel erred in taking the non-disclosure into account.

[27] Accordingly, I would not accede to an argument that the panel relied on irrelevant facts in crafting sanctions, or that it was imposing sanctions in respect of a regulatory offence that had not been alleged or proven.

[28] I turn now to the suggestion that relying on non-disclosure was procedurally unfair.

[29] As I have indicated, the argument about procedural fairness is nuanced. This is so because Mr. Liao does not dispute that in relation to the liability hearing he was provided with notice of the facts alleged against him, including that he had failed to disclose material information to investors. He says, however, that that notice was made in relation to an allegation of fraud, contrary to the statute, but not statutory misrepresentation.

[30] I have already expressed my opinion that the commission did not rely on his acknowledgment of non-disclosure as he alleged. This is fatal to his argument. There is no foundation in the facts of the case capable of supporting Mr. Liao's argument that he was denied procedural fairness.

[31] In my view, Mr. Liao received full, unequivocal, and proper notice of both his alleged contraventions of the *Act* and the facts said to support them. The purpose of notice is to ensure that a party knows the case he or she has to meet and can prepare to meet it. Mr. Liao knew exactly what the case was he had to meet. He then made extensive admissions. Moreover, I see nothing procedurally unfair in an adjudicator then relying on findings of fact and liability, including admitted facts, made in the context of a procedurally fair hearing, to determine appropriate sanctions or remedies.

Disposition

[32] Accordingly, I would dismiss the appeal.

"The Honourable Mr. Justice Harris"

I agree:

"The Honourable Mr. Justice Voith"

I agree:

"The Honourable Mr. Justice Marchand"

Appendix

Excerpt from *Re Bezzaz Holdings*, 2020 BCSECCOM 263 (the "Sanctions Decision"):

> **D. Appropriate Orders Regarding Liao**
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> ***Market prohibitions***
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> [49] In the amended notice of hearing in this matter, the executive director alleged that Liao had contravened section 57(b) with respect to 14 investors who made a total of 15 trades in securities for aggregate proceeds of $382,000 and alleged that Liao had breached sections 34(a) and 34(b) with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059.
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> [50] We found that Liao contravened section 57(b) with respect to one investment by one investor for aggregate proceeds of US$37,888 (equivalent to approximately Cdn$50,000.) He also contravened section 34(a) (unregistered trading) with respect to 27 investors who made a total of 44 trades in securities for aggregate proceeds of $1,616,059 and section 34(b) (unregistered advising) with respect to 12 investors who made a total of 22 trades in securities for aggregate proceeds of $998,388.
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> [51] While Liao's fraud finding was established for only one of the 14 investors and in respect of only one of the 15 investments alleged by the executive director, the panel found that, during the period of June 2015 to December 2, 2015, Liao had actual knowledge of Holdings' cash flow issues and investor repayment problems. Non-disclosure of important facts may constitute fraud "by other fraudulent means" (*Re Lathigee*, 2014 BCSECCOM 264) (*Lathigee*). In *Lathigee*, the panel set out a three part test for determining whether the non-disclosure of certain facts constitutes a prohibited act. Those tests are:
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> (a) whether the non- disclosed information is an important fact (one that would affect a reasonable investor's investment decision);
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> (b) whether the respondent failed to disclose the important information; and
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> (c) if the respondent failed to disclose the important fact, whether that was dishonest.
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> [52] As we stated in the Findings (at paras. 203 and 216), the first two elements in *Lathigee* were, in essence, acknowledged by Liao and were not in dispute. The non-disclosures of the cash-flow issues and problems Holdings [Bezzaz] was having paying investors were clearly misrepresentations to investors. However, the panel found that the third element of fraud by non-disclosure of important facts - i.e. was the non-

disclosure dishonest - was only proven on a balance of probabilities for one investment by one investor after November 3, 2015. On that date, Liao knew that payments promised to investors who invested after that date would not receive timely returns promised on their investments. Liao knew of the risk of investor deprivation which resulted in actual deprivation.

[53] While there were neither allegations nor findings of liability for misrepresentations against Liao, Liao's failure to disclose important facts to investors over an extended period of time is part of the factual circumstances relevant to our analysis of the appropriate sanctions for his contraventions of the Act.

[54] Liao submitted that the permanent market bans suggested by the executive director were unnecessary in the public interest and were disproportionate to Liao's misconduct. Liao suggested that five year market bans would be sufficient to meet the goals of general and specific deterrence. He pointed to his cooperation in the Commission's investigation, absence of past misconduct, raising no significant risk to the capital markets, his inexperience in securities markets and the impact that the finding of fraud will have on his future livelihood.

[55] Liao also focused on the fact that fraud was only proven with respect to a single investment of a single investor, that the basis of his fraud differed and was less serious than that of Bezzasso, his belief that the businesses and products of Bezzasso and his companies would ultimately be successful, his success in obtaining repayments for some investors, his personal investments in Holdings [Bezzaz] along with his father's investment and the fact that he did not misappropriate investors' funds.

[56] Liao also submitted that his fraud contravention as a finder who failed to disclose important information to investors would in itself send a strong message to other finders as a matter of general deterrence.

[57] The executive director submitted that permanent market bans are appropriate against Liao. The finding of fraud against even one investor and even a relatively small deprivation due to fraud warrant permanent bans. Liao solicited and advised numerous investors over a significant period of time without fulfilling the fundament requirements of either registration or exemption. Many of those whom he solicited and advised were insurance clients of Liao and trusted and relied on him. Liao promoted himself as a "financial advisor". Several investors who testified referred to Liao as their "financial advisor".

[58] The executive director referred to three previous decisions of this Commission involving relatively small frauds and, in some cases, breaches of section 34[3]. In each of these cases, permanent bans were imposed. There were aggravating factors in each of these cases including conflicts of interest, history of regulatory misconduct and misappropriating investors' funds for personal purposes. The executive director also referred to *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267 (*Bakshi*), a case involving breaches of sections 34 and 61 but not section 57(b). A 10 year ban was imposed on Bakshi in that case.

[59] In this case, Liao committed a serious act of fraud on an investor who was an insurance client. Liao solicited this investor to reinvest in Holdings [Bezzaz] while he knew that Bezzasso did not intend to make the

promised payments in a timely manner. He did not advise her, as he did to other investors, that Bezzasso intended not to make any payments to investors until at least the end of 2015. In addition, Liao, despite being a registered insurance agent and acknowledging that he was aware of securities regulations, failed to make any attempt to become registered for trading or advising - or find available exemptions from registration.

[60] In previous cases, this Commission has imposed permanent market bans on respondents who have engaged in similar misconduct to that of Liao. This is unsurprising, given that fraud is the most serious misconduct under the Act. We agree with Liao, however, that his misconduct was less serious than that of Bezzasso, for the reasons stated in paragraph 55.

[61] Liao was a finder: he did not directly benefit from the misappropriation of investors' funds but rather received commissions and other compensation as a finder. He had no knowledge during the relevant time of the Ponzi scheme perpetrated by Bezzasso. Liao testified that he believed that the businesses and products promoted by Bezzasso would ultimately be successful and that cash flow shortfalls were normal for start-up, developmental businesses. We have also considered, as required by Davis, the personal circumstances of Liao. Liao is a relatively young man who has demonstrated the ability to provide insurance services to his clients. He is not at present engaged in and, according to his counsel, has no intention to engage in securities market activities in the future.

[62] Taking all of these factors and circumstances into account, and in the public interest, we find it appropriate to order broad market bans against Liao, including reliance on any exemptions as outlined in section 161(1)(c), for the later of 15 years and when he has paid the full amounts of the monetary sanctions ordered under sections 161(1)(g) and 162.

[63] As requested by Liao, we permit him to purchase securities or exchange contracts for his own account through a registered dealer, provided that a copy of this Decision is provided to the registered dealer.

Section 161(1)(g) Order

[64] The executive director has submitted that Liao be ordered to pay to the Commission $68,530 under section 161(1)(g).

[65] Liao did not receive directly any of the funds invested by investors in Holdings [Bezzaz] and Nexus. Liao was entitled to receive commissions (ranging from 3% to 10%) on amounts invested by investors introduced to Bezzasso and his companies by Liao. He agreed to defer certain amounts of commissions at the request of Bezzasso. Liao also received bonuses and "liver" fees, being funds to "wine and dine" investors and prospective investors. Liao was also repaid $25,250 as returns on his $30,000 investment in Bezzasso's companies. He also made a further investment of $20,000 in Bezzasso's companies and made a $30,000 loan to Bezzasso.

[66] In total, during the relevant period, Liao was paid $123,280 from the bank accounts of Holdings [Bezzaz] and Nexus.

[67] As noted, the failure of Bezzasso, Holdings [Bezzaz] and Nexus to make or retain any proper financial records forced the executive director to rely almost entirely on bank records which did not specify the purpose of many of the deposits, withdrawals and transfers in and from the accounts.

[68] Liao did not dispute that he received commissions, bonuses and "liver fees" for finding investors for Bezzasso's scheme. We have found that in doing so, Liao contravened multiple sections of the Act. Therefore, the commissions, bonuses and "liver fees" that Liao received from Bezzasso and his companies were amounts Liao obtained as a result of his contraventions of the Act.

[69] An estimate of the commissions earned by Liao by his unregistered trading would be a minimum of 3% of $1,616,059, i.e. $48,000. The evidence showed that amounts obtained by Liao were $123,280; much greater than $48,000 as the commission rate was up to 10% and Liao was paid bonuses and "liver fees" in addition to his commissions.

[70] The section 161(1)(g) order sought by the executive director was calculated by deducting from the $123,280 received by Liao from Bezzasso and his companies the amount of $4,750 owed to Liao before the start of the relevant period, Liao's $20,000 investment and $30,000 loan to come up with $68,530 as the net amount obtained by Liao through his misconduct. These deductions were most favourable to Liao.

[71] This calculation and the principles behind it follow the guidelines in *Poonian* [*v. British Columbia Securities Commission*, 2017 BCCA 207] and are reasonable in the circumstances and in the public interest.

[72] Liao submitted that a section 161(1)(g) order for payment of $68,530 would be disproportionate as it would be unduly harsh and unnecessary to protect the public interest. Liao submitted that the executive director's calculation was based on unproven assumptions. He suggested that any section 161(1)(g) order should be limited to the commission that he was entitled to under the $50,000 investment for which he was found to have acted fraudulently.

[73] In *Poonian*, the Court of Appeal approved an approach to determine the amounts obtained directly or indirectly by the misconduct of a respondent which requires the executive director to provide evidence of the approximate amount whereupon the burden of proof shifts to the respondent who, presumably, has direct knowledge of their enrichment, to disprove the reasonableness of the executive director's calculation.

[74] Liao did not provide any credible alternative calculation of the amount for an appropriate order under section 161(1)(g). Certainly, limiting the calculation to the investment that led to the finding of fraud against Liao would be wholly inappropriate as it would ignore the amounts obtained by Liao through his unregistered trading and advising. Liao also did not provide any evidence to show that the amount he obtained as a result of his misconduct was less than $68,530.

[75] We find that the appropriate order in the public interest under section 161(1)(g) against Liao is $68,530.

Administrative Penalty

[76] The executive director seeks a $200,000 administrative penalty under section 162 against Liao.

[77] The executive director submitted that *Zhong*, *Rush*, *Lau* and *Bakshi* provide guidance from previous decisions of this Commission in comparable but not identical circumstances. The panel in *Zhong* ordered a

$250,000 administrative penalty in a case where the panel found section 50(1)(a), section 57(b) and section 34 misconduct. The amount of the fraud in *Zhong* was $400,000. In *Rush*, the panel ordered a $200,000 administrative penalty in a case where the panel found both section 57(b) and section 34 misconduct. The amount of the fraud in *Rush* was $73,000 ($60,000 after deducting repayments to investors). In *Lau*, the panel ordered a $85,000 administrative penalty in a case where the panel found section 57(b) and section 168.1 misconduct. The amount of the fraud in *Lau* was $50,000 ($37,000 after deducting repayments to investors). In *Bakshi*, the panel ordered a $100,000 administrative penalty where it found section 34 misconduct of $2.6 million and section 61 misconduct of $1.5 million. There was no fraud finding in that case because the panel found that the conduct alleged to constitute fraud did not involve a "security" under the Act, but the panel made it clear that Bakshi engaged in a sophisticated level of deceit against several clients, and Bakshi was personally enriched by $380,000. In each of these cases there were other factors not present in this case, as, indeed, there are factors in the present case that differentiate it from those previous cases.

[78] Liao submitted that any administrative penalty should be much lower than $200,000, suggesting that a $10,000 to $20,000 administrative penalty would be reasonable. Liao says that the $250,000 administrative penalty in *Zhong* is not comparable as Zhong carried out a deliberate scheme to deceive investors and made prohibited representations and concealed risks. Liao says *Rush* is not comparable to the present case as the respondents in that case engaged in multiple acts of deceit over a significant period of time and engaged in impersonating one of the respondents to cover up a deceit. Liao says *Rush* is also not comparable to the present case as the respondents in that case used investor funds to pay personal expenses. Liao says that *Lau* is not comparable to the present case as Lau took advantage of a vulnerable senior and diverted the investor's funds to pay a personal debt. Liao says that *Baksh*i is not comparable to the present case as Bakshi engaged in multiple section 34 and 61 contraventions over a four year period and funds raised were used for Bakshi's personal purposes.

[79] Liao also relies on *Re Waters*, 2014 BCSECCOM 369 (*Waters*), a case that involved contraventions of sections 34(a) (unregistered trading) and 61(1)(a) (failure to provide a prospectus) with respect to 45 investors and proceeds of $313,000. The panel in that case imposed a $20,000 administrative penalty. We note that there was no fraud finding in *Waters* and no finding of unregistered advising. The respondent in *Waters* was a former registrant and had a history of past securities misconduct.

[80] We find that the $20,000 administrative penalty in *Waters* and the $85,000 administrative penalty in *Lau* are not analogous with the conduct before us in this matter, as there was no finding of fraud in *Waters* and no finding of unregistered trading or advising in *Lau*. We also find that the administrative penalties of $200,000 and $250,000 in *Zhong* and *Rush* are inappropriate for the conduct in this matter, as the misconduct in those cases (including diverting investors' funds to personal uses) was more serious than in the present case. We find *Bakshi* to be the most comparable of all the cases cited as it involved deceit (even though there was no finding of fraud), and the amounts raised through the other misconduct were of sufficiently proximate magnitude to be comparable.

[81] We have found that Liao engaged in unregistered trading and advising, and engaged in fraudulent conduct. While he might not have been aware of Bezzasso's scheme during the relevant period, and appeared to have the naïve belief that Holdings [Bezzaz] and Nexus would ultimately be successful, Liao was at the same time aware of significant important information that was not disclosed to investors or prospective investors. Further, unlike some circumstances before other panels, Liao did not use investor funds for personal use. Considering all these factors, the submissions of the parties, as well as Liao's personal circumstances, we find it appropriate and in the public interest to order a $100,000 administrative penalty against Liao under section 162 of the Act.

IV. Orders

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

...

Liao

8. Liao is prohibited under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision, until the later of 15 years from the date of this Decision and the date upon which Liao has made the payments to the Commission as set out in sub-paragraphs 10 and 11 below; and

9. Liao is prohibited:

   (a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of this Decision;

   (b) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

   (c) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

   (d) under section 161(1)(d)(v), from engaging in investor relations activities;

   until the later of 15 years from the date of this Decision and the date upon which Liao has made the payments to the Commission as set out in sub-paragraphs 10 and 11 below.

10. Liao pay to the Commission $68,530, pursuant to section 161(1)(g) of the Act; and

11. Liao pay to the Commission an administrative penalty of $100,000 under section 162 of the Act.