

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

Citation: Re Shaughnessy, 2024 BCSECCOM 70

Date: 20240212

Order under section 161(6)

Jeffrey Shaughnessy

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

Introduction

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418 (Act).
- [2] The executive director of the Commission applied on November 22, 2023 (Application) for orders against Jeffrey Shaughnessy (Shaughnessy) under sections 161(1) and 161(6)(a) of the Act based upon certain orders made by the Provincial Court of British Columbia.
- [3] Section 161(6) facilitates cooperation between the Commission and 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 SCC 67, at para. 54).

Preliminary matter – notice of Application

- [4] The executive director tendered two affidavits on giving notice of the Application to Shaughnessy.
- [5] The evidence in the two affidavits established that the executive director mailed the Application to Shaughnessy to two addresses. The first address was taken from a March 25, 2022, restitution order from British Columbia Provincial Court. The second address was listed on an active driver's licence in the name of "Jeffrey Shaughnessy" taken from an Insurance Corporation of British Columbia's (ICBC) driver's licence search conducted by the Commission.
- [6] By November 30, 2023, counsel for the executive director had sent a letter by ordinary mail to Shaughnessy at both addresses with the Application enclosed.
- [7] On January 25, 2024, counsel for the executive director sent an email to the hearing office advising that the Application sent to both addresses had been returned to sender. Counsel requested additional time to send Shaughnessy the Application.
- [8] On January 26, 2024, we sent an email to the executive director denying the request for additional time. These are our reasons.
- [9] Section 180 of the Act states:

Notices generally

180 (1) Unless otherwise provided by this Act, prescribed by the regulations, or ordered by the commission or executive director, a record that under this Act is sent or is required to be sent must be

- (a) personally delivered,
- (b) mailed, or
- (c) transmitted by electronic means

to the person that under this Act is the intended recipient of the record.

(2) A record sent to a person by means referred to in subsection (1) (b) or (c) must be sent to that person

- (a) at the latest address known for that person by the sender of the record,
- (b) at the address for service in British Columbia filed by that person with the commission, or
- (c) at the address of the person's solicitor if the person, or the solicitor, has advised that the solicitor is acting for the person.

(3) A record is deemed to have been personally delivered to the commission if the record is deposited at the office of the commission during normal business hours.

(4) A record is deemed to have been received by the person to whom it was sent

- (a) if mailed by ordinary mail, on the seventh day after mailing, or
- (b) if mailed by registered mail, on the earlier of the seventh day after mailing or the day its receipt was acknowledged in writing by the person to whom it was sent or by a person accepting it on that person's behalf.

...

[10] Section 31 of the *Motor Vehicle Act*, RSBC 1996, c 318, states that a person must notify ICBC of a new address within 10 days of a change of address.

[11] In *Re Leyk*, 2018 BCSECCOM 383, the respondent made an application to set aside the liability findings and sanctions against him because he alleged that he did not receive notice of the proceedings against him. The respondent's application was dismissed. The panel reviewed section 180 of the Act and section 31 of the *Motor Vehicle Act* and stated, at paragraph 31:

The *Motor Vehicle Act* requires a driver to keep the address on their driver's licence current and to give ICBC notice within 10 days of any change in address. It is the driver's responsibility to ensure the address provided is accurate and current. It is therefore appropriate for the executive director to rely on the address recorded with ICBC as the latest known address for the purpose of complying with section 180 of the Act.

[12] The panel in *Leyk* stated, at paragraph 36, that section 180 of the Act creates "a method of providing notice to respondents of enforcement proceedings against them. The executive director must be able to rely on these provisions in order to protect the investing public and the capital markets of British Columbia by having the ability to bring timely enforcement proceedings against respondents."

[13] We agree with the panel in *Leyk*. The Act provides specific requirements for providing notice to respondents which the executive director has fulfilled. We found that the

executive director had provided notice of the Application in accordance with the Act, as stated in our January 26, 2024 email to the parties which was mailed to Shaughnessy at his ICBC address:

We find that, by mailing the record to the latest known address of Mr. Shaughnessy, the executive director has provided notice of his application to Mr. Shaughnessy in accordance with section 180 of the Act. We find that the executive director's application has been deemed to have been received by Mr. Shaughnessy in accordance with section 180(4)(a) of the Act. Having found that Mr. Shaughnessy has received the executive director's application, we deny the executive director's request for an additional 30 days to provide notice to Mr. Shaughnessy.

- [14] Although Shaughnessy was provided the opportunity to be heard, he did not participate in the hearing.

Background

- [15] On March 25, 2022, Shaughnessy pled guilty to one count of obtaining credit by false pretence or fraud contrary to section 362(1)(b) of the *Criminal Code*, RSC 1985, c C-46, (*Criminal Code*).
- [16] On June 30, 2022, the Honourable Judge La Prairie, of the Provincial Court of British Columbia, sentenced Shaughnessy to the following:
- (a) A conditional sentence of three months; and
 - (b) Restitution in the amount of \$29,000.
- [17] The reasons for sentence are set out at *R. v. Shaughnessy*, Vancouver Registry, File No. 262421-2C (Reasons for Sentence).
- [18] The Provincial Court of British Columbia found that between September 24 – 29, 2017, and October 10 – 13, 2017, at or near Vancouver, British Columbia, Shaughnessy committed the offence of obtaining credit by false pretence or fraud when:
- (a) Shaughnessy befriended two couples;
 - (b) Shaughnessy convinced both couples to invest in an investment opportunity that he held out as organizing a speaking event involving Magic Johnson to take place at the Park Hotel in May of 2018 (the Event);
 - (c) Shaughnessy presented the couples with materials related to the proposed Event, and the couples invested funds to be used for the Event;
 - (d) Shaughnessy told the couples that they would receive increased returns on their investments and that, if the Event did not work out, Shaughnessy would give their investments back;
 - (e) The company that Shaughnessy held out to the couples as operating had ceased operating prior to his requests for the investments;

- (f) One couple invested \$10,000 while the other couple provided two investments totaling \$19,000; and
- (g) Instead of using the investments for the intended purpose, Shaughnessy deposited the funds into the bank account of the company and then used the funds for personal purposes, including use at a casino.

Analysis

- [19] The Commission is established under the Act to regulate the capital markets in British Columbia. Central to the Commission's mandate under the Act is to protect the investing public from those who would take advantage of them, and to preserve investor confidence in the regulated capital markets.
- [20] Under section 161(6), the Commission may, after providing an opportunity to be heard, make an order in respect of a person if the person has been convicted in Canada of an offence arising from a transaction, business or course of conduct related to securities or derivatives.
- [21] Shaughnessy is a resident of Vancouver, British Columbia. He received a 3 month conditional sentence and a restitution order as a result of his fraudulent scheme. Shaughnessy's conduct harmed the investors who trusted him.
- [22] In his Application, the executive director submitted that mitigating factors were Shaughnessy's guilty plea because it saved time and public resources and Shaughnessy's expression of remorse for his misconduct.
- [23] The executive director cited *Re Basi*, 2011 BCSECCOM 573, *Re Dhala*, 2015 BCSECCOM 336, and *Re Davis*, 2016 BCSECCOM 375, in support of his position that permanent bans are appropriate.
- [24] In *Basi*, the respondent took \$15,000 from an investor and used the money to pay off debts and for other personal uses instead of purchasing shares in a company. The investor managed to recover \$4,445. The panel ordered permanent bans on Basi in addition to an order under section 161(1)(g) of the Act to disgorge \$11,055 and an administrative penalty of \$100,000.
- [25] In *Dhala*, the respondent was found to have committed fraud with respect to four investors in the amount of \$38,250. Dhala promised the investors that he would invest their money in securities and currency trading but instead used the money on personal expenditures. The panel ordered permanent bans on Dhala in addition to disgorgement of \$26,900 and an administrative penalty of \$125,000.
- [26] In *Davis*, the respondent was found to have committed fraud on an investor in the amount of \$7,000. Davis purported to sell to the investor shares that he did not own. He then perpetuated the fraud when, after the investor asked for the money back, he falsely told the investor that the shares were in the stock market and were not liquid. Davis used the money for his own personal expenditures. He eventually returned the \$7,000 to the investor. The panel ordered permanent bans on Davis and an administrative penalty of \$15,000.

- [27] All three cases are factually similar to the fraud perpetrated by Shaughnessy. In each of them, the respondents gained the trust of investors and then betrayed that trust by taking the investors' money and spending it on themselves.
- [28] We have considered the executive director's Application, the circumstances of Shaughnessy's misconduct, the factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.
- [29] Shaughnessy's misconduct was extremely serious. He orchestrated a scheme to defraud the investors and used the investors' money for his personal gain. By doing so, he demonstrated that he is dishonest and untrustworthy and therefore unfit to be a registrant, director or officer in the capital markets.
- [30] Shaughnessy's deceptive conduct also demonstrates that he is a significant ongoing risk to the public and the capital markets. The fact that he admitted to his misconduct is not sufficient to outweigh those risks. Serious sanctions are required to deter him from engaging in similar conduct, and it is also in the public interest to deter others from engaging in similar conduct.
- [31] We find that Shaughnessy is unfit to participate in the capital markets of British Columbia and that permanent prohibitions are warranted. There is no evidence of individual or other circumstances that would support orders short of a permanent market ban.

Order

- [32] We find that it is in the public interest to order that:

- (a) under section 161(1)(d)(i) of the Act, Shaughnessy resign any position he holds as a director or officer of an issuer or registrant;
- (b) Shaughnessy is permanently prohibited:
 - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives the registered dealer a copy of this decision, he may trade in or purchase securities and derivatives only through a registered dealer in:
 - (A) his own RRSPs, RRIFs, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for his own benefit;
 - (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)(d)(vi), from engaging in promotional activities on Shaughnessy's own behalf in respect of circumstances that would reasonably be expected to benefit Shaughnessy.

February 12, 2024

For the Commission

Gordon Johnson
Vice Chair

Audrey T. Ho
Commissioner