

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

Citation: Re Benjamin Kirk, 2021 BCSECCOM 32

Date: 20210125

Reciprocal Order

Benjamin Thompson Kirk

Section 161 of the *Securities Act*, RSBC 1996, c. 418

- [1] This is an order under sections 161(1) and 161(6)(d) of the *Securities Act*, RSBC 1996, c. 418.
- [2] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies and exchanges. The executive director of the Commission has applied for an order reciprocating in British Columbia the Alberta Securities Commission on October 9, 2015 (Application), in the settlement agreement *Re Kirk*, 2015 ABASC 900 (Settlement Agreement).
- [3] The executive director tendered as evidence the Settlement Agreement and made written submissions to the Commission.
- [4] We find that the executive director provided the respondent notice of the application. Although Benjamin Thompson Kirk (Kirk) was provided the opportunity to be heard, Kirk did not participate in the hearing.
- [5] The Commission makes reciprocal orders under section 161(6) when such an order will, in the public interest, protect investors and the capital markets in British Columbia. Although the order in British Columbia is based on findings and sanctions in another jurisdiction, the Commission must be able to regulate a cross-border securities industry with highly mobile funds, people and information.
- [6] Among other things, Kirk admitted to breaching sections 75(1)(b) and 92(4.1) of the *Alberta Securities Act* as a *de facto* director of Skymark Media Group Ltd. (Skymark), when he authorized, permitted or acquiesced in Skymark and employees of Skymark in making misrepresentations and advising investors without being registered or having a valid exemption to that requirement. In particular, Kirk's conduct included authorizing, permitting or acquiescing in statements made by Skymark that:
 - a. Predicted the future price of securities, including "gains of 100%-1780%" without reasonable basis for making such statements and failing to disclose associated risks,
 - b. Stated that a security was "on the verge of a major breakout," and could earn "massive returns," with no reasonable basis for making such statements.

- [7] Further, the foregoing statements were made without disclosing that Kirk had significant ongoing involvement with the issuers of the securities, and at times held a significant number of those securities, either directly, beneficially or on behalf of third parties.
- [8] Although not quantified in the Settlement Agreement, Kirk admitted to realizing a substantial profit from selling shares in the relevant issuers. In civil proceedings brought in the U.S. District Court, Southern District of New York by the United States Securities and Exchange Commission, relating to the underlying conduct, Kirk entered into a consent order consenting to the entry of a final judgment, ordering him to pay disgorgement in the amount of \$5,499,021 plus prejudgment interest of \$731,495.63.
- [9] To prevent Kirk from engaging in similar conduct in British Columbia, we find that it is in the public interest to order that:
- a) under section 161(1)(d)(i), Kirk resign any position he holds as a director or officer of an issuer or registrant, except that you may continue to act as a director or officer of an issuer whose securities are solely owned by him;
 - b) Kirk is permanently prohibited:
 - i. under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except where all the of the following conditions are met:
 - (a) trades are made through a registrant who has first been given a copy of the Settlement Agreement and any order made by the Commission;
 - (b) trades are made in his own: RRSP account, TFSA account and/or RRIF account; and
 - (c) trades are in mutual funds, exchange-traded funds, government bonds, guaranteed investment certificates, or securities listed and posting for trading on the TSX, TSX Venture Exchange, the NYSE, or the NASDAQ.
 - ii. under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;
 - iii. under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant, except that Kirk may act as a director or officer of any issuer whose securities are solely owned by him or his immediate family members (being his spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law or brother or sister-in-law); and

- iv. under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets.

January 25, 2021

For the Commission

Gordon Johnson
Vice Chair

Deborah Abbey
Commissioner