



British Columbia
Securities Commission

REPLY TO:

Deborah W. Flood

T: 604-899-6623 / F: 604-899-6633

Email: dflood@bcsc.bc.ca

By Regular Mail

August 4, 2020

Dear Mr. Narayan:

**Saileshwar Rao Narayan
Reciprocal Order Application**

I am writing this letter on behalf of the Executive Director of the British Columbia Securities Commission (the Executive Director).

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director is applying for orders against you under sections 161(6) (c) and 161(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act). The Executive Director is not seeking a financial penalty.

The Executive Director is making this application based on the findings and orders of the Alberta Securities Commission (ASC). The ASC found you had breached sections of the *Securities Act*, R.S.A., 2000, c. S-4, as amended (Alberta Securities Act).

DECISION OF THE ALBERTA SECURITIES COMMISSION

1. On March 9, 2016, the ASC concluded that you and the companies you controlled contravened securities laws by illegally distributing securities, acting as a dealer without the required registration, perpetrating a fraud, engaging in misrepresentations, and breaching an undertaking in contravention of the Alberta Securities Act.
2. The reasons and decision of the ASC are contained in [Re Narayan](#), 2016 ABASC 228 (CanLII) (Merit and Sanction Decision).
3. The ASC imposed broad, permanent capital market sanctions against you. The ASC also imposed monetary penalties against you in the amount of \$1,275,951.
4. The ASC determined the facts from a combination of admissions from you, agreed exhibits, and the testimonies of you, a retired ASC investigative accountant, and the wife of one of the investors.



5. The following facts are contained in the Merit and Sanction Decision:

- (a) You were the principal behind Prospera Mortgage Investment Corporation (Prospera Mortgage), Prosperity Development Group Ltd. (Prosperity Development), and Prospera Management Corp. (Prospera Management), collectively known as the Prospera Respondents.

Merit and Sanction Decision, para 1

Prospera Mortgage

- (b) You began raising money from the public by selling preferred shares of Prospera Mortgage in 2010. You relied on the offering memorandum (OM) exception that described Prospera Mortgage's business as providing mortgage financing to developers and owners of real estate in Alberta and British Columbia.

Merit and Sanction Decision, para. 13

- (c) The ASC rejected an OM from Prospera Mortgage that was filed on June 23, 2011. In October 2011, Prospera Mortgage agreed to discontinue distributing securities in reliance on the OM exception, until it had filed an OM that complied with Alberta securities law. You, in your capacity as director of Prospera Mortgage, signed an undertaking to that effect (Undertaking)

Merit and Sanction Decision, para. 14

- (d) Contrary to the undertaking, Prospera Mortgage continued to distribute securities, purporting to rely on the OM exception, despite not filing any compliant OM with the ASC. Prospera Mortgage raised \$778,769 after entering into the Undertaking.

Merit and Sanction Decision, para. 15

- (e) Contrary to the stated use of funds in the OM, Prospera Mortgage did not acquire mortgages as security for loans with the \$2,343,000 it raised from investors.

Merit and Sanction Decision, para. 2

- (f) The only mortgage Prospera Mortgage ever owned was a \$120,000 mortgage that did not qualify as a mortgage investment as described in Prospera Mortgage's OM.

Merit and Sanction Decision, para. 18



- (g) You spent little, if any, time seeking mortgage investment opportunities, and you invested none of the funds in mortgages as described in Prospera Mortgage's OM.

Merit and Sanction Decision, para. 21

- (h) Neither you nor Prospera Mortgage were registered with the ASC in any capacity throughout the relevant time.

Merit and Sanction Decision, para. 17

Prosperity Development

- (i) Beginning in the spring of 2012, you began raising money through Prosperity Development for a different purpose; to develop a recreational vehicle park next to Pine Lake, Alberta. The securities offered to investors were unsecured bonds of Prosperity Development.

Merit and Sanction Decision, paras. 22 and 23

- (j) Between April 12 and May 23, 2012, Prosperity Development raised over \$3,400,000 using the OM exemption.
- (k) Prosperity Development's OM explained that money raised would be used to acquire and develop identified land in Pine Lake under a purchase agreement. Under the purchase agreement, \$5,000 was the deposit and \$845,000 was the balance of the purchase price. The \$845,000 was not to be paid until after Prosperity Development received confirmation of rezoning and development approval. The OM also provided that the purchase agreement would be terminated if Prosperity Development did not obtain rezoning of the land and a development permit.

Merit and Sanction Decision, para. 23

- (l) Contrary to the OM, the land was purchased by a numbered company owned by your brother, using \$845,000 of Prosperity Development's investors' money. This money was paid prior to seeking or obtaining zoning or development approvals. This was in clear violation of the representations made to investors.

Merit and Sanction Decision, paras. 24 and 44

- (m) At the time \$845,000 was lent to your brother's numbered company, no mortgage was registered against the Pine Lake property. Later, Prosperity Development filed a caveat against the Pine Lake property claiming an



unregistered mortgage. This mortgage appears to have no value due to three subsequent mortgages totaling \$900,000 registered against the title.

Merit and Sanction Decision, paras. 2 and 25

- (n) Prosperity Development's project never advanced beyond lending \$845,000 from the over \$3,400,000 raised from the public.

Merit and Sanction Decision, para. 2

5. The ASC found that that you and the Prospera Respondents contravened the Alberta Securities Act:

- (a) Prospera Mortgage by:
 - (i) acting as a dealer without the required registration,
 - (ii) making prohibited representations to investors;
 - (iii) failing to comply with an Undertaking to the executive director; and
 - (iv) engaging in the distribution of securities without having filed a preliminary prospectus or a prospectus with the executive director.
- (b) You, Prospera Mortgage and Prospera Management, engaged or participated in a course of conduct relating to Prospera Mortgage securities that you all knew or ought to have known perpetrated a fraud on Prospera mortgage investors;
- (c) Prospera Development by making statements to investors that it knew or reasonably ought to have known, in material respects, were misleading or untrue, or omitted facts necessary to make the statements not misleading;
- (d) You and Prospera Development engaged or participated in an act, practice, or course of conduct relating to Prosperity Development securities that you both knew or ought to have known perpetrated was a fraud on Prosperity Development investors; and
- (e) You, in your capacity as director, officer, or both, of Prospera Mortgage and Prosperity Development authorized, permitted or acquiesced to the breaches of the Alberta Securities Act by those entities.

THE APPLICATION

6. 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.



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

9. 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).
10. 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) factors that mitigate the respondent's conduct;
 - (e) the respondent's past conduct;
 - (f) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia;
 - (g) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers;
 - (h) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets; and
 - (i) the need to deter those who participate in the capital markets from engaging in inappropriate conduct.

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

Application of the Factors

Seriousness of the Conduct

11. Your misconduct was egregious. You, and the Prospera Respondents made no attempt to carry out Prospera Mortgage's business plan and instead, improperly used investor money for your personal benefit, in clear violation of the terms under which the money was raised. You authorized Prospera Mortgage's violation of an Undertaking given to the ASC's executive director.

Merit and Sanction Decision, para. 27

12. You admitted that some investors were repaid from monies raised from other investors. This was one aspect of the operation that constituted a Ponzi-like scheme.



Merit and Sanction Decision, para. 19

13. The perpetration of a Ponzi scheme is among the worst types of fraud. Ponzi schemes are a particularly sinister type of fraud because those lucky enough to get in at the beginning do in fact earn the promised returns, and they lend the credibility to the scheme that it needs in order to lure investors.¹
14. Your misconduct involved multiple serious contraventions of the Alberta Securities Act, leading to investors losing approximately \$4 million. Your misconduct is at the upper end of the scale of fraudulent misconduct in terms of the deceit perpetrated on investors.

Merit and Sanction Decision, para. 48

Harm suffered to investors

15. The loss to the public is clear. You raised over \$5,800,000 from the public of which \$1,800,000 was seized by the ASC, leaving a shortfall of \$4,000,000.

Merit and Sanction Decision, para. 48

16. None of the investors received any return of their principal investment and it is unlikely, even with the money that remains frozen, that investors will receive any significant return of their investment monies.

Merit and Sanction Decision, para. 28

17. As a result of your misconduct investors suffered significant hardship, in addition to significant financial loss. Investors testified that their experience with you and the Prospera Respondents caused upset, anguish, and a loss of confidence in the exempt market. One investor was sold the investment by members of her church and this led to her distancing herself from her church. Another investor had to work an additional 14 months to make up the losses to his retirement fund.

Merit and Sanction Decision, paras. 33-34, 49

Enrichment

18. You and the Prospera Respondents obtained significant benefits from your capital market misconduct. The Prospera Respondents were essentially a vehicle for you to raise money from the public for your own personal use.
19. You used invested funds for unauthorized purposes, including for your own personal benefit, and for the benefit of your wife.

¹ [*Manna Trading Corp Ltd. \(Re\)*](#), 2009 BCSECCOM 426 (CanLII), at para. 333



20. You admitted that at least \$800,000 of the money raised by you went to your personal use. Prospera Mortgage's banking records indicate that a significant portion of the \$2,300,000 investor funds were used by you and your wife to support a lavish lifestyle.

Merit and Sanction Decision, para. 50

21. You used investor funds on a lavish lifestyle, which included very expensive cars, and pleasure trips abroad with your wife.

Merit and Sanction Decision, para. 31

Mitigating factors

22. There are no mitigating factors.
23. The ASC found little in your behaviour that counts as mitigation. Beyond the admissions you made, you showed no contrition or empathy for the investors whose money you took. You did not apologize for your conduct nor its impact on investors and the capital market.

Merit and Sanction Decision, para. 61

Past Conduct

24. You were a registered mutual fund salesman for two and a half months in 2005. You were sanctioned by the Alberta Life Insurance Council for acting "in a dishonest or untrustworthy manner" by misleading clients, and you were suspended for 30 days and ordered to pay a penalty of \$7,500.

Merit and Sanction Decision, para. 11

Risk to investors and the capital markets

25. Those who commit fraud of any kind, but particularly of the quantum carried out by you and the Prospera Respondents in this case, represent a very serious risk to our capital markets.
26. Given your dishonesty in raising and spending investors' money, your prior sanction by another regulator for your dishonesty, and your breach of the Undertaking, the ASC were of the opinion that you have little, if any, regard for truth when it comes to separating people from their money. There is nothing more fundamental to the protection of the investing public than telling the truth when raising funds.

Merit and Sanction Decision, para. 52

27. Based on your misconduct, you pose a pronounced risk to the public and are deserving of significant sanctions that will prevent you from future participation in the capital market.



Fitness to be a registrant, director, officer or advisor

28. Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating, individuals and companies must comply with securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets.
29. 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

30. You have committed several acts of deceit against investors, and have used the proceeds of your dishonesty for your own personal benefit. This conduct is completely inconsistent with conduct acceptable for a registrant, director or officer of an issuer, or those otherwise engaged in the capital markets.
31. You pose a great risk to our markets and are ill-suited to participate the capital markets as a registrant, director, officer, promotor, or advisor to any private or public issuers going forward.

Deterrence

32. The market as a whole must understand that a finding of fraud will result in a significant penalty.

[Throw \(Re\)](#), 2007 BCSECCOM 758 (CanLII), para. 74

33. The seriousness of your misconduct demonstrates an overwhelming need to protect the investing public against future harm from you. There is also a need to send a message to others who might be tempted to emulate such misconduct.
34. In imposing a broad market ban, the ASC considered your training and education, your background as a life insurance and mutual fund salesman, your previous sanction for misrepresentation, your egregious behavior in raising investment funds for Prospera Mortgage and Prosperity Development, your misappropriation of that money, and your lack of remorse for your actions.
35. The ASC concluded that a permanent ban, subject to a limited relaxation to allow for personal investment, is necessary to prevent you from repeating your behavior.

Merit and Sanction Decision, para. 64

Previous Orders

36. We refer to a number of decisions for guidance on the appropriate sanction. The decisions below involve one or a number of the same contraventions (unregistered



trading, misrepresentations, breach of an undertaking, and/or fraud) as in your case. The Commission imposed permanent market bans on the respondents in the decisions.

37. The most similar case in terms of enrichment is [*Re Bai*](#), 2018 BCSECCOM 156. The respondents used only a small portion of investor funds in the manner represented to investors. The remainder of investor funds, \$1,291,000, were either paid to earlier investors, or pocketed by the respondents and used to pay for Bai and his wife's personal expenses, many of which were lavish by any standards.
38. The most similar case in terms of quantum is [*Re Oei*](#), 2017 BCSECCOM 365. Oei raised approximately \$5 million from investors through fraud. Oei also co-mingled investor funds with his personal funds and used them for his own benefit.
39. The most similar case in terms of facts is [*Re Dominion Grand*](#), 2019 BCSECCOM 335. The corporate respondents, who were mortgage investment corporations, raised \$1.1 million from investors. The Commission found the respondents perpetrated a fraud on investors when they represented to investors that the corporate respondents would invest funds in mortgages secured by real estate, when in fact, none of the investors' funds were invested that way.

The Davis Consideration

40. 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.
41. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

42. The ASC ordered broad, permanent market bans against you, as well as joint and several monetary penalties totaling approximately \$1.2 million.
43. Although there is no limitation on the Commission from imposing a capital market sanction that is similar or different to the ASC sanctions, the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.
44. 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) the factors from *Eron* and *Davis*;



- (c) the sanctions ordered in previous cases cited above;
- (d) the available orders under the Act; and
- (e) the public interest.

45. Based on the misconduct described in the Merit and Sanction Decision and the subsequent orders made against you, the Executive Director is seeking the following orders pursuant to section 161(1) of the Act:

- (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, except that you can trade in or purchase securities through a registrant (who has first been given a copy of this decision) in:
 - RRSPs, RRIFs, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for your benefit;
 - One other account for your benefit;
 - or both, provided that:
 - (A) The securities are listed and posted for trading on the TSX, the NYSE, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and
 - (B) You do not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.
 - (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 markets;
 - (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.

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

SUPPORTING MATERIALS

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

- (a) *Re Narayan*, 2016 ABASC 228 (CanLII) (Merit and Sanction Decision)
- (b) *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (c) *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22
- (d) *Manna Trading Corp Ltd. (Re)*, 2009 BCSECCOM 426 (CanLII)
- (e) *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267
- (f) *Throw (Re)*, 2007 BCSECCOM 758 (CanLII)
- (g) *Re Bai*, 2018 BCSECCOM 156
- (h) *Re Oei*, 2017 BCSECCOM 365
- (i) *Re Dominion Grand*, 2019 BCSECCOM 335
- (j) *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149

YOUR RESPONSE

48. 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, September 10, 2020**.

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

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

50. 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.



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51. The Commission will send you a copy of its decision.
52. **If you have any questions regarding this application, please contact Ms. Deborah Flood, at 604-899-6623, or 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)