

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

Citation: Re Sidhu, 2023 BCSECCOM 531

Date: 20231108

Geoffrey Rajay Sidhu

Panel	Gordon Johnson Marion Shaw	Vice Chair Commissioner
Date of Decision	November 8, 2023	

Decision

I. Introduction

- [1] On October 25, 2023, the executive director of the British Columbia Securities Commission provided to the Commission one application (Application) under section 15.1 of the *Securities Act*, 1996, c. 418 (Act) made by an individual (Applicant) for the payment of funds obtained by the Commission (Funds) pursuant to an order against Geoffrey Rajay Sidhu (Sidhu).
- [2] With the Application, the executive director provided a report and recommended that the Commission make a full distribution of the Funds together with any accrued interest to the Applicant. The executive director also provided an affidavit of a staff member in the Enforcement Division of the Commission in support of his recommendation.
- [3] Having considered the evidence and recommendations provided by the executive director as well as the factors in section 7.4 of the *Securities Regulation*, B.C. Reg. 196/97 (Regulation) relevant to the executive director's recommendations, we make the payment order below pursuant to section 15.1(3) of the Act.
- [4] These are our reasons for doing so.

II. Background

A. Underlying Settlement

- [5] In a settlement agreement with the executive director dated September 12, 2022 (*Re Sidhu*, 2022 BCSECCOM 359) (Settlement Agreement), Sidhu admitted that he illegally distributed securities to an investor in furtherance of a trade involving Bracetek Industries Group Ltd. (Bracetek), contrary to section 61 of the Act.
- [6] Sidhu also admitted that:
 - a) Bracetek was in the business of developing, manufacturing and selling three proprietary braces used in residential and commercial construction. Bracetek licensed the technologies used in the braces from companies controlled by Sidhu.
 - b) After meeting Sidhu in November 2015, an investor obtained a \$2.07 million mortgage and invested \$1.75 million of the mortgage proceeds in Bracetek.

- c) Sidhu discussed the Bracetek investment with the investor before she invested and assisted her in completing the subscription agreement.
- d) Bracetek paid \$900,000 of the investor's funds to companies controlled by Sidhu for licensing fees payable per the terms of the licensing agreements between these companies.
- e) Bracetek distributed \$1.75 million of its securities to the investor without filing a prospectus when a prospectus exemption was not available.
- f) Sidhu acted in furtherance of Bracetek's trade to the investor and therefore he illegally distributed securities to the investor contrary to section 61 of the Act.

[7] Sidhu agreed to an order under section 161(1)(g) of the Act to pay to the Commission the Funds, being \$900,000 that he acquired, directly or indirectly, as a result of his contraventions of the Act (Order).

B. Funds paid to Commission

[8] On March 3, 2023, the Commission received the Funds from Sidhu in payment of the Order.

C. Claims process

[9] On April 5, 2023 the executive director applied to the Commission for approval of a proposed claims process under section 15.1 of the Act (Claims Process).

[10] On July 14, 2023, the Commission issued a Ruling (*Re Sidhu*, 2023 BCSECCOM 359) approving the Claims Process.

[11] In accordance with the Claims Process, the executive director:

- a) posted a notice about the Claims Process on the Commission's public website with a claim deadline of October 16, 2023, and
- b) emailed the notice to a known eligible applicant, the Applicant, whose email address was in the executive director's possession.

[12] The Applicant responded to the notice by filing the Application.

[13] The executive director's report to the Commission provides details on the underlying settlement, the approved Claims Process and the Application.

III. Law and Analysis

A. Provisions of the Act and Regulation

[14] Section 15.1 of the Act provides:

Claim for wrongful benefit

15.1 (1) The commission must publish a notice if the commission receives money from an order under section 155.1(b), 157(1)(b) or 161(1)(g).

- (1.1) A notice under subsection (1) must set out a period within which a person may make a claim.

- (1.2) The period referred to in subsection (1.1) must be at least 3 months from the date the notice is given.
- (2) A person may make a claim to money referred to in subsection (1) by submitting an application in accordance with the regulation.
- (3) if the commission receives an application under subsection (2), the commission may, in accordance with the regulations, pay to the applicant all or a part of the amount claimed.
- (5) The commission may retain any money not payable under subsection (3) after the period referred to in subsection (1.1) expires and after adjudicating all claims in accordance with the regulations.

[15] Part 3 of the Regulation provides, in part:

Definitions

7.1 In this Part:

“**eligible applicant**” means a person who

- (a) suffered pecuniary loss as a direct result of misconduct that resulted in an order for which the commission gave notice under section 15.1(1) of the Act,
- (b) did not directly or indirectly engage in the misconduct that resulted in the order, and
- (c) has not been denied a claim under section 7.4(6);

“**order**” means an order made under section 155.1(b), 157(1)(b) or 161(1)(g) of the Act.

Claims application

7.3 (2) If a person has made an application under section 15.1 of the Act and the information provided in the application changes in a material respect so that the information provided is false or misleading, the person must report the change to the commission promptly.

Adjudication of claims

7.4 (1) If the commission determines that an applicant is an eligible applicant in respect of an order, the commission may make a payment to the eligible applicant from money received from the order.

- (2) When determining the amount to be paid to an eligible applicant, the commission must consider the following:
 - (a) the amount of money received from the order;
 - (b) the loss suffered by the eligible applicant;
 - (c) the losses suffered by all eligible applicants;
 - (d) any other information the commission considers appropriate in the circumstances;

- (3) When determining an applicant's loss for the purposes of this section, the commission must not include any amount claimed by the applicant in respect of a loss of opportunity, including interest on any loss, and must consider the following:
 - (a) whether the applicant received or is entitled to receive compensation from other sources for the loss arising from the misconduct that resulted in the order;
 - (b) whether the applicant benefitted from the misconduct that resulted in the order;
 - (c) the results of any hedging or other risk limitation transactions made by the applicant.

...

Opportunity to be heard

7.5 Except for a decision to prorate payments under section 7.4(4), the commission must not deny all or part of a claim without giving the applicant an opportunity to be heard.

B. The Commission's procedure

[16] In *Re Alexander*, 2017 BCSECCOM 78 at paragraphs 25-27, the Commission set out some general principles to consider in determining applications to pay out funds pursuant to section 15.1 of the Act:

25. We ... adopt the following guidelines for future applications under section 15.1 of the Act:

1. although a duty of fairness applies in any administrative proceeding, in this case, if the procedural requirements set out in the Act and the regulations are met, the duty of fairness is fulfilled;
2. applications under section 15.1 are not generally determined with a view to the public interest (unlike many other provisions of the Act which expressly require the Commission to take the public interest into consideration when making an order or taking some other step);
3. a Commission panel considering an application under section 15.1 should apply the test of whether the evidence, on a balance of probabilities, supports granting the application;

...

26. In general, our role, as a Commission panel, is similar to that of a judge in a bankruptcy proceeding. In that role, we must:

- ensure that the procedural requirements of the Act have been met;
- where there is a substantial number of claimants, ensure that the Commission's administrative procedures for vetting those claims are appropriate;
- provide a forum whereby disputes over claims may be heard; and
- make orders for payments where we are satisfied that the evidence, on a balance of probabilities, warrants such an order.

27. Similarly, the executive director, who is responsible for administrative oversight of the vetting of applications, plays an important role by making recommendations to the panel (wherever possible) in much the same manner that a trustee in bankruptcy makes a recommendation for payment out of court based on their administrative oversight of the claims process.

C. Position of the Executive Director

[17] In his report, the executive director takes the position that:

- a) the Commission has complied with the procedural requirements in the Act and Regulation;
- b) the Applicant meets the definition of “eligible applicant” in the Regulation and the Applicant has submitted an application in the required form; and
- c) the Commission should make a full distribution of the Funds and any interest accrued on the Funds to the Applicant.

D. Analysis

[18] The executive director’s report and recommendations were made in writing. No one has requested an opportunity to make submissions in person, although the executive director did offer to appear before the panel to make oral submissions. We find that we are able to make an order on the Application without an in-person hearing or further submissions.

[19] Mindful of the Commission’s guidance in *Re Alexander*, we have reviewed the executive director’s report and recommendations as well as the affidavit in support. Our task is to determine whether the evidence, on a balance of probabilities, supports granting the Application.

[20] We find that the Applicant is an “eligible applicant” for the purposes of Part 3 of the Regulation. Based on the materials before us, we find:

- a) the Applicant is the investor referred to in the Settlement Agreement;
- b) though the Applicant did not provide records with the Application, sufficient documentary evidence was obtained during the investigation of this matter and relied on in reaching the Settlement Agreement; and
- c) the Applicant’s claim does not exceed the amount of her investment.

[21] Pursuant to section 7.4(2)(d) of the Regulation, one additional factor we have considered is whether the Applicant may separately seek compensation in respect of her investment in Bracetek. The executive director provided evidence to establish that although the Applicant has commenced a civil action against Sidhu, her lawyer has informed the court that Sidhu paid \$900,000 to the Commission and that the Applicant applied to the Commission for payment out of that amount.

[22] Accordingly, we conclude that any potential recovery by the Applicant in her civil action should not reduce the amount to which she is otherwise entitled pursuant to her Application.

- [23] We find that the Commission has given the required notice to the public with respect to the Funds as required by section 15.1(1) of the Act.
- [24] Since the Funds have been in the Commission’s possession, they have been accruing interest daily. The evidence establishes that the amount of interest accrued to the date of the executive director’s report to the Commission on October 25, 2023 is \$30,359.59. In *Re Mesidor*, 2020 BCSECCOM 164, the Commission held at paragraph 40 that while section 15.1 of the Act is silent on the issue of accrued interest, “[g]iven the more general purpose of these provisions, which includes the enabling of recovery by eligible investors against amounts collected under a section 161(1)(g) order...the language of the Act permits that accrued interest can be ordered to be paid to eligible investors”.
- [25] We conclude that interest is properly payable in these circumstances.

IV. Conclusion and Order

- [26] Having considered the report and recommendations of the executive director and the affidavit in support of those recommendations, we conclude that the requirements set out in the Act and Regulation were met, and that the evidence, on a balance of probabilities, supports granting the Application.
- [27] Pursuant to section 15.1(3) of the Act, we order that the Funds held by the Commission from the Order, together with interest accrued to the date of payment, be paid to the Applicant.

November 8, 2023

For the Commission

Gordon Johnson
Vice Chair

Marion Shaw
Commissioner