

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

Citation: Re Skerry, 2021 BCSECCOM 30

Date: 20210122

Order under section 161(6)

Micheal Allen Skerry

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

Introduction

- ¶ 1 This is an order under sections 161(1) and 161(6)(b) of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 The executive director of the Commission applied on June 9, 2020, for an order reciprocating in British Columbia certain of the sanctions imposed on Micheal Allen Skerry (Skerry) in the decision *SEC v. Micheal Skerry*, Case No. 1:17-cv-00415-WCL-SL, in which the United States District Court, Northern District of Indiana, Fort Wayne Divisions (the U.S. Court) found Skerry contravened sections of the *Securities Act of 1933* [15 U.S.C. § 77a] (U.S. Securities Act), the *Securities Exchange Act* [15 U.S.C. § 78a] (Exchange Act), and SEC Rule 10b-5 [17 C.F.R. §240.10b-5] (Rule 10b-5).
- ¶ 3 We find that executive director provided the respondent notice of the application. Although the respondent was provided the opportunity to tender evidence and make submissions, Skerry did not participate in the hearing. We find that the respondent was provided with an opportunity to be heard.

Background

- ¶ 4 The United States Securities and Exchange Commission (SEC) alleged in a complaint filed with the U.S. Court that Skerry committed misrepresentation, fraud, and selling securities without a registration statement, contrary to sections 5 and 17(a) of the *U.S. Securities Act*, section 10(b) of the *Exchange Act*, and Rule 10b-5.
- ¶ 5 The SEC alleged that Skerry perpetrated a fraudulent scheme to “scalp” the stock of Success Holding Group International, Inc. (Success Holding), a penny stock whose securities were quoted on the OTC Link. In particular, the SEC alleged that after acquiring a large block of Success Holding stock in June 2014, Skerry employed a variety of deceptive practices to drive up the demand for and the price of Success Holding stock, including posting misleading messages on public websites and sending emails out to potential investors, encouraging them to buy Success Holding stock, without disclosing his ownership or intention to sell.
- ¶ 6 At the time of these activities, Skerry held substantially all the Success Holding shares available for trading. After the share price for Success Holdings significantly increased,

Skerry dumped his shares on unsuspecting investors, generating a profit of over \$950,000 in approximately 5 months, from July to December 2014. During that time, Skerry's sales made up more than 60% of the trading volume, and included 100% of the trading volume on certain days.

- ¶ 7 Skerry filed a motion to dismiss which the U.S. Court denied, and on October 16, 2018, Skerry filed an answer to the complaint. Skerry failed to respond to further motions and failed to comply with and an order to attend a deposition and provide responses to interrogatories. As a result, the U.S. Court held on August 6, 2019, that the remedy of default judgment was appropriate, resulting in both a finding of liability against Skerry, and finding that the facts outlined in the SEC's allegations were undisputed. On December 26, 2019, the U.S. Court ordered judgment in the SEC's favour and imposed the following permanent market bans and monetary orders against Skerry:
- (a) Permanent ban from violating section 10(b) of the Exchange Act, Rule 10b-5, and sections 5 and 17(a) of the U.S. Securities Act;
 - (b) Permanent ban from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, with an exception under the Exchange Act;
 - (c) Disgorgement order of \$957,712.41 as well as interest in the amount of \$212,710.62; and
 - (d) Civil penalty of \$957,712.41.

Analysis

- ¶ 8 Section 161(6) facilitates cooperation between the Commission, other securities regulatory authorities, self-regulatory bodies, exchanges and the courts. If the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia (*McLean v. British Columbia (Securities Commission)* [2013] 3 S.C.R. 895 at para. 54) or before the Commission. In this instance, Skerry failed to comply with orders from the U.S. Court in proceedings before it, and did not participate in the hearing process before the Commission.
- ¶ 9 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.
- ¶ 10 Skerry is a resident of New Westminster in British Columbia. He has received significant, permanent prohibitions from participating in the securities industry in the United States of America, as a result of his deliberate, deceptive conduct that significantly harmed unsuspecting investors of close to one million dollars. We find that

the purpose of section 161(1)(6)(b) is to ensure that the capital markets in British Columbia are protected from persons who have engaged in conduct in other jurisdictions that would have warranted significant sanctions here. As such, the Commission finds it in the public interest to issue orders in this matter.

Order

¶ 11 To prevent Skerry 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), Skerry resign any position he holds as a director or officer of an issuer or registrant;
- b) Skerry is permanently prohibited:
 - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives;
 - (ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;
 - (iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
 - (iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
 - (v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives market;
 - (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:
 - a) an issuer, security holder or party to a derivative, or
 - b) another person that is reasonably expected to benefit from the promotional activity; and

- (vii) (vii) under section 161(1)(vi) from engaging in promotional activities on Skerry's behalf in respect of circumstances that would reasonably be expected to benefit Skerry.

January 22, 2021

For the Commission

Gordon Johnson
Vice Chair

Deborah Abbey
Commissioner