



British Columbia  
Securities Commission

REPLY TO:  
Deborah W. Flood  
T: 604-899-6623 / F: 604-899-6633  
Email: [dflood@bcsc.bc.ca](mailto:dflood@bcsc.bc.ca)

**By Regular Mail**

June 9, 2020

Dear Mr. Skerry:

**Micheal Allen Skerry  
Reciprocal Order Application**

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director of the Commission (the Executive Director) is applying for orders against you under sections 161(6)(b) and 161(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act).

The Executive Director is making this application based on the decision in *SEC v. Micheal Skerry*, Case No. 1:17-cv-00415-WCL-SL, where you were found to have 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).

**BACKGROUND**

1. On September 28, 2017, the Securities and Exchange Commission (SEC) filed a complaint in the United States District Court, Northern District of Indiana, Fort Wayne Division naming you as a defendant (Complaint). The Complaint alleged 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.

Complaint, paras. 1-3

2. You filed a motion to dismiss which the court denied on February 26, 2018.
3. On October 16, 2018, you filed an answer to the Complaint.

Memorandum of law in support of sanctions, p. 3,  
footnote 3



4. You failed to respond to the SEC's interrogatories and failed to attend a deposition. Therefore, the SEC filed motions to compel you to respond to requests and attend a disposition. You failed to respond to the motions.
5. On January 7, 2019, a court ordered you to attend a deposition and provide responses to interrogatories. You failed to comply with the court order.

Memorandum of law in support of sanctions, p. 4, para. 1

6. On March 13, 2019, the SEC filed a motion for sanctions seeking remedies against you, including default judgment (Motion for Sanctions). You failed to respond to the Motion for Sanctions.

Motion for Sanctions  
Opinion and Order, p. 1, para. 1

7. The Motion for Sanctions included a sworn certification from SEC legal counsel, Michael Foster, confirming your failure to cooperate in discovery or comply with the court order of January 7, 2019.

Motion for Sanctions, p. 3-4

8. As a result of your failure to:
  - (a) respond to the SEC's discovery requests;
  - (b) attend a deposition;
  - (c) abide by a court order; and
  - (d) respond to the Motion for Sanctions,

the court found that the remedy of default judgment was appropriate, and on August 6, 2019, the court ordered default judgment (Opinion and Order).

Opinion and Order

9. On November 5, 2019, the SEC filed a motion and memorandum seeking remedies and final judgment. The memorandum seeking final judgment noted that based on the default judgment, the facts establishing your fraud were undisputed. Accordingly, the SEC established that the alleged violations of securities law had occurred, and it sought monetary and capital market sanctions against you.

Memorandum seeking final judgment, p. 1, para. 2, p. 5, para. 3  
Motion for remedies and final judgment



10. On December 26, 2019, the court granted the SEC's motion for remedies and final judgment and ordered judgment in the SEC's favour. The court also imposed permanent market bans and monetary orders against you.

#### Order of Judgment

### THIS PROCEEDING

#### Applicable law

11. With this letter, the Executive Director is applying to the Commission for orders against you under [section 161](#) of the Act. I have enclosed a copy of section 161 of the Act for your reference.
12. Under section 161(6)(b) of the Act, the Commission or the Executive Director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives.
13. The court granted default judgment against you. It is well-established under U.S. and Canadian law that a default judgment conclusively establishes the liability of a defendant and any allegations relating to liability are considered true.<sup>1</sup> As a consequence of default, defendants are deemed to have admitted the allegations of the complaint.<sup>2</sup> It is widely held that a court, when faced with a default judgment, is required to accept all of the factual allegations as true.<sup>3</sup> A commission panel in [Durante \(Re\)](#), 2004 BCSECCOM 634 stated the following at paragraphs 9 and 26:

Under U.S. law, a default judgment is an admission of the facts alleged in the complaint.

Under U.S. law, the effect of the default judgments is that Durante is taken to have admitted the allegations in the SEC complaints.

14. As a U.S. court has found you contravened U.S. securities law, you come within section 161(6)(b) of the Act.

#### **Summary of Facts**

15. Given the default judgment, the Commission can accept and rely upon the allegations in the Complaint as findings of fact. The findings of fact are also recited in the Motions for Sanctions, memorandum of law in support of its Motion for Sanctions, Opinion and Order, Motion for remedies and final judgment,

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<sup>1</sup> *Domanus v. Lewicki*, 742 F.3d 290, 303 (7<sup>th</sup> Cir. 2014) at p.9, para. 3, [E. Sands and Associates Inc. v. Dextras Engineering & Construction Ltd.](#), 2009 BCSC 42 at para 23

<sup>2</sup> *SEC v. Berkshire Resources, LLC*, 2009 U.S. Dist. LEXIS 109534, 2009 WL 4260219, para 4

<sup>3</sup> *Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009), *SEC v. Cole*, 661 Fed. Appx. 52, p. 2, para. 3 (2<sup>nd</sup> Cir.2016) citing *Finkel*



memorandum in support of motion for remedies and final judgment, and Order of Judgment:

- (a) You are a resident of New Westminster in British Columbia, Canada.

Complaint, para. 7

- (b) In May 2014, you met with the principals of Success Holding Group International (Success Holding) to discuss the company's plans for obtaining a listing on the Nasdaq stock market or the American stock exchange. At that time, Success Holding was a penny stock quoted on the OTC.

Complaint, paras. 1 and 11

- (c) Following the meeting, you were engaged by Success Holding to provide investor relations services and aid in raising capital for Success Holding.

Complaint, para. 11

- (d) In June 2014, you purchased 360,000 shares from Success Holding for \$36,000.00. After purchasing the shares, you began taking steps to generate interest in Success Holding and its stock.

Complaint, para. 13

- (e) You employed a variety of deceptive and fraudulent practices to "scalp" the stock of Success Holding. You manipulated and increased the price of the stock by a variety of deceptive practices, including:
  - (i) posting misleading messages on public websites; and
  - (ii) sending blast emails to potential investors urging them to buy the stock without disclosing your ownership of the stock or your intention to sell your shares.

Complaint, paras. 15-19

Opinion and Order, paras. 2-3

- (f) At the time you began your promotional activities, your shares represented substantially all of the Success Holding shares available for trading. Your efforts to promote Success Holding and its stock dramatically increased Success Holding's share price. The price of Success Holding stock rose from \$1.00 per share at the time of your first sale to \$10.25 per share five months later. You sold all your shares in Success Holding on the open market from July to December 2014. Your sales made up more than 60% of the trading volume during this period, including 100% of the trading volume on certain days.



Complaint, paras. 1, 20

- (g) You profited in the amount of \$957,712.41 from the sales of your Success Holding stock.

Declaration of Saylor, para. 8, Exhibit A  
Order of Final Judgment, p. 7

- (h) After you stopped selling a substantial number of shares into the market, the trading volume and the stock price of Success Holding stock dropped significantly. Fewer shares of Success Holding traded from January 1, 2015 to June 30, 2015 than had traded in the month of December 2014 alone. The stock price dropped dramatically from \$10.25 on December 31, 2014 to \$6.76 on June 30, 2015.

Complaint, para. 21

- (i) No registration was filed in connection with your sale of Success Holding stock to the public.

Complaint, para. 22

### **Sanction**

16. In making orders under section 161 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities.
17. Orders under section 161(1) of the Act are protective, preventative and intended to be exercised to prevent future harm.

[Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#),  
[2001] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39,  
and 56

18. In [Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining orders under section 161(1).
19. The following factors from *Re Eron* are relevant in this proceeding:
- (a) the seriousness of the respondent's conduct,
  - (b) the harm suffered by investors as a result of the respondent's conduct,
  - (c) the extent to which the respondent was enriched;
  - (d) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,



- (e) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- (f) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (g) orders made by the Commission in similar circumstances in the past.

[Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22

### **Application of the Factors**

#### ***Seriousness of the Conduct***

- 20. The finding and sanctions in the U.S. demonstrates that market manipulation is a serious contravention under U.S. Securities Law. Similarly, the Commission has recognized in cases involving section 57(1)(a) of the Act (the similar provision in the Act) that market manipulation can cause grave harm to both investors and issuers, and calls into question the public's confidence in the integrity of the securities markets.
- 21. Fraud is one of the most egregious securities regulatory violations.

[Manna Trading Corp Ltd. \(Re\)](#), 2009 BCSECCOM 595 (CanLII)

- 22. In [Poonian \(Re\)](#), 2015 BCSECCOM 96, the panel said (at paragraph 15):

Market manipulation compromises the integrity of the entire market. Its impact extends beyond the victims who lost money to the investing public as a whole. In *De Gouveia, Re*, 2013 ABASC 249 the Alberta Securities Commission concluded that manipulative trading “undermines the integrity of the capital market. It is unfair to investors, and jeopardizes the confidence in the capital market on which legitimate investor interest and capital formation depend”.

- 23. You carried out a fraudulent investment scheme to “scalp” the stock of Success Holding and, in so doing, further engaged in an illegal offering of securities because no registration statement was filed in connection with your sales of Success Holding stock to the public.

Memorandum in support of Motion for Remedies, p. 2, para. 3

- 24. You acted with intent when you carried out this deliberate scheme, spanning over 6 months, in order to enrich yourself at the expense of others.

Memorandum in support of Motion for Remedies, p. 6, para. 2



***Harm suffered by investors***

25. The market manipulation resulted in rapid increases of the price of the shares of Success Holding. Following the sale of your shares for a significant profit, there was a precipitous decline of the share prices. No doubt innocent investors who invested when share prices were artificially high were impacted financially.
26. At least 25 investors from the greater Buffalo, New York area purchased shares of Success Holding from September 2014 to December 2014.

Complaint, para. 19

***Enrichment***

27. A declaration of SEC senior accountant, Wilburn Saylor, Jr. (Saylor), was filed with the court in support of remedies and final judgment. Saylor reviewed records and trading data to determine the profits earned by you from trading in the securities of Success Holding. Saylor calculated the net proceeds of your unlawful activity at \$957,712.41.

Memorandum seeking final judgment, p. 15-31

***The risk to investors and the capital markets***

28. Participation in our capital markets is a privilege, not a right.
29. Market manipulations share similarities with fraud in that the underlying conduct of both involve elements of intent and deceit. Those who engage in market manipulation intend to deceive and harm the investing public.

[Re Deyrmenjian](#), 2019 BCSECCOM 93, para. 104

30. You played a significant role in the market manipulation. This is not a case of a single isolated incident, quickly acknowledged, with expressions of remorse and acceptance of responsibility.
31. Your conduct demonstrates that you lack integrity, have little or no concern for investors or for legitimate market participation. The risk you pose to the securities markets and investors is serious and palpable.

***Fitness to be a registrant, director, officer or advisor***

32. Honesty is a critical part of being a registrant or a director or an officer of an issuer. In fact, it is part of the basic duties of those positions.

[Re SBC Financial Group Inc.](#), 2018 BCSECCOM 267, para. 34

33. Market manipulation involves a finding of intent on the part of the respondent and an element of deceit in either creating a misleading appearance of trading activity



in, or an artificial price, for a security. This misconduct is completely inconsistent with conduct acceptable for a registrant, director or officer of an issuer, or those otherwise engaged in the capital markets.

[Re Deyrmenjian](#), 2019 BCSECCOM 93, para. 119

34. You have demonstrated deceit and dishonesty and a disregard for compliance with applicable laws. You have no place as a director, officer or advisor in this jurisdiction. Your occupation as an investor relations consultant will provide you with opportunities to commit similar misconduct in the future unless broad, permanent market prohibitions are imposed.

Memorandum seeking final judgment, p. 6, footnote 4

***Deterrence***

35. The capital markets of British Columbia are highly regulated, and persons seeking the privilege of participating in them are held to high standards of honesty and integrity. As a result, individuals who are active in our capital markets should expect that the Commission will make protective orders removing them from the markets if they commit securities fraud.

[Re Davis](#), 2018 BCSECCOM 284, para. 34

36. Through the orders we are seeking, we intend to demonstrate the consequences of your conduct, to deter you from future misconduct, and to create an appropriate general deterrent. Permanent bans are proportionate to your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

***Previous orders***

37. We refer to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market bans in the three decisions below. The decisions involve the same contravention (fraud), and/or a similar amount of quantum.
38. The Commission imposed permanent market bans in the following three decisions that have similar fact patterns to your misconduct:
- [Re Sungro](#), 2015 BCSECCOM 281  
The three respondents engaged in conduct relating to Sungro's shares that resulted in an artificial price for the shares. The respondent McLeary, was enriched in the amount of \$91,308.56, derived from the sale of shares.





- [Re Hable](#), 2017 BCSECCOM 209  
The respondent Hable, engaged in conduct relating to shares of Samaranta Mining Corporation that resulted in an artificial price for the shares. Hable was enriched in the amount of \$157,596.96 by the sale of shares.
- [Re Lim](#), 2017 BCSECCOM 196  
Two respondents were found to have engaged in market manipulation of shares of Urban Barns Food Inc. Trading accounts connected to the manipulation contained approximately US\$4.8 million derived from the sale of the shares which were the subject of the manipulation.

### ***The Davis Consideration***

39. In the Court of Appeal decision in [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149, the Court identified that it is incumbent upon a tribunal to consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public where a person's livelihood is at stake.

40. According to emails that you sent to investors, you claim to have worked in the stock market for over 30 years.

Memorandum seeking final judgment, p. 6, footnote 4

41. You list yourself as the president of M&T Business Consultants, and hold yourself out as a business consultant involved with taking companies public.

Memorandum seeking final judgment (declaration of Saylor), p. 17, para. 12

42. The Executive Director has considered this information, but in our view, the risk you present to the integrity of the capital markets and to investors warrants your permanent removal from the capital markets of British Columbia.

### **ORDERS SOUGHT**

43. As a result of the Order of Judgment, you are subject to the following sanctions:

- (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.

44. There is no limitation on the Commission from imposing a capital market sanction that is similar or different to the court orders, however, the Commission needs to consider the enforcement orders available under the Act, what is reasonable based on the evidence known to it, and what is in the public interest.
45. Unlike the *Exchange Act*, the Act does not create a separate category of securities with a price of less than five dollars. Further, there are no specific enforcement orders under the Act prohibiting participation in an offering of penny stock, or prohibiting 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.
46. Although there is no comparative enforcement order specifically prohibiting trading and purchasing penny stock under the Act, there is an order available under section 161(1)(b) of the Act that prohibits trading and purchasing of securities or derivatives.
47. In seeking orders under 161(1) of the Act, the Executive Director has taken the following factors into consideration when applying for orders in this proceeding:
  - (a) the circumstances of your misconduct;
  - (b) court documents from *SEC v. Skerry*;
  - (c) the factors from *Eron* and *Davis*;
  - (d) the sanctions ordered in previous cases cited above;
  - (e) the enforcement orders available under the Act;
  - (f) your individual circumstances; and
  - (g) the public interest.
48. The Executive Director seeks the following orders against you:
  - (a) under section 161(1)(d)(i), you resign any position you hold as a director or officer of an issuer or registrant;
  - (b) you are 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) under section 161(1)(vi) from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person.

49. The Executive Director is not seeking any monetary sanctions against you.

#### **SUPPORTING MATERIALS**

50. In making this application, the Executive Director relies on the following, copies of which are enclosed:

- (a) Complaint
- (b) Memorandum of law in support of Motion for Sanctions
- (c) Motion for Sanctions
- (d) Opinion and Order
- (e) Memorandum seeking final judgment
- (f) Motion for remedies and final judgment
- (g) Order of Judgment
- (h) *Domanus v. Lewicki*, 742 F.3d 290, 303 (7<sup>th</sup> Cir. 2014)
- (i) [\*E. Sands and Associates Inc. v. Dextras Engineering & Construction Ltd.\*](#), 2009 BCSC 42
- (j) *SEC v. Berkshire Resources, LLC*, 2009 U.S. Dist. LEXIS 1009 534, 2009 WL 4260219
- (k) *Finkel v. Romanowicz*, 577 F3d 79, 84 2d Cir. 2009)
- (l) *SEC v. Cole*, 661 Fed. Appx. 52, 53-54 (2<sup>nd</sup> Cir. 2016)
- (m) [\*Durante \(Re\)\*](#), 2004 BCSECCOM 634
- (n) [\*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)\*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (o) [\*Re Eron Mortgage Corporation\*](#), [2000] 7 BCSC Weekly Summary 22



- (p) [\*Manna Trading Corp Ltd. \(Re\)\*](#), 2009 BCSECCOM 595 (CanLII)
- (q) [\*Poonian \(Re\)\*](#), 2015 BCSECCOM 96
- (r) [\*Re Deyrmenjian\*](#), 2019 BCSECCOM 93
- (s) [\*Re SBC Financial Group Inc.\*](#), 2018 BCSECCOM 267
- (t) [\*Re Davis\*](#), 2018 BCSECCOM 284
- (u) [\*Re Sungro\*](#), 2015 BCSECCOM 281
- (v) [\*Re Hable\*](#), 2017 BCSECCOM 209
- (w) [\*Re Lim\*](#), 2017 BCSECCOM 196
- (x) [\*Davis v. British Columbia \(Securities Commission\)\*](#), 2018 BCCA 149

## **YOUR RESPONSE**

51. You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Commission Hearing Office by **Thursday, July 23, 2020**.

52. The contact information for the Commission Hearing Office is:

Commission Hearing Office  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
12<sup>th</sup> Floor, 701 West Georgia Street  
Vancouver, BC V7Y 1L2  
E-mail: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca)  
Telephone: 604-899-6500

53. If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice.

54. The Commission will send you a copy of its decision.

55. **If you have any questions regarding this application, please contact Ms. Deborah Flood, at 604-899-6623, or [dflood@bcsc.bc.ca](mailto:dflood@bcsc.bc.ca)**

Yours truly,

Douglas B. Muir  
Director, Enforcement  
DWF/crc  
Enclosures

cc: Commission Hearing Office (by email to [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca))