

REPLY TO:

Karin Blok

T: 604-899-6975 / F: 604-899-6633

Email: kblok@bcsc.bc.ca

By Regular Mail

November 22, 2023

Dear Mr. Shaughnessy:

Jeffrey Shaughnessy
Reciprocal Order Application
Our File No: 54936

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

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

The Executive Director is making this application based on your criminal conviction for obtaining credit by false pretence.

CRIMINAL CONVICTION

1. On March 25, 2022, you entered a guilty plea to one count of obtaining credit by false pretence or fraud contrary to section 362(1)(b) of the *Criminal Code*.
2. On June 30, 2022, the Honourable Judge La Prairie, of the Provincial Court of British Columbia, sentenced you to the following:
 - (a) a conditional sentence of three months; and
 - (b) restitution of \$29,000.
3. The reasons for sentence are set out at *R. v. Shaughnessy*, Vancouver Registry, File No. 262421-2C (Reasons for Sentence).

Summary of Findings

4. Between September 24, 2017 and October 13, 2017, at or near Vancouver, British Columbia, you committed the offence of obtaining credit by false pretence or fraud. The details of your conduct are set out in the Reasons for Sentence.

- (a) You befriended two couples, C.C. and W.K and S.C. and J.H.

Reasons for Sentence, para. 2

- (b) You convinced both couples to invest in an investment opportunity that you held out to include a speaking event involving Magic Johnson at the Park Hotel in May of 2018.

Reasons for Sentence, para. 2

- (c) You presented the couples with materials related to the proposed event, and they invested funds with you intended to be used for the event.

Reasons for Sentence, para. 2

- (d) You told the couples that they would receive the return of their investments plus additional funds and that if the speaking event did not work out, their investments would be returned.

Reasons for Sentence, para. 2

- (e) The company that you represented as being responsible for putting on the event had ceased operating prior to your request for the investments.

Reasons for Sentence, para. 4

- (f) C.C. and W.K. invested \$10,000 while S.C. and J.H. provided two investments totaling \$19,000.

Reasons for Sentence, para. 3

- (g) Instead of using the investments for the intended purpose, you deposited the funds into the company's account and then used the funds for personal purposes, including use at a casino.

Reasons for Sentence, para. 4

THIS APPLICATION

- 5. With this letter, the Executive Director is applying to the Commission for orders against you under section 161 of the Act. I have enclosed a copy of section 161 of the Act for your reference.
- 6. In making orders under section 161 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities.
- 7. Orders under section 161(1) of the Act are protective, preventative and intended to be exercised to prevent future harm.

[Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#), 2001 SCC 37, paras. 36, 39 and 56

- 8. In, [Re Eron Mortgage Corporation](#), [2007] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining orders under section 161(1).
- 9. The following factors from *Re Eron* are relevant in this proceeding:
 - (a) the seriousness of the respondent's conduct,
 - (b) the harm suffered by investors as a result of the respondent's conduct,
 - (c) the extent to which the respondent was enriched;
 - (d) factors that mitigate the respondent's conduct;
 - (e) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
 - (f) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser;

- (g) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (h) orders made by the Commission in similar circumstances in the past.

Application of the Factors**Seriousness of the Conduct**

- 10. Your conduct in contravening s. 362(1)(b) of the *Criminal Code* is analogous to a contravention of s. 57(1)(b) (fraud) of the Act.
- 11. Fraud is one of the most egregious securities regulatory violations.

[*Manna Trading Corp. Ltd. \(Re\)*](#), 2009 BCSECCOM 595

- 12. You induced the investors to invest in a speaking event despite the fact that the company you claimed was responsible for the event was no longer in business. You promised the investors their money would be used for the event but you instead diverted the funds for your personal use.

Harm suffered by investors

- 13. Your conduct resulted in financial losses and emotional harm to the investors.
- 14. While the investors said that the loss of their funds did not negatively impact them financially, because they had sufficient means to invest, the breach of trust you committed caused them emotional harm.

Reasons for Sentence, para. 8

Enrichment

- 15. You wrongfully obtained \$29,000 from the investors which you used for your own personal benefit. The sentencing decision notes that, as of the date of sentence, you had not paid back any of the funds. A restitution order in the amount of \$29,000 was imposed as part of your sentence.

Reasons for Sentence, paras. 10 and 28
Restitution Order

Mitigating Factors

- 16. The Commission has previously held that admitting liability pre-hearing is a significant mitigating factor as it allows the Commission and investors to avoid a potentially lengthy hearing to determine liability.

[*Re Flexfi Inc.*](#), 2018 BCSECCOM 166, para. 70

- 17. You pled guilty in the criminal proceedings and accepted responsibility for your conduct. This is a mitigating factor.

Reasons for Sentence, para. 1

- 18. The sentencing judge also found that you had expressed remorse for your misconduct.

Reasons for Sentence, para. 10

- 19. While the sentencing judge noted that you do not have a criminal record, the absence of prior misconduct is not a mitigating factor.

Reasons for Sentence, para. 9

[Re Davis](#), 2016 BCSECCOM 375, para. 30

Risk to investors and the capital markets

20. Those who commit fraud of any kind represent a very serious risk to our capital markets.

[Re Braun](#), 2019 BCSECCOM 65, para. 21

21. You orchestrated a scheme to defraud investors who believed you were their friend. You then used their funds for your own person use. Your fraudulent conduct demonstrates that you pose a significant ongoing risk to other investors and the capital markets of British Columbia.

Fitness to be a registrant or a director or officer

22. Honesty is a crucial part of being a registrant or a director or an officer of an issuer. In fact, it is part of the basic duties of those positions.

[Re SBC Financial Group Inc.](#), 2018 BCSECCOM 267, para. 34

23. You have shown to be dishonest and untrustworthy. Your conduct falls far short of that expected of participants in our capital markets. You pose a great risk to our markets and are ill-suited to act as a registrant, director, officer, promotor or advisor to any private or public issuer going forward.

Deterrence

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

[Re Thow](#), 2007 BCSECCOM 758, para. 74

25. You used your position as a friend to induce the investors to invest in an event you claimed would be organized by a company that you knew was no longer in business. After depositing the investors' funds into the company account, you withdrew the funds and used them for personal use. This type of conduct calls for serious sanctions that will deter similar misconduct.

26. Through the orders we are seeking, we intend to demonstrate the consequences of your conduct, to deter you from future misconduct, and to create an appropriate general deterrent. Permanent market bans are proportionate to your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

Previous orders

27. As noted, your conduct in contravening s. 362(1)(b) of the *Criminal Code* is analogous to that of fraud under the Act. We refer to the following decisions involving fraud contraventions for guidance on the appropriate sanction.

- [Re Basi](#), 2011 BCSECCOM 573
The respondent committed fraud in the amount of \$11,055. Basi obtained \$15,000 from an investor for the purpose of purchasing shares of MGM. Instead, Basi deposited the money into an intermediary entity that he controlled and used \$11,055 for personal use. The Commission imposed permanent market bans.
- [Re Dhala](#), 2015 BCSECCOM 336
The respondent committed fraud when he took \$38,250 from four investors on the promise to buy shares of a TSXV listed company that was conducting a private placement. He did not buy the shares and instead used the investor funds for personal expenses. The respondent also contravened s. 168.1(1)(a) of the Act. The Commission imposed permanent market bans.

- [*Re Davis*](#), 2016 BCSECCOM 375¹
The respondent perpetrated a fraud on one investor in the amount of \$7,000. The respondent did this by purporting to sell the investor shares he did not own. The Commission imposed permanent market bans.

28. Your conduct in taking money under false pretenses and then using the money for personal purposes, is similar to the conduct of the respondents in the above cases. The amount of money obtained in each case is similar to the amount of money you took from the investors. While none of the above cases involve admissions regarding the misconduct, the fact that you admitted to your misconduct is not sufficient to outweigh the risk you pose to the capital markets given your deceptive conduct.

The Davis Consideration

29. In the Court of Appeal decision in [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149, the Court held that it is incumbent upon a tribunal to consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public where a person's livelihood is at stake.
30. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

31. At your sentencing the Court imposed the following conditions for the duration of your three month conditional sentence:
- You must not sell, promote, purchase, trade or distribute any securities unless you are registered and authorized by the BC Securities Commission
 - You must not engage in any investor relation activities unless you are registered and authorized by the BC Securities Commission
 - You must not act as a director, officer principle, promoter, consultant, manager or as an insider for any company that sells, promotes, purchases, trades or distributes securities unless you are registered by the BC Securities Commission

Conditional Sentence Order, conditions 10, 11 and 12

32. There Commission can impose a capital market sanction that is similar or different to the court order; however, the Commission needs to consider the enforcement orders available under the Act, what is reasonable based on the evidence known to it, and what is in the public interest.
33. In seeking orders under 161(1) of the Act, the Executive Director has taken the following factors into consideration when applying for orders in this application:
- (a) the circumstances of your misconduct;
 - (b) the factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above; and
 - (d) the public interest.

¹ While the respondent successfully appealed the sanctions decision (2018 BCCA 149), at the second sanctions hearing the Commission again imposed permanent market prohibitions (2018 BCSECCOM 284).

34. Based on the factors, it is in the public interest and proportionate to your misconduct to seek permanent market prohibition orders against you. Accordingly, the Executive Director is seeking the following orders pursuant to section 161(1) of the Act:
- (a) under section 161(1)(d)(i), you resign any position you hold as a director or officer of an issuer or registrant;
 - (b) you are permanently prohibited:
 - (i) under section 161(1)(b)(ii), from trading in any securities or derivatives, except in accounts in your own name with a person registered to trade in securities under the Act if you have first provided the registered representative with a copy of this order before any trade takes place;
 - (ii) under section 161(1)(c), from relying on any of the exemptions set out in the Act, the regulations or a decision;
 - (iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
 - (iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
 - (v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
 - (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity; and
 - (vii) under section 161(1)(vi) from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person.
35. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

36. In making this application, the Executive Director relies on the following, copies of which are enclosed:
- (a) Conditional Sentence Order
 - (b) Restitution Order
 - (c) Information
 - (d) Reasons for Sentence
 - (e) [*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
 - (f) [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22
 - (g) [*Manna Trading Corp. Ltd. \(Re\)*](#), 2009 BCSECCOM 595
 - (h) [*Re Flexfi Inc.*](#), 2018 BCSECCOM 166
 - (i) [*Re Davis*](#), 2016 BCSECCOM 375

- (j) [Re Braun](#), 2019 BCSECCOM 65
- (k) [Re SBC Financial Group Inc.](#), 2018 BCSECCOM 267
- (l) [Re Thow](#), 2007 BCSECCOM 758
- (m) [Re Basi](#), 2011 BCSECCOM 573
- (n) [Re Dhala](#), 2015 BCSECCOM 336
- (o) [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149

YOUR RESPONSE

37. You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Commission Hearing Office by **Friday, January 5, 2024**.
38. The contact information for the Commission Hearing Office is:
- Commission Hearing Office
British Columbia Securities Commission
PO Box 10142, Pacific Centre
12th Floor, 701 West Georgia Street
Vancouver, BC V7Y 1L2
E-mail: hearingoffice@bcsc.bc.ca
Telephone: 604-899-6500
39. If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice.
40. The Commission will send you a copy of its decision.
41. **If you have any questions regarding this application, please contact Ms. Karin Blok , at 604-899-6975, or kblok@bcsc.bc.ca**

Yours truly,

DocuSigned by:

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11/22/2023 | 1:58 PM PST

Douglas B. Muir
Director, Enforcement

KB/crc
Enclosures

cc: Hearing Office (by email to hearingoffice@bcsc.bc.ca)