

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

Citation: Re Lawrence Chang, 2020 BCSECCOM 199

Date: 20200612

Reciprocal Order

Lawrence Bradley Chang

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

I. Introduction

- [1] This is an order under sections 161(1) and 161(6)(c) 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 certain of the sanctions imposed by the Investment Industry Regulatory Organization of Canada (IIROC) against Lawrence Bradley Chang pursuant to *Re Chang*, 2013 IIROC 48 (Decision on the Merits) and *Re Chang*, 2014 IIROC 4 (Sanctions Decision).
- [3] 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.
- [4] The executive director tendered as evidence the Decision on the Merits and the Sanctions Decision and made written submissions to the Commission.
- [5] Chang tendered evidence and made written submissions to the Commission.

II. Background

IIROC Decisions

- [6] In the Decision on the Merits, IIROC concluded that:
- on six occasions from December 31, 2007 through March 28, 2008, Chang purchased a total of \$498,160 of one security (USSU) in a client account without authorization from the client, contrary to IDA Bylaw 29.1,
 - from January 2008 through May 2008, contrary to IDA Bylaw 29.1, Chang made misrepresentations to the client regarding the number of shares of USSU held in the client's account in order to hide the fact that he had made unauthorized purchases of USSU, and
 - in engaging in unauthorized trading and misrepresentations, Chang engaged in business conduct or practice unbecoming and detrimental to the public interest contrary to IDA Bylaw 29.1.
- [7] In the Sanctions Decision, IIROC made the following orders against Chang:
- a permanent ban from approval with IIROC,
 - a fine of \$100,000, and
 - costs of \$7,500.
- [8] In our decision, we relied on the facts set out in the Decision on the Merits and the Sanctions Decision.

Additional facts

[9] Evidence tendered in connection with this application established that:

- (a) Chang was sued by his client in a civil action on the basis of the same allegations contained in the Decision on the Merits. The action was settled out of court with Chang personally paying \$220,000 to his client as a term of the settlement.
- (b) Chang has suffered a number of personal hardships since the IIROC decisions. His marriage broke down in 2012. His four young children depend on him financially.
- (c) Chang has struggled financially since 2012. His income tax returns for 2016 to 2018 show his annual gross income at below \$51,000. He has been unable to afford to pay the \$100,000 IIROC penalty. In January 2018, he was declared bankrupt. Chang said he is taking steps to discharge his bankruptcy.
- (d) Since 2011, Chang has worked with another individual introducing buyers to suppliers of bulk fuel. Chang said he has an opportunity to become a director and officer of newly incorporated private company (Newco) involved in bulk sales of fuel products. He believes he will benefit from such a role. Among other things, he said it will allow for an increase in income over time and an opportunity to acquire an ownership interest in Newco which will benefit his family in the long term.
- (e) Chang has not been involved in the capital markets since 2009. There is no evidence that Chang has engaged in any misconduct in relation to those markets since 2009.

III. Positions of the parties

[10] The executive director initially sought orders under section 161 imposing broad permanent market bans against Chang. After reviewing information subsequently provided by Chang regarding his personal circumstances, the executive director limited the permanent bans he is seeking against Chang to the following:

- under section 161(1)(d)(ii), a prohibition against becoming or acting as a director or officer of any issuer or registrant except Newco,
- under section 161(1)(d)(iii), a prohibition against becoming or acting as a registrant or promoter, and
- under section 161(1)(d)(iv), a prohibition against acting in a management or consultative capacity in connection with activities in the securities market, except Newco.

[11] Chang does not oppose permanent bans prohibiting him from becoming or acting as a registrant or a director or officer of a registrant. Chang said that these orders are rationally connected to the misconduct described in the Decision on the Merits. He argued, however, that the balance of the orders sought by the executive director are not reflective of the misconduct in issue. Chang submitted that, in the alternative, the director and officer ban be limited to reporting issuers.

IV. Analysis and decision

[12] Under section 161(6)(c), the Commission may, after providing an opportunity to be heard, make an order in respect of a person if the person is subject to an order made by, among other entities, a self-regulatory body such as IIROC, imposing sanctions, conditions, restrictions or requirements on the person.

- [13] Chang is subject to sanctions imposed by IIROC pursuant to the Sanctions Decision. The panel must determine whether it is in the public interest to make the orders sought by the executive director under section 161(1) of the Act.
- [14] Orders under section 161(1) are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37.
- [15] Taken together, sections 161(6)(c) and 161, allow a panel to rely on another jurisdiction's efforts to avoid the need for duplicative proceedings. However, the Commission must make its own determination as to whether making the order is in the public interest rather than automatically making an order based on the order of the other jurisdiction. See *Maclean v. British Columbia (Securities Commission)* 2013 SCC 67.
- [16] In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

In making orders under sections 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. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of the 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 adviser 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.

- [17] The Commission must also consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public when a person's livelihood is at stake. See *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

A. Application of factors

Seriousness of conduct

- [18] There is no question that Chang's misconduct was serious. His actions in engaging in unauthorized trading and misrepresentations were deliberately dishonest and abusive of his client. His acts were not isolated but continued repeatedly over a number of months. IIROC found Chang's misconduct to be detrimental to the public interest.

- [19] It should be noted, however, IIROC recognized that the misconduct did not involve multiple clients or multiple different factual situations nor did it establish that Chang generally treated his clients dishonestly.

Harm suffered by investors

- [20] Chang purchased about \$500,000 worth of USSU in his client's account without authority and, during a period when the price of USSU was declining, he repeatedly misrepresented the quantity of USSU in his client's account. IIROC found that in so doing, Chang exposed his client to large losses.
- [21] We note that Chang subsequently paid his client \$220,000 in settlement of a civil action commenced by his client relating to the same allegations as set out in the IIROC Decision on the Merits.

Damage to integrity of markets

- [22] Misconduct such as Chang's undermines the public's trust in registrants and, therefore, harms the capital markets generally.

Participation in our capital markets and fitness to be a director, officer or adviser to issuers

- [23] There is no question that Chang's misconduct fell substantially below what is expected of registrants. It was dishonest and exposed Chang's client to substantial financial harm. The capital markets operate on the basis of trust between registrant and client. Chang's misconduct raises significant concerns regarding his fitness to be a registrant or to be a director or officer of a registrant going forward.

Enrichment

- [24] Chang was not significantly enriched by his misconduct. He realized \$3,318 from commissions on the trades in issue.

Mitigating/aggravating factors

- [25] IIROC found Chang's participation in the investigative and hearing process after leaving the industry to be somewhat mitigating.
- [26] The executive director submits it is an aggravating factor that Chang was a registrant at the time of his misconduct. As his misconduct comprised breaches of rules governing the conduct of registrants, his status as a registrant was an element of his misconduct, not a separate aggravating factor.

Deterrence

- [27] The sanctions we impose must be sufficient to establish that Chang and others will be deterred from misconduct.
- [28] Our orders must also be proportionate to Chang's misconduct (and the circumstances surrounding it).
- [29] The executive director submitted that permanent bans he is proposing are proportionate to Chang's misconduct and are necessary to ensure that Chang and others will be deterred from engaging in similar misconduct in the future.
- [30] Chang argued that sanctions imposed pursuant to the Sanctions Decision are sufficient for the purposes of specific deterrence and further orders to that effect are unnecessary. He noted that he has not been involved in the capital markets since 2009 when the IIROC investigation into his misconduct began. He submitted that there is no evidentiary basis for the Commission to reasonably believe that his future conduct warrants the orders sought by the executive director.

Previous orders

- [31] The executive director directed us to four previous decisions of the Commission as helpful guidance in determining appropriate sanctions in these circumstances: *Re Pawar*, 2016 BCSECCOM 174, *Re Maudsley*, 2005 BCSECCOM 577, *Re Furman*, 2019 BCSECCOM 214 and *Re Zhong*, 2015 BCSECCOM 383.
- [32] The circumstances in *Re Pawar* are the most analogous to those before us. *Pawar* involved the issuance of a reciprocal order under sections 161(1) and 161(6)(d) of the Act in connection with sanctions imposed by IIROC against Pawar pursuant to a settlement agreement. Pursuant to that agreement, Pawar admitted to acting contrary to Dealer Member Rule 29.1 when, in his capacity as a registered representative, he solicited four friends to provide \$95,000 in a fictional investment. IIROC found that Pawar used various subterfuges and deceptions to persuade his friends to make payments to him personally. Pawar intended to invest the funds in his own account and to use the investment returns to pay off personal debts and to repay the funds advanced by his friends. IIROC imposed a permanent ban against re-applying for registration in any capacity as well as monetary sanctions.
- [33] The executive director sought permanent market bans against Pawar similar to the ones he originally sought in this case. However, the orders issued by the Commission were limited to permanent prohibitions against Pawar becoming or acting as a registrant or a director or officer of any registrant.
- [34] The circumstances in the other cases cited by the executive director are not analogous to the circumstances before us. They all involve fraud which the Commission has repeatedly found to be one of the most serious types of misconduct prohibited by the Act.
- [35] Chang also directed us to *Re Pawar* for guidance on the appropriate sanctions in this case. He said it is notable that, despite the broad permanent bans sought by the executive director against Pawar, the Commission made a narrow order against Pawar which was rationally connected to his misconduct and similar to the prohibitions imposed by IIROC. He says that the same outcome is appropriate in this case.
- [36] Chang also cited various settlement agreements entered into by the Commission with respect to sanctions imposed by the Vancouver Stock Exchange either pursuant to settlement agreements between the Exchange and a respondent or following a hearing before an Exchange disciplinary panel. It is the practice of the Commission to give little weight to Commission settlement decisions in determining sanctions as settlements are derived in a different context than decisions arising from a hearing.

B. Decision

- [37] We agree with Chang that sanctions should be reasonably connected to the misconduct in issue. Chang's misconduct comprised activities carried out in his role as a registrant. The misconduct was sufficiently dishonest and abusive to warrant a permanent ban against Chang from becoming a registrant or a director or officer thereof.
- [38] We do not find it appropriate in these circumstances to impose a ban prohibiting Chang from acting as a director and officer of an issuer, even if the ban is limited to reporting issuers. As in *Pawar*, the misconduct related to a breach of bylaws regulating the conduct of registrants. In this case, the misconduct involved a single client in a single factual situation. There was no evidence that Chang generally treated his clients dishonestly. Over 10 years have passed with no evidence of Chang's involvement in the capital markets or any misconduct on his part relating to those markets.
- [39] Considering the evidence in this case and applying the various *Eron* factors, we find that permanent prohibitions against Chang from becoming or acting as a registrant or a director or officer of a registrant are appropriate and required in the public interest.

V. Orders

[40] Considering it to be in the public interest, and pursuant to section 161 of the Act, we order that Chang be permanently prohibited:

1. under section 161(1)(d)(ii) from becoming or acting as a director or officer of a registrant, and
2. under section 161(1)(d)(iii), from becoming or acting as a registrant.

June 12, 2020

For the Commission

Judith Downes
Commissioner

Deborah Abbey
Commissioner