

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

Citation: Re BridgeMark, 2023 BCSECCOM 553

Date: 20231122

**Anthony Kevin Jackson, BridgeMark Financial Corp., Jackson & Company
Professional Corp., Justin Edgar Liu, Lukor Capital Corp., and
Asiatic Management Consultants**

Panel	Audrey T. Ho Judith Downes	Commissioner Commissioner
Submissions completed	October 3, 2023 (1 st application), November 2, 2023 (2 nd application)	
Date of ruling	October 3, 2023 (1 st application), November 3, 2023 (2 nd application)	
Date of reasons for rulings	November 22, 2023	
Parties		
James K. Torrance Paul Smith Karin Blok	For the Executive Director	
Scott Kugler Ricki Johnston (1 st application)	For Anthony Kevin Jackson, Jackson & Company Professional Corp. and BridgeMark Financial Corp.	
Anthony Kevin Jackson (2 nd application)	For Anthony Kevin Jackson, Jackson & Company Professional Corp. and BridgeMark Financial Corp.	
Mitchell Ferreira (1 st application) Craig P. Dennis, K.C. (2 nd application)	For Justin Edgar Liu, Lukor Capital Corp. and Asiatic Management Consultants	

Reasons For Rulings

I. Introduction

- [1] These are the reasons for our rulings on two adjournment applications by Anthony Kevin Jackson (Jackson), Jackson & Company Professional Corp. (JacksonCo) and BridgeMark Financial Corp. (BridgeMark, and collectively the Applicants), to adjourn the liability hearing initially scheduled to commence on October 3, 2023 to February 20, 2024.

- [2] The first application was made on October 3, 2023 and was granted, in part, on October 3, 2023.
- [3] The second application was made on October 30, 2023 and was granted on November 3, 2023.

II. Background

- [4] On November 26, 2018, the executive director issued a temporary order and notice of hearing (2018 BCSECCOM 369) against a large number of individuals and companies including the Applicants, as well as Justin Edgar Liu, Lukor Capital Corp. and Asiatic Management Consultants (collectively, the Liu respondents).
- [5] On April 28, 2021, the executive director issued an Amended Notice of Hearing (ANOH, 2021 BCSECCOM 164) against a number of respondents including the Applicants and the Liu respondents. In addition to allegations of conduct contrary to the public interest made in the 2018 notice of hearing, the executive director added allegations of insider trading in the securities of certain issuers that were implicated in the 2018 notice of hearing.
- [6] In the ANOH, the executive director alleges the following with respect to the Applicants:
 - 1. that the Applicants acted contrary to the public interest when they participated in a scheme (Scheme) in which:
 - (a) individuals and companies (the consultants) entered into consulting agreements with certain Canadian Securities Exchange (CSE) listed issuers and received prepaid consulting fees from the issuers but performed little or no consulting work,
 - (b) the issuers relied on the consultant exemption to the prospectus requirement in section 2.24 of National Instrument 45-106 (the consultant exemption) to raise funds through private placements and some consultants purchased free trading shares of the issuers through these private placements,
 - (c) the issuers retained only a portion of the funds raised because they paid most of the private placement funds to the consultants as prepaid consulting fees shortly before or after the private placements, and
 - (d) the placees in those private placements, in most instances, sold their shares shortly after purchase, generally below the private placement price,
 - 2. that Jackson and BridgeMark engaged in insider trading contrary to section 57.2(2) of the Act in the course of participating in the Scheme, by entering into transactions involving securities of one issuer while in a special relationship with it and with knowledge that the issuer retained only a portion of the funds raised in its private placement, and

3. that Jackson, as the director of BridgeMark, authorized, permitted or acquiesced in BridgeMark's contravention of section 57.2(2) of the Act, and by operation of section 168.2 of the Act, also contravened that section.

III. Relevant procedural history

- [7] There have been many interlocutory proceedings involving the Applicants since the issuance of the 2018 notice of hearing. They included multiple applications to extend temporary orders, extend freeze orders, vary or revoke freeze orders, as well as judicial review of certain Commission rulings and reconsiderations arising from the judicial review.
- [8] From the very start of proceedings before this tribunal, the Applicants were continuously represented by very experienced legal counsel (Initial Counsel) who frequently appear before this tribunal.
- [9] At a set date hearing held on July 14, 2021, the Commission set the dates for the hearing on the merits of the ANOH (the liability hearing) for November 1-December 16, 2022 and January 9-27, 2023. Those dates were set after canvassing the parties' availability and were agreed to by counsel for all the parties.
- [10] On September 6, 2022, then counsel for the Liu respondents wrote to the Commission providing notice of their intention to withdraw as counsel for the Liu respondents. The Liu respondents retained new counsel later that month.
- [11] On October 3, 2022, the Liu respondents applied to adjourn the liability hearing to specified dates in 2023, with the start date being September 11, 2023. Counsel for all the parties indicated they would be available on the proposed new hearing dates. The executive director did not oppose the application and the other respondents took no position on the application. The Commission granted the application on October 11, 2022 and set new hearing dates beginning September 11, 2023 (2022 BCSECCOM 423).
- [12] On June 27, 2023, the Liu respondents applied to further adjust the hearing dates by moving several weeks scheduled for the fall of 2023 to the spring of 2024, due to another change of legal counsel. Counsel for the other parties were canvassed for their availability in 2024. The application set out the proposed new hearing dates. The executive director did not oppose the application, and the other respondents took no position. On July 10, 2023, the Commission granted the application (2023 BCSECCOM 350) and adjusted the hearing dates to the proposed new dates, as follows:
 1. October 3, 4, 6, 10-13, 26 afternoon, 27, 30 and 31, 2023,
 2. November 3, 8-10, 14-17, 20 and 21, 2023,
 3. February 19-23 and 26-29, 2024, and
 4. March 1, 4-8 and 11-15, 2024.
- [13] On September 6, 2023, the Applicants made a disclosure application. That application was heard on Friday, September 29, 2023 in the afternoon. The Applicants were still represented by Initial Counsel at that hearing.

- [14] September 29, 2023 was the last business day before the start date of the liability hearing on Tuesday, October 3, 2023.
- [15] On October 2, 2023, the Applicants (through different legal counsel) emailed to the Commission Hearing Office to advise that they had just terminated the retainer of Initial Counsel and attached an application to adjourn the liability hearing to allow for a change of counsel. The Commission did not receive this application until the morning of October 3, 2023, as October 2 was a statutory holiday and the Commission Hearing Office was closed.
- [16] The panel heard the adjournment application in person on October 3, 2023. The Applicants were represented by new legal counsel (Adjournment Counsel) who indicated they had only been retained for the purpose of the adjournment application. They have some general familiarity with the subject matter of the allegations as they appeared on behalf of the Applicants in a related civil proceeding. Adjournment Counsel advised that if the adjournment were granted, they were retained to appear on the adjourned dates.
- [17] The Applicants requested an adjournment until February 2024. Adjournment Counsel indicated they had not had time yet to canvass the other parties' counsel for availability and were not in a position to propose new hearing dates if we granted the adjournment.
- [18] The executive director opposed the application. The Liu respondents did not oppose the application.
- [19] On October 3, 2023, the panel adjourned the start date of the liability hearing to November 8, 2023. The panel directed the parties to attend a hearing management meeting for the purpose of identifying 12 additional hearing days to replace the October dates.
- [20] On October 27, 2023, Jackson attended the hearing management meeting without legal counsel and advised that Adjournment Counsel had not been retained. He repeated his desire to retain them and to adjourn the liability hearing to February 2024 for that to happen and for his new counsel to prepare for the hearing. He was directed to make a written application if he wished the panel to consider this request.
- [21] This second adjournment application was received on October 30, 2023. The Applicants applied to adjust the hearing dates to the following dates:
1. February 20-23 and 26-29, 2024, and
 2. March 1, 4-8, 11-15, 18-22 and 25-28, 2024.
- [22] The executive director opposed the application, but offered two alternatives which are described below. The Liu respondents consented to the application but their counsel indicated that he was not available on the proposed additional dates of March 18-22 and 25-28, 2024.
- [23] On November 3, 2023, the panel granted the application and adjourned the hearing start date to February 20, 2024. The panel specified that the hearing will proceed on the dates scheduled in February and March 2024 and directed the parties to identify

additional hearing days to replace the October and November dates.

IV. Positions of the Parties – first adjournment application

A. The Applicants

[24] The Applicants submitted that they are entitled to a fair hearing, and refusing the adjournment would amount to unfairness to them. They submitted that the right to counsel is a significant, if not absolute, right in matters before administrative bodies. They said that the circumstances favour an adjournment, and point to the following:

1. Without an adjournment, the Applicants would be forced to proceed without legal representation; they lack the skills and resources to adequately provide for a defence.
2. The timing of the decision to terminate their relationship with Initial Counsel and to retain new counsel was precipitated by information and understanding that became available to them only in the week preceding the application. In particular, the Applicants indicated that in the previous week, they received new information about the potential sanctions that might be associated with the liability hearing which changed their perception of the risks and potential outcomes they might be exposed to and led them to the decision to change counsel.
3. They had taken steps to retain new counsel; there is evidence the Applicants will have new counsel for the adjourned hearing dates.
4. This is the first adjournment request by the Applicants. The prior adjournments were requested by the Liu respondents and should not prejudice the Applicants' right to an adjournment for a change in counsel.
5. The Applicants seek an adjournment only long enough to allow for proper preparation of counsel and the readying of an appropriate defence.
6. The matter is complex, and has potential serious consequences for the Applicants.
7. The Liu respondents do not oppose the adjournment.
8. There is no evidence that an adjournment would be prejudicial to the executive director or to the public's interest in having an expeditious hearing.

B. The Liu Respondents

[25] The Liu respondents did not oppose the application.

C. Executive Director

[26] The executive director opposed the application. He submitted that it is not in the public interest to adjourn the hearing to February 2024, for the following reasons:

1. This matter has gone on for a long time; for example, the executive director provided disclosure in May-June 2021 and sent his witness list in December

2021. It is time to get on with the hearing.

2. The executive director's witnesses include individuals other than Commission staff, such as consultants, issuer representatives and placees in private placements. Their memory could be impacted by the passage of time.
3. It is in the public interest to have matters conclude expeditiously.

V. Applicable law

- [27] The Commission's goal is to conduct its proceedings fairly, flexibly and efficiently. In considering procedural matters, the Commission considers the rules of natural justice set by the courts and the public interest in having matters heard fully and fairly, and decided promptly. See: BC Policy 15-601 *Commission Hearings* (BC Policy 15-601), sections 1.2 and 2.1.
- [28] Pursuant to the Commission's inherent jurisdiction to control its own procedures, and as set out in BC Policy 15-601, the Commission is authorized to adjourn hearings and to set terms and conditions on adjournments, as the Commission sees fit. The exercise of this authority is discretionary.
- [29] BC Policy 15-601 states:

3.4 Preliminary Applications

(c) *Adjournment Applications* – The Commission expects parties to meet scheduled hearing dates. If a party applies for an adjournment, the Commission considers the circumstances, the timing of the application in relation to any hearing date, the fairness to all parties and the public interest in having matters heard and decided efficiently and promptly. The Commission will generally only grant adjournments if a panel is satisfied based on the evidence filed by the applicant that there are compelling circumstances. Where an adjournment application is based on a party's health, the Commission usually requires sufficient evidence from a medical professional. Where the Commission has previously set dates for a hearing, and a party retains new counsel, the Commission expects the new counsel to be available for those dates.

- [30] The right to retain counsel is not absolute; what is absolute, however, is the right to a fair hearing. See: *Mervilus v. Canada (Citizenship and Immigration)*, 2004 FC 1206, at para 25, with reference to a decision of the Supreme Court of Canada in *Cardinal v. Director of Kent Institution*, describing the test to be applied to an adjournment request based on a need to retain counsel.
- [31] On the issue of procedural fairness in the context of an application to adjourn an administrative hearing in order to retain counsel, the Saskatchewan Court of Appeal in *Markwart v. Prince Albert City*, 2006 SKCA 122, at paragraph 33, quoted the following passage from *Judicial Review of Administrative Action in Canada*, Donald J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, looseleaf (Toronto: Canvasback Publishing, 1995) at pp.9-108 &109:

... [w]hile a decision to grant or refuse an adjournment may be said to be a matter of discretion, a tribunal's decision cannot be contrary to procedural fairness. Thus, the basic question is whether an adjournment was required in

order to ensure that the individual concerned had a reasonable opportunity in all the circumstances to present proofs and arguments to the decision-maker, and to answer the opposing case. *[footnote omitted]* As well, it may be relevant to consider the seriousness of the injury likely to be sustained by the applicant as a result of an erroneous or adverse determination of the dispute. For example, a request for an adjournment in proceedings that may result in the deprivation of a right protected by the Charter must be considered especially carefully.

[32] Although not quoted by the Court, that passage continues as follows:

[...]

In addition, the “cost” of the adjournment, that is, the extent to which the resulting delay will cause prejudice to other parties to the hearing, and possibly the public interest in expeditious decision-making, must be balanced against any such “fairness” considerations. For example, a request for an adjournment will not lightly be granted at the request of one participant in a multi-party proceeding, when all others are present with their lawyers and witnesses, and are ready to start. Nor will an adjournment necessarily be granted to await a hearing of related cases by the Supreme Court of Canada. *[footnote omitted]* As well, whether the party requesting the adjournment was at fault in causing the situation that led to the request *[footnote omitted]* will of course be taken into account as an element of the public cost of adjourning the proceeding.

[33] There is a significant public interest in having proceedings heard and concluded promptly. Investor confidence in the integrity of the capital markets and the Commission’s ability to protect the public diminishes as serious allegations continue to be unheard. See *Re Nickford*, 2016 BCSECCOM 282, at para 16.

[34] Another important public interest factor is the need for an administrative body, including this Commission, to operate efficiently. As the Commission stated in *Re Zhang*, 2023 BCSECCOM 192, at para 47:

... It is not efficient for us as a tribunal to repeatedly set aside time and resources only to adjourn. Also, the resource cost to the enforcement division is even larger because that group invests significant resources into preparation as each hearing date approaches. Even more importantly, there are a number of witnesses who have repeatedly set aside time in their schedules to attend hearings which did not proceed and permitting another adjournment will repeat that cost on individuals who have suffered their own level of stress and given up time in relation to this proceeding. We consider all those interests to be important. ...

VI. Analysis

[35] There can be no debate that a respondent is entitled to a fair hearing, that a respondent’s right to retain legal counsel is not absolute, and that it is in the public interest to hold and complete hearings promptly.

- [36] Our task rests in weighing and balancing all the relevant and sometimes competing factors in the circumstances before us to determine whether or not it is in the public interest to grant the adjournment and if so, on what terms and conditions.
- [37] We considered and weighed all relevant factors. We highlight here the following factors which favoured the granting of an adjournment:
1. The allegations are complex, many documents are involved, and it will be more difficult for a lay respondent to represent himself at this hearing without a lawyer.
 2. These proceedings can result in significant consequences for the Applicants.
 3. This is the Applicants' first request for an adjournment, and they have taken immediate steps to retain new counsel.
 4. The Liu respondents do not oppose the adjournment.
 5. There is no material prejudice to the executive director. Although memories of some witnesses may fade with time, the executive director acknowledged that interview transcripts of his witnesses are available.
 6. The first two witnesses, whose testimony and cross examination is expected to take up all or a large portion of the hearing days proposed to be adjourned, are Commission investigators. The impact of hearing delays on them is less than the impact on non-Commission witnesses.
 7. Having all parties represented by experienced counsel in this hearing will likely facilitate a more efficient hearing.
- [38] The following favoured denying the adjournment application:
1. We do not find compelling the Applicants' reason for requesting a last minute adjournment. This matter has been ongoing and very active since 2018. The Applicants have been represented from the beginning by experienced counsel. The Applicants' perception of their risks and outcomes and the state of their defence may have changed last minute as a result of new information, but the consequences and sanctions that may be imposed on them following a hearing should have been known for a long time. Furthermore, the magnitude of the potential financial sanctions that may arise from the ANOH allegations was the subject of the Applicants' preliminary applications to vary or revoke freeze orders back in 2022, and were canvassed by Initial Counsel and commented on by this panel in our rulings (see *Re BridgeMark*, 2022 BCSECCOM 294).
 2. No party has a right to insist on an adjournment to obtain their counsel of choice. If a party changes counsel, as set out in BC Policy 15-601, the Commission expects them to retain new counsel who are available on the scheduled hearing dates, to avoid disruptions to the other parties and to the tribunal's operational efficiency.

3. The other parties were all ready to proceed on October 3.
4. Given the number of parties, counsel and hearing days involved, it would be difficult to find new dates that are not too distant from the originally scheduled dates. The more days that are adjourned, the greater the challenge.

[39] We also took into account the following:

1. If retained, Adjournment Counsel should need less time to prepare for the liability hearing since they already have some familiarity with the case.
2. Of the approximately 40 scheduled hearing days, 20.5 days were before February 2024. Of those 20.5 days, 11.5 days were in October and nine days in November 2023.

[40] Weighing all the competing interests, we concluded that it was in the public interest to grant a short adjournment, to allow time for the Applicants to retain Adjournment Counsel and for counsel to prepare. Adjourning the hearing start date from October 3 to November 8, 2023 reduces the number of hearing dates before February 2024 to nine days. The first two witnesses are Commission investigators. Based on estimates provided by the executive director, it is reasonable to expect that the direct examination and cross examination of the first witness by two sets of respondents, and potentially the direct examination of the second witness, would take up those nine days. That gives the Applicants' new counsel a month to prepare for the cross examination of one witness, albeit an important witness, with three more months of preparation time after that.

VII. Our first ruling

[41] For the above reasons, we ordered that the liability hearing be adjourned to a start date of November 8, 2023, and kept all the scheduled hearing dates after November 8. We directed the parties to work together to identify approximately 12 additional hearing days to replace the adjourned dates.

VIII. Second adjournment application

[42] As stated above, at the hearing management meeting on October 27, 2023 to find additional hearing dates, Jackson indicated that the Applicants wished to repeat their adjournment application. This led to the second adjournment application.

IX. Position of the Parties – second adjournment application

[43] The positions of the parties on the second application were largely the same as the ones made in the first application.

[44] While he opposed the application, the executive director suggested two alternatives in response to the Applicants' submissions on fairness:

1. Start the hearing on November 8 and the executive director would call his first witness (a Commission investigator). Cross examination of that witness would be postponed until the hearing dates in February 2024. Any remaining time in the hearing days currently scheduled in November could be used for the executive director to call and conduct direct examination of his second witness

(another Commission investigator).

2. Start the hearing on November 8 and the executive director would call his first witness. Counsel for the Liu respondents would cross examine that witness, and cross examination by the Applicants would be adjourned until February 2024. The executive director would call and conduct direct examination of his second witness during any remaining time left in November but the executive director would not close his direct examination of the second witness until after the first witness' evidence is completed.

[45] The Liu respondents consented to the adjournment application. However, if we denied that application, they would consent to the first alternative presented by the executive director but not the second one. They submitted that the notion there could be further direct examination while cross examination of the first witness is only half complete, and the notion that there would be a planned hiatus of several months when the Applicants' cross examination is left open and the Liu respondents' is closed, introduce much room for procedural complication and unfairness.

X. Analysis – second adjournment application

- [46] The panel's analysis and weighing of the competing factors were largely the same as the ones conducted for the first application. The one difference is that the Applicants would be without legal representation for the first nine days of the hearing if it started on November 8.
- [47] We thank the executive director for presenting thoughtful alternatives but agree with the Liu respondents that the second one is complicated and could introduce other procedural issues.
- [48] We seriously considered the first alternative. Ultimately, we concluded that the benefit of retaining the nine hearing days in November, when the parties already need to find another 11.5 days in 2024, is modest. Weighed against that, deferring the cross examination of an important witness for several months after direct examination is not ideal if it can be avoided, as that testimony is bound to be less fresh in everyone's mind even with the aid of hearing transcripts. In addition, the Applicants would remain without legal representation during those nine days although the potential disadvantage is mitigated.
- [49] In the end, we find that the benefit of proceeding on November 8 in these circumstances does not outweigh the disadvantages. We concluded that the public interest weighed in favour of granting the adjournment application and rescheduling the entire 20.5 days into 2024. We caution that the balance tipping in favour of this adjournment was very slight and further delays may result in a different outcome.

XI. Our second ruling

- [50] Accordingly, we granted the application and ordered that the start date of the hearing be adjourned to February 20, 2024, and kept the scheduled hearing dates in February and March 2024. We directed the parties to work together and propose new hearing dates to replace the adjourned dates.

November 22, 2023

For the Commission

Audrey T. Ho
Commissioner

Judith Downes
Commissioner