

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

Citation: Re Bridges, 2023 BCSECCOM 548

Date: 20231117

**Alexander William Bridges (a.k.a. Alex Blackwell),
Shane Douglas Harder-Toews, and Fraser Valley Hop Farms Inc.**

Panel	Gordon Johnson Karen Keilty Jason Milne	Vice Chair Commissioner Commissioner
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Hearing dates May 23, 24 and 25, 2023

Submissions completed June 16, 2023

Date of Findings November 17, 2023

Parties

Mila Pivnenko Jillian Dean	For the Executive Director
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I. Introduction

- [1] This is the liability portion of a hearing under sections 161, 162 and 174 of the *Securities Act*, 1996, c. 418 (Act).
- [2] In a notice of hearing issued November 1, 2022 (2022 BCSECCOM 435), the executive director alleged, among other things, that:
- (a) Fraser Valley Hop Farms Inc. (FVHF) and Alexander William Bridges (Bridges) committed fraud when they represented to 18 investors who invested \$1,852,300 in FVHF that their funds would be used on the hops farm, but used approximately \$500,000 of these funds on expenses unrelated to the hops farm; and
 - (b) FVHF, Bridges and Shane Douglas Harder-Toews (Toews), the respondents, illegally distributed securities of FVHF to 13 investors, who invested \$931,000.
- [3] Six witnesses testified at the liability hearing, including two Commission investigators and four investors.
- [4] None of the respondents participated in the hearing.
- [5] Written submissions were received from the executive director. No submissions were received from the respondents.

II. Factual Background

- [6] FVHF is a British Columbia corporation which was incorporated on March 17, 2016. FVHF's apparent intention was to lease farmland in the Fraser Valley and to grow hops to supply to craft breweries in British Columbia.

- [7] FVHF leased a farm (the Farm) by a lease dated October 3, 2016 and hired employees to work the Farm. FVHF grew some hops on the Farm.
- [8] According to records filed by FVHF with the corporate registry in British Columbia, throughout its existence up to the commencement of this proceeding, FVHF had only one registered director, Bridges. Those records listed the same address in Abbotsford, British Columbia for Bridges as that listed for FVHF.
- [9] Bridges was also known as Alex Blackwell (Blackwell). This fact was confirmed by evidence which we discuss below. In this decision where we discuss documents and evidence from witnesses who knew Bridges as Blackwell we use the two names interchangeably.
- [10] Bridges controlled FVHF's Bank of Montreal (BMO) bank account. This fact was also confirmed by evidence which we discuss below.
- [11] Toews signed a management agreement with FVHF which appointed Toews as FVHF's marketing director. Toews duties in the management agreement are listed as:
1. Marketing and promotion of the hops farm through both traditional and current social media branding.
 2. Overseer of farm operation, human resources and investor relations.
 3. Website server management on behalf of Fraser Valley Hop Farms Inc., telecommunication.
 4. Other responsibilities:
 - a. Meeting with employee's, associates, executives, breweries, investors, affiliates and other such individuals.
 - b. Assist in day-to-day operations.
 - c. Supervision of independent contractor employment agreements, with approval of the seabird fiirst [sic] nation band.
- [12] Toews admitted that his duties expanded beyond those listed in his management agreement. The extent of Toews managerial responsibilities with VFHF is discussed below in further detail.
- [13] Toews was the sole director and had signing authority to the bank account of the numbered company 1160924 B.C. Ltd. that did the payroll for FVHF.
- [14] Toews was the sole director and had signing authority to the bank account for BCHN Housing News Limited (BCHN), a company that provided marketing services to FVHF.
- [15] Both together and apart Bridges and Toews met with a number of people who invested in FVHF. As we have noted, four of those investors testified at the hearing.

A. SUMMARY OF INVESTORS' EXPERIENCES

1. Investor L

- [16] What follows is based upon testimony given by Investor L and exhibits which he discussed in the course of his testimony.
- [17] Investor L is a resident of Vancouver Island. In early 2018 Investor L was searching for a suitable investment which he could make on behalf of himself and his son. Investor L's

son has a medical condition which can be accommodated by allowing him flexibility in terms of how and when he works. As a result, Investor L was hoping to set his son up with an income producing asset which his son could nurture and earn revenue from.

- [18] Investor L had become aware of FVHF through a craft beer festival web page which mentioned FVHF. Later, in February of 2018, Investor L saw FVHF advertise in a separate website listing BC business for sale. Investor L followed up with an email inquiry. Investor L received a brief email reply from a representative of FVHF named Ms. I. Ms. I was later identified as Toews' partner. In her email Ms. I identified herself as a director of FVHF. She thanked Investor L for his initial questions. She provided some information about FVHF and she concluded by saying:

"The managing director is Shane Toews, and I can set up a meet-and-greet conference call with him at some point this week while you do your due diligence. I look forward to speaking with you soon."

- [19] Investor L later had a telephone conversation with Toews and on February 17, 2018, Toews sent Investor L a detailed email. That email was copied to an address which was later identified to be the address of the person Investor L knew as Blackwell. The body of the email reads in part as follows:

It was a pleasure speaking with you yesterday. My apologies for the delay in getting this info over to you. The day went longer than expected yesterday and we were out at the farm all day today. Feel free to reach out to me on this e-mail with any questions you might have regarding the business or opportunity to partner with us on acreage. My personal, direct line is [REDACTED]. You are also welcome to contact me anything via phone call, e-mail or text. I look forward to our next conversation later this week or at your earliest convenience.

As requested, I have attached to this e-mail a copy of the \$0.25 share subscription agreement, an excel calculator that can be changed to show results of different variables (ie: share prices, acreage, price per lb etc.) The details of the Farm Share Partners Agreement I also have included in the email below.

The FSP Agreement is for the duration of 25 years (Seasons)

The Common Class B shares in the company are forever.

For Example:

A FSP Agreement for 2 acres (25k per acre investment) would be projected to show you returns of \$11,250.00 per annum.

A 2 acre FSP Agreement would also see you purchase 200,000 Common Class B shares.

200,000 Common Class B shares are projected to show returns of \$4,937.50 per annum for every 100 acres planted above and beyond the first 90 FSP Agreement Acreage.

We intend to have 250 to 350 acres planted within the next 26 months.

I have broken down the projected returns to be seen off of a \$25,000.00 per acre FSP or Farm Share Purchase Agreement that we spoke about. Please see those figures and the breakdown below.

PREFACE

Fraser Valley Hop Farms Inc. has lease 130 acres for the planting and growing of Hops Plants in Aggasiz B.C. The Company has the option to expand this initial lease in the same filed and on same irrigation system and intends to plant 350-500 acres throughout the coming 26-38 months. The first 90 acres with the Company is in the process of planting will be structured as farm share acreage with FVHF partnering with individual investors per acre over the 25 year period in addition to shares in the company in its entirety @ \$0.25 per share.

Eash 10 acre plot will be sold for \$225,000.00 or per acre at \$25,000.00 per acre

The projected yields and potential returns I will detail below:

Each acre will yield an average of 1500lbs of hops per acre per season.

The plants that we are using have been known to produce over 1500bs per acre in only their second season. It is not unusual to see yields of between 1500lbs and 1900lbs per acre.

If one were to invest with us as a farm share partner on a 10 acre plot they would have the privilege of naming the 10 acre plot (ie: Alex's acreage)

NUMBER FOR 1 ACRE and 10 ACRE Plots.

1500lbs @ an average of \$15.00 per lb = \$22,500 per acre or \$225,000.00 per 10 acre plot per annum.

So a seasonal revenue of \$22,500 per acre or \$225,000 per 10 acres. Fraser Valley Hop Farms will share 25% of this gross revenue with their individual investor or farm-share partner. So you would be making \$5,625.00 per acre per year on each 25k investment.

OR

\$56,250.00 per 10 acre plot annually on \$225,000.00 Investment (an approximate 25% return on your initial investment of \$225,000.00 annually)

As per our business plan the conservative numbers are as follows:

1,500 pounds of dried hops per acre @ approximately ... \$15.00/pound.

Annual Gross @ 100 acres = \$2,250,000.00

Operational Cost -(\$250,000.00) or \$2,500.00 per acre

Annual Net \$2,000,000.00/year

Under the farm share agreement we would reinvest 50% of this revenue into strengthening and expanding the Company for the first 5 years.

\$1,000,000.00 Reinvested into FVHF to expand acreage and strengthen company. For the first 5 years/ seasons.

\$1,000,000.00 FVHF

25% of FVHF gross revenue (minus fixed operational cost of \$2500 per acre) FVHF gives to its investor pool conservatively 250,000 per annum per 100 acres.

HARD COSTS OF SET UP:

LAND LEASE: 130 acres = 100k per annum

Hard cost of 15k per acre on time only on initial set up.

Annual dividend payments made to investors at the end of each fiscal year (December)

* Note: For the first 90 acres of farm share agreements with individual investors FVHF will absorb the \$2500.00 operation costs per acre.

At only 190 acres planted and based on an average sales price of \$15.00 per pound a 2 acre investor/ farm share partner would expect approximately \$11,250.00 in returns from their 2 acre plot and \$4,937.50 in projected dividends from their purchase of 200,000 shares.

At total investment of \$50,000.00 CAD would conservatively yield returns of approximately \$16,187.50 per annum with only 190 acres planted in total.

The company is aiming to have between 300 and 350 acres planted and producing in the following 26 months.

Feel free to call or email any additional questions you may have in the meantime. I look forward to following up with you early next week.

- [20] The February 17, 2018 email included as attachments the FVHF 2018 business plan, a share subscription agreement, a feasibility study and a document called a farm share agreement (Farm Share Agreement).
- [21] The feasibility study was a professionally prepared document from an independent company which, among other things, spoke to the suitability of the Fraser Valley's climate and soils for growing good quality hops as well as to the desire of local brewers to source hops locally.
- [22] The Farm Share Agreement set out the form of an agreement under which FVHF would operate a hops growing business on a defined parcel of land and an investor, defined in the agreement as a farm share partner, would have various rights. Under the agreement FVHF would operate the business of growing hops and potentially other crops and might subcontract with other parties to provide some or all of its services. FVHF agreed to pay the farm share partner compensation based on production from a specific number of acres on the farm based on a schedule.
- [23] After reviewing the package of materials, Investor L was interested enough that he arranged to visit the FVHF's farm. While there he observed that the farm had facilities and equipment operating including an irrigation well, a pump system and a tractor. Some hops had been planted and others were being planted, with areas laid out for trellises. Investor L met with Toews and with Blackwell. Based on what he was told while at the Farm, Investor L understood Blackwell to be the head of FVHF.

- [24] After Investor L's tour he had various email and other communications with Toews in which Investor L requested and received more information about the business. Investor L negotiated some amendments to the Farm Share Agreement and its related schedule, especially regarding FVHF's obligation to keep appropriate accounting records and regarding the clarity of FVHF's obligation to provide payments to Farm Share Agreement partners. The schedule which was relevant to Investor L defined the agreement as relating to a 5 acre parcel of the farm for \$25,000 per acre, with Investor L paying \$125,000 in total. Investor L liquidated some other investments he had, signed (along with his son) the Farm Share Agreement which he had negotiated with FVHFs, signed a subscription agreement with FVHF for 500,000 shares of that company and paid \$125,000 to FVHF into a specific account which FVHF had at the Bank of Montreal.
- [25] Investor L continued to keep in touch with Toews and in May of 2018, Investor L agreed to, and did, increase his investment by \$60,000. Investor L had negotiated what he called a 25% discount in his investment, meaning that for his new \$60,000 he, and his son, received a further 3 acres and 300,000 shares. Investor L signed further versions of the same documentation he had signed before, but with the dates and amounts changed to reflect the then current terms. When Investor L made payment, he was directed by Toews to make payment to a different bank account than he had used before. As a result Investor L made his further cheque payable to 1160924 BC Ltd.
- [26] On July 15, 2018 Investor L received an email from Toews answering some questions he had asked about topics such as how discussions were going with Molson Coors, how many employees FVHF had, and what relationship FVHF had with a business called Lions Bay Holdings. The answers were all reassuring to Investor L and the next month Investor L made a third investment, this one of \$40,000 with the same terms as his second investment. That brought Investor L's total investment in FVHF to \$225,000.
- [27] Investor L received no return on his investment but he did receive updates which were generally reassuring until a particular email dated July 18, 2020. The July 18, 2020 email was from Blackwell. It was a lengthy email which reported on some good news about great work FVHF was doing planting hops. The email also described some misfortune at the Farm such as theft and difficulties with construction of a processing facility. At the top of the 4th page of the email Blackwell stated:
- "In order to achieve revenue generation in a few short months and avoid insolvency we need each and every one of our shareholders to put forth additional capital immediately or the company will have no choice but to dissolve entirely and all investments put forward to this day will be lost completely."
- [28] Blackwell went on to describe the sacrifices he had been making to personally cover costs for the business, including maxing out his own credit and selling "my custom golf cart, my boat, three Rolexes, my two favorite brietling watches and my prized sports car".
- [29] It soon became clear to Investor L that he had lost his investment in FVHF and with it the opportunity he had hoped to develop for his son.

2. *Investor XL*

- [30] Investor XL lives in Abbotsford.
- [31] Investor XL was introduced to FVHF by Mr. B. Mr. B contacted Investor XL in late 2017 or early 2018 and told her that he was in charge of the investment and looking for potential investors for the FVHF project. Mr. B sent a business plan dated 2016 to Investor XL.
- [32] In January 2018, Investor XL received an email from Blackwell, the person she understood to be the general manager or executive for the whole farm project. Among other things, the email from Blackwell contained details on the structure and anticipated returns of the Farm Share Agreement which were virtually identical to the terms which had been sent to Investor L.
- [33] Attached to Blackwell's January 2018 email were an updated business plan and an Excel calculator that a potential investor could use to show the effect of changing variables for the investment. Investor XL used the calculator and testified that both it and the updated business plan influenced her decision to invest in FVHF.
- [34] On March 6, 2018, Blackwell emailed Investor XL again, this time attaching a ten-acre Farm Share Agreement, and a Schedule 1 to that agreement. Schedule 1 repeated the projected returns set out in the January 2018 email from Blackwell, stating: "Therefore, an annual gross revenue of \$22,500 per acre or \$225,000 per 10 acres is projected. Fraser Valley Hop Farms will pay 25% of the gross revenue to the FSP. So, the projected revenue to an FSP would be \$5,625.00 per acre. For a Farm Share Agreement for 10 acres, the FSP's annual projected compensation would be \$56,250."
- [35] Prior to investing, Investor XL visited the farm property and met with Blackwell. At the farm, she saw structures being set up for the farm including posts, irrigation works and some areas with plants. Investor XL testified that Blackwell was a "big talker" and told her about expansion plans for the operation, the competitive environment for the business, how many customers were waiting to buy their hops and how profitable the operation would be. Blackwell told Investor XL that her money would be used for irrigation, buying seeds, leasing or buying land and setting up structures for planting.
- [36] Investor XL is a businessperson herself, lives in the Fraser Valley and considered the FVHF opportunity carefully prior to investing. Before learning about FVHF from Mr. B and Blackwell, Investor XL knew that hops had become a very popular crop in the valley, but primarily on a hobby-farm basis. She decided that there was an opportunity for larger-scale production that could be profitable.
- [37] Ultimately, Investor XL made three investments in FVHF. In March of 2018 she invested \$225,000 to finance the setup of ten acres of hop farming. Although she asked Blackwell many times for a share certificate after making this investment, she never received one.
- [38] In May of 2018, Investor XL invested another \$225,000 to finance the development of a further ten acres of farm land. Again Investor XL repeatedly asked Blackwell for a share certificate in respect of this investment, but he told her "the same old story", that he was very busy, that he was working on it, and that he would give her one as soon as possible. Investor XL never received a share certificate.

- [39] Later the same year, Investor XL received a call from Mr. B who told her that the farm was in difficulty because of theft, damage to equipment, and increased costs. Investor XL told Mr. B that Blackwell or his team should deal with these challenges, but both Mr. B and Blackwell called her and told her she could invest more to help the farm recover.
- [40] While her previous investments had been ten acres for \$225,000, Blackwell and Mr. B now told Investor XL that she would get a better rate on an additional investment – three acres for \$50,000. Investor XL invested again, bringing her total investment in FVHF to \$500,000. Exhibits entered at the hearing did not include documentation of the final \$50,000 from Investor XL. As a result, we will only consider Investor XL's two \$225,000 investments in our findings.
- [41] After making her third investment, Investor XL found that the tone of communication changed. First, Mr. B stopped contacting her. Then Blackwell told her that he caught Mr. B stealing from the company and fired him. Blackwell asked Investor XL for more money.
- [42] Like Investor L, Investor XL received a discouraging email from Blackwell in July 2020. That email contained the same statement as Blackwell's email to Investor L: unless shareholders put forward additional capital immediately, "all investment put forward to this day will be lost completely."
- [43] Investor XL refused to invest any more money and she never earned any return on her investment in FVHF. The loss of her investments impacted Investor XL significantly. At the time she invested, Investor XL had two very young children, her mother had cancer, and although Investor XL wanted to buy a bigger home for her family, she could not afford to do so after losing her investments.
- [44] Investor XL said the emotional and psychological impact was even bigger than the financial loss. She had brought a friend to visit the farm, thinking it might be a good investment for him. And as a business person herself, Investor XL said the experience was a big blow to her confidence. She testified that "maybe I don't really know what I'm doing."

3. *Investor AJ*

- [45] Investor AJ is a Vancouver-based geologist who found the investment opportunity in FVHF when doing online research about local businesses looking for investors.
- [46] She met in-person with Blackwell and Toews who provided her with investment materials. Toews and Blackwell explained to Investor AJ that they had a plot of land and had hired a manager to take care of the farming operation. Toews told her that the business would offer products based on the crops they grew, including kombucha tea. Investor AJ was particularly interested in brewing as an industry. Blackwell told her that invested funds would initially be invested in getting the farm up and running and actually producing crops that would then generate cash flow.
- [47] Investor AJ made her investments in FVHF after Blackwell told her about a 30% investment tax credit. Based on a "Capital Table" that she received from FVHF, Investor

AJ understood that she would be getting in at the “Stage 1” offering and acquiring shares for ten cents each.

- [48] In January 2017, Investor AJ invested \$50,000 and understood she would be receiving 500,000 shares in FVHF. In the Private Placement Subscription Agreement that she signed, Investor AJ indicated that she was a close business associate of Blackwell. In her evidence at the hearing, Investor AJ said that she had checked the close business associate category because Blackwell told her that was what FVHF needed to get the agreement in place.
- [49] The subscription agreement she signed specified that Investor AJ was purchasing shares in an entity called Monkey Business Brewery Inc. Investor AJ understood that, because she had invested \$50,000 in FVHF but was interested in the brewing business, she would receive shares in Monkey Business Brewery Inc. as a gift. She did not pay any additional money for these shares beyond the \$50,000 she understood that she invested in FVHF.
- [50] For five or six months after her investment, Investor AJ received regular updates, “and then it just kind of fizzled out”. Investor AJ repeatedly asked for securities certificates but never received any.
- [51] In February 2018, Investor AJ received an email from Blackwell that read, in part:

While prospects for future investment partners is looking strong we really need to work with our existing shareholder base to get our next load of lumber shipped here and to start putting poles in the ground ASAP. Equally as importantly we need to pay our new greenhouse partners a bare minimum of \$40,000.00 CAD (25% deposit on the plants we are purchasing for Spring Planting) And Approximately \$50,000CAD for the next truck loads of lumber to be delivered and set up on the field.

Collectively, I would like to raise an additional \$100,000.00CAD so that we can achieve these goals and get ahead of the game for Summertime. If we achieve our Spring planting goal of an additional approximately 45 acres. This will give us 60 acres of mature, prime plants that even if they were to only yield 1000lbs per acre would see us with revenues of over 900,000.00CAD at current hop prices. Furthermore, if we are to achieve this short-term goal we will be ahead of schedule to plant an additional 30 acres in the summertime. This will complete our first 90 acres and will allow us to focus on the next 200 acres for 2019 and beyond!

If our existing shareholder base can put in less than 20% of their initial investments we can easily obtain the \$100,000.00 necessary to insure success for this Season. In addition to shares/ farmshare agreements on upcoming acreage we can also facilitate a fixed term loan with interest or promissory note to be paid out after harvest season.

I know it has been a lot of hard work and sacrifice to get us this far and we would not be able to have accomplished so much on such a modest budget without the help of each and every one of you. We have worked together as a team to get our state of the art irrigation system completed and powered and we banded together to find new partners and opportunities after Chilliwack Hop Farms had their fire. Now, we are all excited to start reaping the fruits or hops of our labors.

I will be calling everyone individually this week to catch up and put this plan for our next stage of growth in action. I look forward to working with everyone to see a successful 2018 crop and move one step closer to our goal of being one of the largest leading hops producers in British Columbia.

[52] Given the less frequent communication she was receiving at this time, Investor AJ declined to invest more money. She received no returns and lost her \$50,000 investment.

4. *Investor YL*

[53] Investor YL is a financial analyst who lives in Langley. He first learned of FVHF on an investment website and decided to look further into the company.

[54] Blackwell's wife was the first person at FVHF to contact Investor YL. In August 2017, Blackwell's wife sent an email to summarize her telephone conversation with Investor YL the same day. That email read, in part:

Just to give you a recap of what I told you during our call:

FVHF, Inc. plants, grows, harvests, sells/distributes hops for the brewing industry and feeding the insatiable demand for locally grown hops. Currently, there is an overwhelming demand for hops with a 13 million pound global hops shortage.

Each part of the business cycle of Fraser Valley Hops Farms, Inc. from start to finish has been established. We are offering a significant ownership position in the company, with ROI distributed annually.

Due to the rising prices for hops coupled with the desire to preserve the established business and all intellectual property we have built, we have actually decided that it is in the best interest of Fraser Valley Hops Farm, Inc. to not sell 100% ownership of the hops farm. Rather we are providing a select few capital partners the opportunity to become partners [sic] with us. That being said, it would be ideal if you're open to the idea of taking a partial position in the business rather than a total buy-out, while leaving the existing administration and farm hands in place.

[55] Investor YL signed a non-disclosure agreement, agreeing not to divulge information given to him. The next day, he received a lengthy email from Blackwell's wife. Among other things, the email advised that Toews was working hard to build "a solid 'back end' so that you can monitor your investment in real time." Investor YL was interested in the ability to monitor his investment, but the electronic monitoring system never progressed beyond a mock-up. Investor YL was never able to monitor actual investment data.

[56] After reading a business plan given to him by Blackwell's wife, Investor YL thought that investing in FVHF was a good way to get into the industry. In another email, Blackwell's wife provided details about the investment to Investor YL:

There are two sides to this investment

1. Shares that are now being offered at .25/share
2. Farmshare partnership agreement (First 56 acres - no other investors one [sic] else shares in the profit of these acres)

The details of the Farm Share Partners Agreement we spoke of are below:

The FSP Agreement is for the duration of 25 years (Seasons)

The Common Class B Shares in the company are forever.

A FSP Agreement for 2 acres (25k per acre investment) would be projected to show you returns of \$11,250.00 per annum.

A 2 acre FSP Agreement would also see you purchase 200,000 Common Class B shares. 200,000 Common Class B shares are projected to show returns of \$4937.50 per annum for every 100 acres planted above and beyond the first 56 FSP Agreement Acreage We intend to have 350 acres planted within the next 26 months. I have also attached an excel calculator that allows you to input variables such as hops price, yield and producing acreage. Feel free to play around with it to see potential returns on \$0.25 shares. Also, the projected returns to be seen off of a \$25,000.00 per acre FSP or Farm Share Partnership Agreement that we spoke about are broken down below.

[57] The next day, Blackwell sent an email to Investor YL that said, among other things: "I have also attached an excel calculator that allows you to input variables such as hops price, yield and producing acreage. Feel free to play around with it to see potential returns on \$0.25 shares. Also, the projected returns to be seen off of a \$25,000.00 per acre FSP or Farm Share Partnership Agreement that we spoke about are broken down below."

[58] Investor YL used the excel calculator while deciding whether to invest and before he did invest, he also expressed concerns about accountability to Blackwell. Investor YL wrote:

I mentioned this before as accountability is very important as it builds trust between us and I do want a successful long-term relationship. How can we know and be assured that all transactions will be recorded properly and a distribution of dividends will be calculated appropriately. As this is priority placing we are taking on a chance (and risk).

[59] At the hearing, Investor YL explained that he wrote that paragraph because he was concerned that the financials of the farm would not be done properly and that there was no way he could audit the financials. In response to these concerns, Blackwell highlighted to Investor YL that he would be able to monitor his investment electronically, a service which never materialized, and then wrote:

While I cannot guarantee any 100 percent certain results or outcome, I can guarantee that I will lead the company to the best of my ability with honour and integrity as well as with responsibility and accountability to our partners, employees and customers.

[60] Investor YL went further in his due diligence, requesting from Blackwell documentation to confirm that the farm's hops were being sold. He wrote to Blackwell:

I will appreciate if you could send over some contracts you have with breweries confirming the purchases of hops that are being produced out from the farm. It will give us a sense of security that there are contracts in place to purchase the hops and it helps build trust in our relationship. I will promise not to share with anyone as I know this could harm the future of the company. It is solely for the purpose of my own due diligence.

I was wondering if its [sic] worthwhile to sit down together to go through the details of the paperwork and also that I fill it up right. I have had a read through already but wanted to make sure I don't have any misunderstanding. I could drop by your office this Friday if you have some time.

[61] Blackwell provided contracts to Investor YL who considered them prior to investing in FVHF. Ultimately he did invest \$25,000 after concluding that this would be a hands-off investment and one that seemed to offer a good return based on the excel calculator he had been given.

[62] Blackwell provided a Farm Share Agreement and Schedule 1 to Investor YL. Among other things, Schedule 1 stated:

FVHF will split with each farm share partner 25% of gross revenue per their 2 acre plot throughout a 25 year period. In addition, this farm share partner will receive shares in the company in its entirety at a price of \$0.25 per share for a total of 200,000 shares.

...

As per our farm share agreement we split half of our crop with Chilliwack Hop Farms.

So a seasonal revenue of \$11,250 per acre or \$112,500 per 10 acres. Fraser Valley Hop Farms will split this revenue 50/50 with their individual investor or farm-share partner. So the farm share partner would be making \$5,625.00 per acre on each 25k investment per acre per annum.

--OR--

\$56,250.00 per 10 acre plot annually In addition to the farm share on the 1-10 acre plots you will also be purchasing shares in the company @ \$0.25 per share

[63] Under the heading "Partnerships for growth", Schedule 1 depicted logos of the governments of British Columbia and Canada. Investor YL took that to mean that government was supporting farming in the province which he felt to be a positive thing.

[64] Ultimately, Investor YL signed a Private Placement Subscription Agreement and invested \$25,000 to finance the setup of one acre of the farm property. In the subscription agreement, Investor YL made hand-written changes, adding an option to purchase an additional acre for the same price, \$25,000. He made that change because even though he had originally contemplated investing \$50,000, he had concerns about accountability and wanted to see how the operation ran before deciding whether or not to invest a second sum of \$25,000.

[65] Investor YL did not make a second investment. Although he asked Blackwell for a share certificate, he never received one. Investor YL received no returns on his investment and lost the \$25,000. Beyond the financial loss, Investor YL testified that he cannot trust anyone anymore.

[66] Several other individuals also invested in FVHF. We discuss the evidence relevant to those other investors below to the extent that it is important for us to do so in order to reach conclusions regarding the issues raised in the NOH.

III. Applicable Law

[67] In this part we address the applicable caselaw and the key statutory provisions engaged by the notice of hearing. We minimize our discussion of the key authorities which we will expand on and apply in the analysis section of this decision.

A. Standard of Proof

[68] The onus of proof lies with the executive director. The standard of proof is proof on a balance of probabilities as stated by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53. The British Columbia Court of Appeal in *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2023 BCCA 70, summarized the test in *McDougall* as:

[162] In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada put to rest any debate that a heightened standard of proof applies in civil cases involving criminal or morally blameworthy conduct. The Court stated clearly that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities”: *F.H.* at para. 40. A judge’s task is to determine “whether it is more likely than not” that the event at issue occurred: at para. 44. The level of scrutiny applied in the fact-finding exercise does not change with the seriousness of the case. In all cases, “evidence must be scrutinized with care by the trial judge” and “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”: at paras. 45–46.

[163] Nevertheless, context remains critical. In assessing the evidence “a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences”: *F.H.* at para. 40. The quality of evidence required to meet the balance of probabilities standard “will depend upon the nature of the claim and of the evidence capable of being adduced”: *Nelson (City) v. Mowatt*, 2017 SCC 8 at para. 40.

B. Relevant Provisions of the Act

Definition of “security”

[69] At all relevant times, section 1(1) of the Act defined “security” to include:

- (a) a document, instrument or writing commonly known as a security;
- (d) a bond, debenture, note or other evidence of indebtedness, share [...] or subscription; and
- (l) an investment contract.

[70] The leading case on interpretation of the meaning of “security” is *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 SCR 112. The majority of the Supreme Court of Canada stated, at page 127, that

...in searching for the meaning and scope of the word 'security' in the Act, form should be disregarded for substance and the emphasis should be on economic reality.

Fraud

[71] At the relevant time (December 14, 2016 to July 26, 2018), section 57(b) of the Act

stated:

A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct

(b) perpetrates a fraud on any person.

[72] The leading cases for securities fraud in British Columbia are *R. v. Théroux*, [1993] 2 SCR 5, and *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. They summarize the elements of fraud:

...the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Illegal distribution

[73] At the relevant time (December 14, 2016 to May 27, 2019), the provisions of the Act relevant to the illegal distribution allegation were as follows:

- (a) section 1(1) defined "trade" to include "(a) a disposition of a security for valuable consideration" and "(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)";
- (b) section 1(1) defined "distribution" as "a trade in a security of an issuer that has not been previously issued"; and
- (c) section 61(1) stated "Unless exempted under this Act, a person must not distribute a security unless... a preliminary prospectus and a prospectus respecting the security have been filed with the executive director, and the executive director has issued receipts" for them.

Section 168.2 of the Act

[74] At all relevant times, section 168.2(1) of the Act stated that if a corporate respondent contravened a provision of the Act, an individual who was an employee, officer, director or agent of the company also contravened the same provision of the Act, if the individual authorized, permitted, or acquiesced in the contravention.

[75] The panel in *Re Bergman*, 2021 BCSECCOM 302, considered the meaning of “authorized, permitted or acquiesced” for a director or officer’s liability for the corporate respondent’s non-compliance with the Act. The panel stated at paragraphs 38 and 39:

There have been numerous decisions that have considered the meaning of the terms “authorize, permit or acquiesce.” In sum, these decisions require that the respondent have the requisite knowledge of the corporate contraventions and the ability to influence the actions of the corporate entity through action or inaction.

In *Re Momentas Corp.*, 2006 ONSEC 15, the Ontario Securities Commission considered the meaning of “authorized, permitted or acquiesced” for a director or officer’s liability for the issuer’s non-compliance with the Act, and stated at paragraph 118:

Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms “authorize”, “permit” and “acquiesce” varies significantly. “Acquiesce” means to agree or consent quietly without protest. “Permit” means to allow, consent, tolerate, given permission, particularly in writing. “Authorize” means to give official approval or permission, to give power or authority or to give justification.

IV. Position of the executive director

- [76] The executive director submits he has proven that both FVHV and Bridges committed fraud in breach of section 57(b) of the Act against 18 investors by making representations to those investors that their funds would be used on the Farm but instead using the funds for unrelated purposes.
- [77] The executive director submits he has proven that FVHF distributed securities in 22 different distributions in breach of section 61 of the Act, that Bridges is liable under section 61 for his direct participation in 16 of those distributions and that Toews is liable under section 61 of the Act for 10 of those distributions.
- [78] The executive director submits that Bridges was a director of FVHF and Toews was a de facto director of FVHF and that they authorized, permitted or acquiesced in FVHF’s violations of section 61 of the Act and as a result they are each liable under section 168.2 of the Act as if they had contravened that same provision.
- [79] The executive director accepts that section 57(b) of the Act applies only if the conduct in question was conduct relating to securities or exchange contracts. The executive director also accepts that the prohibition against distributions under the Act applies in relation to distributions of securities. The executive director submits that the investments made by the investors were investments in securities.
- [80] The executive director notes that not all investors received the same documentation from FVHF. Most received Farm Share Agreements relating to their “per acre” entitlements and most received subscription agreements. However, some investors received only verbal representations consistent with the Farm Share Agreements and

the subscription agreements. In addition, one investor received a promissory note related to a portion of his investment. The executive director submits that the definition of “shares” in the Act clearly captures the subscription agreements and Farm Share Agreements, and the oral equivalents of those documents, because those documents were evidence of the shares offered to investors and represented equity investments and an entitlement to share in expected profits of FVHF. The executive director submits that the promissory note which FVHF issued is also a security.

[81] The executive director made the following submissions regarding the characterization of the instruments provided to investors by FVHF:

- (a) as the Supreme Court of Canada said in *Pacific Coast Coin*, a common enterprise “exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor’s role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community”;
- (b) the focus on the economic reality of the investment, as opposed to mere form, is consistent with the established principles of statutory interpretation, the purposes of the Act, and previous jurisprudence;
- (c) every investor’s money went to the same pool of commingled funds in FVH accounts and was treated the same by Bridges. All investors were treated identically in terms of how their investments were processed, regardless of:
 - (i) what paperwork they received as proof of their investment (PPSA, FSA, promissory note or verbal); and
 - (ii) whether they invested multiple times.
- (d) the evidence shows that the substance of arrangement between the Respondents and investors was that of an investment contract:
 - (i) the investors provided money to the Respondents for the purpose of investing FVHF, and were to receive a percentage of gross revenue and annual dividends. This was the common enterprise; and
 - (ii) the profits were to come from the efforts of Bridges and Toews, not the investors themselves. The investors were not required to do anything other than provide the money and wait for the promised returns.

[82] The executive director submits that the fraud allegations have been proven by evidence that FVHF and Bridges, directly and through others acting on the instructions of Bridges, told investors that their money would be going towards the hops farm. Some investors received more specific representations and were told about specific farm related items that their money would be used on, others received more general representations, and by detailed evidence regarding how the funds were actually used. The actual use of the funds was established by detailed schedules introduced into evidence through and explained by a Commission witness, Ms. H, who had obtained a significant body of records from FVHF’s bank and had used those records to re-create the flow of funds

from when the funds were received by FVHF from investors until the funds were spent or transferred in a manner for which no further record exists. The executive director asserts that Ms. H was very conservative in her calculations such that any doubt about the legitimacy of any particular expenditure or transfer of investor funds was resolved by Ms. H in favour of the respondents.

- [83] The executive director submits that FVHF had subjective knowledge of the deceit alleged based on the following:
- (a) FVHF and Bridges knew that they did not use all of the investors' money on the hops farm;
 - (b) Bridges knew it because he controlled FVHF and the bank account of FVHF where investors' funds were held, and was the sole person who decided how investors' funds would be spent;
 - (c) numerous decisions from this Commission have found that in cases where an individual controls a corporate respondent and perpetrates fraud, the individual's state of mind is attributed to the corporate respondent; and
 - (d) in the case at bar, the action of FVHF with respect to its bank account [REDACTED] used to receive investors' money was controlled by Bridges, and it is appropriate to conclude that Bridges' knowledge and state of mind should be attributed to FVHF.
- [84] The executive director submits that FVHF and Bridges had subjective knowledge of the deprivation suffered by the investors based on the following:
- (a) the deceit involved handling investors' money and/or inducing investors to invest money in FVHF;
 - (b) in 2020 Bridges sent out an email to some investors stressing the importance of raising additional capital to prevent FVHF from ceasing operations and all investment from being lost completely. Bridges understood the importance of investor capital to maintain operations and emphasized the dire situation that FVHF was in as funds were depleted; and
 - (c) FVHF and Bridges, therefore, knew or ought to have known that their deceit in diverting a large portion of the investors' funds for uses other than the hops farm was putting the investors' money at risk and could have as a consequence the deprivation of the investors.
- [85] The executive director submits that the allegations of an illegal distribution have been proven because Bridges and Toews both solicited investments on behalf of FVHF, because the investments were for securities, or shares, or investment contracts, and because no exemption applied. The executive director submits that once a distribution has been proven the onus is on the respondents to establish that an exemption existed from the prospectus requirements of the Act.

[86] The executive director submits that there is considerable evidence that Bridges was a director of FVHF and that Toews was a de facto director of FVHF. On that basis the executive director submits that Bridges and Toews are liable under section 168.2 of the Act.

V. Analysis and Findings

A. Identities and Roles of Bridges and Toews

[87] The evidence is unequivocal that Bridges identified himself to investors as a director of and the leader of FVHF. Bridges was the only director identified in the BC corporate registry as the director of FVHF. Bridges was identified by Toews as a director of FVHF. Bridges' emails to investors, both those quoted in this decision and those which were found throughout the exhibits before us but not explicitly quoted in this decision, confirm that Bridges played the leading role in operating FVHF and in raising funds from investors.

[88] The evidence is also unequivocal that Bridges and Blackwell are different names for the same person. Some of that evidence is:

- Toews' interview under oath, where he confirmed Bridges was Alex Blackwell;
- the Notice to End Tenancy for the Furry Creek address, which lists the names of tenants as Alexander William Bridges and [REDACTED], who was Bridges' partner, and the correspondence regarding that tenancy, which was sent to Alex Blackwell and Blackwell's wife ([REDACTED]);
- evidence from two investors that Bridges is Alex Blackwell; and
- multiple e-transfers made from FVHF BMO account [REDACTED] controlled by Bridges where the email of the "sender" is "alex@fraservalleyhopfarms.com" (the email address used by Alex Blackwell), and the "recipient name" is "Alexander Bridges" with the email address "alexbridges@[REDACTED]".

[89] The evidence is also unequivocal that Toews played a significant role in operating FVHF and in dealing with investors. Toews admits as much, as referenced above where we mention the explanation Toews gave about his management contract with FVHF and in other statements by Toews during his interview with Commission investigators. The same conclusions are well supported by evidence from investors regarding their interactions with Toews. What remains to be decided is whether the evidence establishes that Toews was a de facto director of FVHF.

[90] In *British Columbia (Securities Commission) v. Alexander*, 2013 BCCA 111, the British Columbia Court of Appeal accepted that someone is a *de facto* director if they did one or more of the following list of factors:

- (a) appointed nominees as directors;
- (b) responsible for supervision, direction, control and operation of the company;
- (c) ran the company from their office;
- (d) negotiated on behalf of the company;
- (e) company's sole representative on a trip organized to solicit investments;
- (f) substantially recognized and managed the company;
- (g) selected the name of the company;
- (h) arranged a public offering; and/or

(i) made all significant business decisions.

[91] In this case the executive director asserts that the following factors demonstrate that Toews was a de facto director of FVHF:

- a) Toews considered himself a director, cofounder and co-owner of FVHF;
- b) Toews was represented as the Marketing Director of FVHF to investors;
- c) Toews had the authority to sign investment documents on behalf of FVHF as its director. He signed six investor agreements and one share certificate;
- d) Toews directly interacted with investors, discussed key business terms of their investments, and took them on farm tours;
- e) Toews, together with Bridges and others, was instrumental in designing marketing materials for FVHF, including the business plans;
- f) Toews, together with Bridges, solicited investors for FVHF through online ads; and
- g) Toews was involved in key operational decisions for FVHF, including obtaining a business license and a CRA number, dealing with WorkSafeBC, paying employees, documenting the construction of infrastructure, writing press releases, taking drone videos, and filling employee timesheets.

[92] We would not consider that any one of the above factors asserted by the executive director is sufficient to establish that Toews was a de facto director of FVHF. General employees who are not de facto directors or officers will often perform many of the functions which were performed by Toews for FVHF. However, when we look at the totality of Toews role, and particularly the impression of authority over FVHF which Toews appears to have intentionally created, we conclude that the evidence establishes that at all material times Toews was a de facto director of FVHF.

B. Evidence regarding investors who did not attend the hearing

[93] The executive director alleges that Bridges and FVHF perpetrated a fraud against 18 investors and that Bridges and Toews made illegal distributions to 13 investors: 16 times by Bridges and 10 times by Toews. Only 4 of those investors appeared before us. Each of those witnesses was compelling and each provided evidence which is well supported by contemporaneous documentation. We accept the evidence of each of those witnesses generally and specifically regarding what they were told about how their funds would be used and who they dealt with in the course of making their investments in FVHF. We also accept their evidence that each of the investors were providing investment funds in exchange for one or both of shares in FVHF and a Farm Share Agreement from FVHF.

[94] Evidence from five other investors, AG, TJ, MP, CG and BE (one who invested through a numbered company) was introduced into the record in the form of transcripts from the investors' sworn interviews with Commission staff. The evidence given in those interviews, and the related documentation provided, is all both internally consistent and consistent with the stories the investors who appeared before us told. We have no difficulty in this case giving significant weight to the evidence from the witnesses whose evidence was introduced in the form of such transcripts. Such evidence is uncontradicted and is consistent with the evidence we have which has been established

to our satisfaction to be quite reliable. We accept that evidence for the same purposes as noted above regarding the witnesses who appeared at the hearing.

- [95] Evidence from the remaining investors was introduced through a combination of investigators interview notes, supporting documentation such as copies of subscription agreements for shares in FVHF, emails and texts from representatives of FVHF to investors, cheques for investments made, bank records showing funds received into accounts related to the Respondents, and other documents. In all cases the combination of notes taken and documents provided regarding the experience of these investors who did not appear before us or attend a sworn interview, provide a sufficient level of detail that we find that they invested in FVHF on the same basis as the investor witnesses who appeared before us. We are assisted in reaching this conclusion by the fact that many of the statements about the use of proceeds given to all investors were clearly set out in the business plans which were sent to most investors and that the content of Bridges' emails to investors regularly contained assurances to the effect that invested funds would be used by FVHF specifically to advance the operations on the Farm.
- [96] To be clear about our finding, we conclude that each of the 13 investors who were identified by the executive director as investors who invested their money based on assurances that the invested funds would be used for operations on the farm did so, as alleged in the notice of hearing.
- [97] To summarize, all of the evidence, whether provided in person or in other forms, supports the conclusions that investors dealt with individual representatives of FVHF and received documents from FVHF which constituted or supported trades of securities. The details of those events differed from investor to investor but the patterns were generally the same. We find the evidence to be reliable in all cases. Later in this decision we address the key distinctions between the experiences of investors and how those differences relate to the allegations in the notice of hearing.

C. Fraud

- [98] As has been explained above, section 57(b) of the Act applies to conduct related to securities. In some cases considerable analysis is required to determine if a particular investment relates to a security. That is not the case here. While FVHF issued several types of instruments to investors, including shares and a Farm Share Agreement component entitling investors to a share of proceeds from a specific acreage of land, Toews explained that the overall investment opportunity that was offered to investors was in essence shares. Shares in a corporation fall within the definition of securities under the Act. In addition, the FVHF instruments were also investment contracts within the meaning of subsection (l) of the definition of security, representing an investment in a 'common enterprise' with profit to come from the efforts of Bridges and Toews. Even the per acre rights to receive a series of payments under the Farm Share Agreements depended on the success of the farming business operated by FVHF. As the Supreme Court of Canada said in *Pacific Coast Coin*, a common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor's role is limited to the

advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community.”

[99] The executive director has established that the conduct in question related to securities.

[100] The next element which the executive director must prove to establish a breach of section 57(b) of the Act is a “prohibited act”, as that concept is explained in *Theroux*. In this case the executive director does not submit that the statements made by Bridges and Toews were initially, inherently false. For example it is not suggested that, contrary to representations, there was no farm or no ongoing effort by FVHF to grow hops on the farm. Instead, the executive director asserts that the prohibited act is the combination of the various representations made by Bridges, Toews and FVHF to the effect that funds contributed by investors would be used in the operation of, and growth of the business when the reality was that a significant proportion of those funds were diverted to other uses.

[101] There are several precedents which support the approach taken by the executive director, including:

Re Furman, 2019 BCSECCOM 107

- \$452,000 raised for day trading
- \$229,000 was transferred into trading accounts and \$223,000 was improperly used
- The panel found that there was a \$452,000 fraud on the investors
- See the panel’s analysis on alternative use starting at paragraph 41. At paragraph 41(c), the panel highlighted that the respondent “represented to all of the investors that their funds would be invested in the respondent’s day trading business but then misappropriated \$223,000 of the investors’ funds for purposes unrelated to those activities”.

Re Nickford, 2017 BCSECCOM 272

- Almost \$2m lent to Nickford’s company LZWM with varying rates of return
- \$1,273,468 was transferred to Nickford’s personal account
- The panel found that there was a fraud on the investors of at least \$318,141
- At paragraph 95, the panel stated: “Reviewing the expenditures from the personal bank account set out in the source and use of funds statements prepared by the Commission investigator, we conclude the executive director has proved the following expenditures totaling \$144,252 were spent for purposes other than the business operations of LZWM and the growth of the LZWM business: personal loan payments, identifiable personal expenses, and cash withdrawals in Las Vegas and at local casinos as well as payments to local casinos.”
- At paragraph 103: “Adding together the previously identified personal expenditures of \$144,252 and the \$972,700 in cash withdrawals, we conclude the respondent spent a total of \$1,116,952 on personal expenses, including gambling, from the personal bank account during the relevant period. As there was at most \$798,811 of non-investor funds available in the

personal account to pay these personal expenditures, there was a shortfall of at least \$318,141 that would have had to be paid from investor funds.”

Re Braun, 2018 BCSECCOM 332

- The respondents raised \$450,000 from two investors to purchase property
- The respondents used the money mostly on their personal living expenses
- The panel found that the respondents defrauded the investors of the \$450,000
- At paragraphs 109 and 110, the panel stated: “Each of the respondents then made the deceitful representation to each of the investors as to the use of the investors’ funds through their execution of each of the Purchase Sales Agreements... All of them had knowledge of the diversion of funds from the represented purpose and the deprivation to which this exposed the investors.”

Re The Falls Capital Corp., 2015 BCSECCOM 59

- The respondents raised \$9.4m for real estate projects
- The panel found:
 - Wharram, West Karma and Falls breached section 57(b) when they took \$139,000 (\$75,000 for the purchase of a home and \$64,000 sale of claims proceeds) from Falls, deposited into a West Karma account and then used it for Wharram’s personal expenses.
 - Wharram, West Karma and Deercrest breached section 57(b) when they took \$130,000 from Deercrest, deposited into a West Karma account and then used it for Wharram’s personal expenses.
 - Wharram and Deercrest breached section 57(b) when they took \$265,000 directly from Deercrest’s bank accounts and used it for Wharram’s personal expenses.

[102] Our lengthy summaries of the evidence of the investor witnesses includes details of what those investors were told to expect about the use of their invested funds. By way of both the answers those witnesses gave and the documents they testified they received from FVHF confirmed that the investor witnesses were told, in substance, that invested funds would be used for the farming activities on the Farm. As we have noted, the evidence regarding what other investors were told is reliable and establishes that they were also given assurances that invested funds would be used for farming activities on the Farm. As a result, the diversion of invested funds to other uses by Bridges or by FVHF would be conduct sufficient to meet the definition of deceitful or fraudulent in the context of section 57(b) of the Act.

[103] In order to prove that a significant portion of the invested funds were diverted to improper purposes the executive director called a Commission staff witness who was trained as a forensic accountant and who provided a very careful and detailed review of banking documents and Mastercard account documents tracking the receipt of and use of funds received from investors. The review included not just the statements themselves but whatever supporting documentation was available and in many cases included investigations by the staff witness to determine the nature of the business which was operated by the recipient of investors’ funds.

[104] The methodology used by the staff witness was sound. The staff witness first identified the account of FVHF into which investor funds totaling \$1,852,300 were deposited. It was established based on the banking records that Bridges had exclusive control over the banking and credit card accounts of FVHF. The staff witness then tracked how the funds were used. Some funds were used for farming equipment, tools, labor and construction materials which might well have been used for the farm. All of those uses, the cost of which totaled \$795,201, were treated as legitimate expenses related to farming activities on the Farm. The staff witness was very conservative in categorizing these expenses. For example there were a large number of payments made for restaurant meals. The staff witness checked the addresses of the restaurants to determine if it was possible that the costs were for food which might potentially have been brought to the Farm and given to farm workers as a benefit. Such potential uses were treated as legitimate. A further example of the conservative approach taken by the staff witness relates to a payment to a law firm. While a connection of this expense to FVHF could not be verified, it was categorized as a legitimate expense because it might have been legitimate.

[105] Some of the funds from investors were paid to Toews and to his company. Those amounts, which totaled \$189,500, were treated as legitimate based on Toews' marketing services provided to the FVHF.

[106] Some of the funds were paid to Bridges, either directly or by cash withdrawal by him or by payment of expenses for meals and personal services near Bridges home (with no potential connection to the Farm detectable). Of those amounts Bridges was credited with his salary based on his employment contract, which was \$100,000 per year, for the 20 month relevant period.

[107] Some of the uses of the funds simply could not be identified based on the documentation available. For example, there were multiple transfers from FVHF's bank account to the BCHN bank account controlled by Toews. Although Toews did not have good systems to track the transfers, Toews and BCHN provided business marketing services for FVHF, those uses were treated as legitimate.

[108] Expenses which could have been legitimate office expenses, not related directly to farming but possibly related to the overhead and operations of FVGF were treated as legitimate.

[109] After all of the potentially legitimate expenses were accounted for, what was left of the \$1,852,300 was \$498,273 for which the staff witness could find no potential legitimate use.

[110] We reviewed many expenses paid from invested funds and a great number of them were clearly for personal use with no connection to the Farm. It is proven to the required

standard from the financial records that a great deal of investor money was diverted to improper uses. It is also proven to the required standard that the staff witness used an acceptable method to quantify how much of the total invested funds was diverted to improper purposes. In fact we are quite satisfied that the staff witness was quite conservative in her estimates and calculations and the amount identified as being misused, \$498,273, is the minimum amount which should be so categorized.

[111] The risk that the invested funds would be lost is sufficient to establish the deprivation. However, it is also established that no funds have been recovered, so we can safely conclude that there has been an actual deprivation suffered by investors equal to the amounts of the invested funds as alleged in the notice of hearing. We find that the essential element of deprivation is also proven.

[112] We also conclude that both FVHF and Bridges had subjective knowledge of both the deceit and the deprivation which we have identified. Bridges directed all of the funds which passed into FVHF's control. Only he had authority to spend the funds from the relevant accounts. Since Bridges was the primary manager of and a director of FVHF, there is no doubt that steps taken regarding FVHF at Bridges direction were taken with full knowledge by Bridges.

[113] All elements of a breach of section 57(b) of the Act have been proven.

D. Illegal Distribution

[114] Section 61 of the Act requires that, if a person wants to distribute a security, then a prospectus must be filed and received by the Commission unless there is an exemption.

[115] The respondents bear the onus of establishing the factual basis for the existence of an exemption from the prospectus requirements of section 61. See: *Solara Technologies Inc. and William Dorn Beattie* 2010 BCSECCOM 163, at paragraph 33, *Re SBC Financial Group Inc.*, 2018 BCSECCOM 113, at paragraph 53, and *Re Pegasus Pharmaceuticals*, 2021 BCSECCOM 374, at paragraph 108.

[116] In *Solara*, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act, and a person relying on an exemption has the onus of proving that the exemption is available. The Commission concluded that an issuer must have evidence that can reasonably verify the exemption they are relying on:

37. The determination of whether an exemption applies is a mixed question of law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.

38. To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship...

39. Accordingly, a representation that merely asserts, with nothing else, that the investor is a close personal friend, or an accredited investor, is not sufficient to determine whether the exemption is available.

[117] Exemptions to prospectus registration are found in National Instrument 45-106 – Prospectus and Registration Exemptions (NI 45-106) including, in Division 1 of the instrument, capital raising exemptions.

[118] Consistent with the principles set out in *Solara*, Companion Policy 45-106CP stated, at the relevant time:

- (a) that the person relying on a prospectus exemption (the issuer) is responsible for determining whether the terms and conditions of the prospectus exemption are met. (s. 1.9(1)).
- (b) it will not be sufficient for the issuer to accept standard representations in a subscription agreement or an initial beside a category on the Individual Accredited Investors Form unless the issuer has taken reasonable steps to verify the representation made by the purchaser. (s. 1.9(3)).
- (c) it is the issuer that is relying on the prospectus exemption and it is the issuer that is responsible to ensure the terms of the exemption are met. (s. 1.9(4)).
- (d) to assess whether a purchaser is an accredited investor, the issuer is expected to ask questions about the purchaser's net income, financial assets or net assets, or to ask other questions designed to elicit details about the purchaser's financial circumstances. If the issuer has concerns about the purchaser's responses, it should make further inquiries about the purchaser's financial circumstances. If the issuer still questions the purchaser's eligibility, the issuer could ask to see documentation that independently confirms the purchaser's claims. (s. 1.9(4)(c)).

[119] For many – but not all – of the distributions, the executive director pointed to evidence to support his position that no exemptions applied. However, the executive director excluded from his submissions on the total value of illegal distributions those alleged breaches for which he did not identify specific evidence on the matter of exemptions.

[120] We find that the executive director has proven that FVHF traded in securities because it:

- a) raised money from investors;
- b) sent marketing materials to investors;
- c) issued investment documents to investors; and
- d) received money from investors in its bank account.

[121] We find that the executive director has proven that Bridges traded in securities because he:

- a) met and spoke with investors about investments in FVHF;
- b) corresponded with investors through e-mail and text messages;
- c) communicated with investors by telephone regarding their investments in FVHF;

- d) signed eight investment agreements on behalf of FVHF for five investors;
- e) provided payment instructions to investors;
- f) accepted and deposited an investor cheque;
- g) sent marketing documents to investors, directly and through his wife;
- h) participated in creating FVHF business plans;
- i) participated in posting online ads soliciting investors for FVHF;
- j) received investors' deposits in the FVHF bank account he controlled; and
- k) decided how investor money in the FVHF account would be spent.

[122] We find that the executive director has proven that Toews traded in securities because he:

- a) met and spoke with investors about investments in FVHF;
- b) corresponded with investors through e-mail and text messages;
- c) communicated with investors by telephone regarding their investments in FVHF;
- d) signed six investor agreements on behalf of FVHF for three investors included in the illegal distribution allegations;
- e) provided payment instructions to investors;
- f) provided marketing documents to investors;
- g) participated in posting online ads soliciting investors for FVHF;
- h) participated in creating FVHF business plans;
- i) received an investor's deposit in the 1160924 B.C. Ltd. bank account that he controlled; and
- j) received a salary for his work for FVHF.

[123] From our own review of the evidence we do not see a basis to conclude that the onus on the respondents to establish an exemption has been met. We do not have sufficient information about the investors' financial circumstances to conclude that any of them were accredited investors. Although some investors signed forms indicating that they were friends of representatives of FVHF, conflicting evidence from the witnesses shows that they were asked to sign such forms when there clearly was no relationship between the parties other than the solicitations which led directly to the investments. Similarly we don't see any other exemption which applies. We therefore find that the respondents illegally distributed securities to the investors without filing a prospectus and without a valid exemption.

[124] We looked at the evidence regarding which of Bridges and Toews led the processes which resulted in the illegal distributions. A sample of the evidence is recorded above in the summaries of the investor witness evidence, each of which records the key conversations which led to the distributions in question and the individuals with whom the conversations were held. The executive director has provided the panel with helpful charts showing similar connections between the investors and the respondents. Further submissions might be helpful during the sanctions phase of this proceeding. However, for current purposes it is sufficient to conclude, as we do, that FVHF contravened section 61 of the Act with respect to 22 distributions of securities, Bridges contravened section

61 of the Act with respect to 16 distributions of securities, and Toews contravened section 61 of the Act with respect to 10 distributions of securities.

E. Liability under Section 168.2

[125] Liability under section 168.2 of the Act is established where:

- (a) a corporate respondent has contravened the Act, the regulations, or failed to comply with a decision; and
- (b) an individual who is an employee, officer, director or agent of the corporate respondent “authorizes, permits or acquiesces” in the contravention.

[126] We found that FVHF contravened sections 57(b) and 61 of the Act. The question remains as to whether Bridges and/or Toews authorized, permitted or acquiesced in those contraventions.

[127] As we found in the section 57(b) analysis, at all relevant times, Bridges was FVHF’s decision-maker. He was the founder, managing director, and controlled FVHF’s bank account. We find that Bridges authorized, permitted or acquiesced in FVHF’s contraventions of section 57(b) of the Act. We find that, under section 168.2 of the Act, Bridges breached the same provisions as FVHF.

[128] We found that Toews was a de facto director of FVHF. On behalf of FVHF, both Toews and Bridges:

- (a) Raised money from investors;
- (b) sent marketing materials to investors; and
- (c) issued investment documents to investors.

[129] Both Toews and Bridges enabled FVHF’s breaches of section 61 of the Act. We find that both Toews and Bridges authorized, permitted or acquiesced in FVHF’s contraventions of section 61 of the Act and therefore contravened the same provision under section 168.2 of the Act.

VI. Summary of Conclusions

[130] In conclusion, we find that:

- (a) Bridges and FVHF contravened section 57(b) of the Act when they knowingly committed acts of deceit that deprived investors of their investments;
- (b) Bridges authorized, permitted or acquiesced in FVHF’s contraventions of section 57(b) of the Act and therefore also contravened that section by operation of section 168.2 of the Act;
- (c) Bridges, Toews, and FVHF contravened section 61 of the Act when they distributed securities to investors without a prospectus or a legitimate exemption; and

(d) Bridges and Toews authorized, permitted or acquiesced in FVHF's contraventions of section 61 of the Act and therefore also contravened that section by operation of section 168.2 of the Act.

VII. Submissions on Sanction

[131] We direct the executive director and the respondents to make their submissions on sanctions as follows:

By December 1, 2023 The executive director delivers submissions to the respondents and the Commission Hearing Office.

By December 15, 2023 The respondents deliver response submissions to the executive director, [the other respondents] and the Commission Hearing Office.

Any party seeking an oral hearing on the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By December 22, 2023 The executive director delivers reply submissions (if any) to the respondents and to the Commission Hearing Office.

November 17, 2023

For the Commission

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner

Jason Milne
Commissioner