

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

Citation: Re Dhanani, 2016 BCSECCOM 413

Date: 20161216

**Ayaz Dhanani (also known as Azim Virani, Michael Lee,
Alex Nebris, Paul Dhanani, Samuel Ramos, and Rahim Jiwa)**

Panel	Nigel P. Cave Judith Downes Gordon Holloway	Vice Chair Commissioner Commissioner
Hearing Date	December 6, 2016	
Submissions Completed	December 6, 2016	
Date of Findings	December 16, 2016	
Appearing David Hailey	For the Executive Director	

Decision

I. Introduction

- [1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The Findings of this panel on liability made on May 30, 2016 (2016 BCSECCOM 179) are part of this decision.
- [2] We found that Dhanani perpetrated a fraud on three investors in the collective amount of \$188,800 in contravention of section 57(b) of the Act.
- [3] The parties were given an opportunity to make written and oral submissions with respect to the appropriate sanctions for the respondent's misconduct. The executive director provided written and oral submissions. The respondent did not make any written or oral submissions.
- [4] The respondent was incarcerated as of the date of the oral submissions on sanction in this matter. On August 12, 2016, the respondent provided the executive director with contact information for him while he was incarcerated. That contact information was supplied to the Secretary of the Commission on August 15, 2016.
- [5] On September 15, 2016 and October, 4, 2016, the Secretary of the Commission provided notice to the respondent of the filing deadlines set by the panel for written submissions. Further, on October 21, 2016 and October 26, 2016, the Secretary of the Commission provided notice to the respondent of the date set by the panel for the hearing of oral

submissions. In these later notices, the respondent was advised that due to his incarceration he would be able to participate in the hearing by telephone. The respondent did not respond to any of these notices.

- [6] Counsel for the executive director advised the panel that he spoke with staff at the facility where the respondent was incarcerated and confirmed that all communications from the Commission had been provided to the respondent and that the facility has a telephone available for the use of inmates.
- [7] We find that the respondent had notice of the submission dates and an ability to provide written submissions. We also find that the respondent had notice of the hearing set for oral submissions and an ability to participate in it. As a consequence, we find that the respondent had an opportunity to be heard with respect to sanctions in this matter.

II. Position of the Parties

- [8] The executive director sought the following orders:

- (a) under sections 161(1)(b) and (d)(i) through (v) of the Act, that Dhanani resign any position he holds as a director or officer of any issuer or registrant and that he permanently
 - i) cease trading in, and be prohibited from purchasing, securities and exchange contracts;
 - ii) be prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - iii) be prohibited from becoming or acting as a registrant or promoter;
 - iv) be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 - v) be prohibited from engaging in investor relations activities;
- (b) under section 161(1)(g) of the Act, that Dhanani pay to the Commission \$188,800; and
- (c) under section 162 of the Act, that Dhanani pay to the Commission an administrative penalty of \$225,000.

III. Analysis

A. Factors

- [9] Orders under sections 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37.
- [10] In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

- the seriousness of respondent's conduct,
- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

B. Application of the factors

Seriousness of the Conduct

- [11] This Commission has repeatedly found that fraud is the most serious misconduct under the Act. As noted in *Manna Trading Corp Ltd. (Re)*, 2009 BCSECCOM 595, "nothing strikes more viciously at the integrity of our capital markets than fraud".
- [12] The respondent's misconduct is an egregious form of fraud. In this case, the respondent used the promise of fast and large returns from purported investments in our capital markets to induce investors to give him money. It was all a sham. There is no evidence that there ever were any real investments contemplated by the respondent. The respondent simply pocketed the funds obtained from the investors and used them for the personal expenses of himself and his family. The seriousness of the misconduct is exacerbated by the various individual acts of deceit carried out by the respondent including, in the case of one investor, the use of an alias.

Harm to investors

- [13] In this case, there was harm to all three investors. None of the investors have had his or her funds returned. Although the Commission has issued a freeze order with respect to funds held in one bank account, those funds are insufficient to repay all of the investors. There was no evidence as to when, or if, those funds might be able to be realized upon in favour of the investors or that further recovery is possible.

Dhanani's enrichment

- [14] Dhanani and his family were clearly enriched by his misconduct. Funds from two of the investors were deposited into Dhanani's father's bank account, a portion of which was withdrawn and given to Dhanani. The remainder was then used for personal expenditures.

Aggravating or mitigating factors; past misconduct

- [15] The respondent does not have a history of securities regulatory misconduct. However, the respondent does have a history of criminal fraud. While a history of criminal misconduct would not normally be relevant in determining the appropriate sanctions for a respondent, this further evidence of Dhanani's participation in fraudulent conduct heightens our concern for the risk that he poses to our capital markets.
- [16] There are no mitigating factors in this case.

Fitness to continue to participate in the capital markets

- [17] Those who commit fraud represent a significant risk to our capital markets. That is why permanent market prohibitions are almost always imposed where a respondent is found to have committed fraud.
- [18] This was an egregious form of fraud. There were no real investments. In one case, Dhanani adopted an alias to perpetuate the fraud. Dhanani represents the upper end of risk to our capital markets.

Specific and general deterrence

- [19] The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct.

Previous orders

- [20] The executive director referred to a number of previous decisions of this Commission in support of the requested sanctions, including: *The Falls Capital Corp. (Re)*, 2015 BCSECCOM 422, *Re Zhong*, 2015 BCSECCOM 383, *Re Spangenberg*, 2016 BCSECCOM 180, *Re Cho*, 2013 BCSECCOM 454, *Re Rush*, 2016 BCSECCOM 55, *Re Dhala*, 2015 BCSECCOM 336, *Re Basi*, 2011 BCSECCOM 573 and *Re Mesidor*, 2014 BCSECCOM 6.

- [21] All of these decisions were generally supportive of the sanctions requested by the executive director. The decisions in *Cho* and *Spangenberg* offer the most direct comparisons in terms of the misconduct of the respondents, the number of investors harmed and the total amounts raised.
- [22] In *Cho*, the respondent was found to have contravened the Act with respect to illegal distributions, misrepresentations and fraud. He raised just over \$100,000 from five investors and repaid those investors approximately \$60,000 as purported returns on their investments. Subsequently, a distribution of frozen funds reduced the amount still owed to investors to \$20,000. The respondent's misconduct included the use of multiple fake identities. The respondent received lifetime market prohibitions, was ordered to pay approximately \$20,000 under a section 161(1)(g) order and an administrative penalty of \$200,000.
- [23] In *Spangenberg*, the respondent was found to have contravened the Act with respect to illegal distributions and fraud. He raised just over \$170,000 from seven investors. The respondent was found to have engaged in multiple elements of deceit including the altering of an analyst report and multiple elements of misrepresenting to investors his personal background. The respondent received lifetime market prohibitions, was ordered to pay the full amount raised under a section 161(1)(g) order and an administrative penalty of \$225,000.

IV. Appropriate Orders

A. Market Prohibitions

- [24] Those who commit fraud represent the most serious risk to our capital markets. Dhanani perpetrated a most egregious and cynical form of fraud against three investors. We do not see any reason in this case to depart from the Commission's consistent practice to protect investors and our capital markets by imposing permanent market prohibitions on those who commit fraud.

B. Section 161(1)(g) order

- [25] The executive director cites the decision *Michaels (Re)*, 2014 BCSECCOM 457 (at paragraph 42) for the following principles that the Commission applies in considering orders under section 161(1)(g) of the Act:

- (a) the focus of the sanction should be on compelling the respondent to pay any amounts obtained from the contraventions of the Act;
- (b) the sanction does not focus on compensation or restitution or act as a punitive or deterrent measure over and above compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;
- (c) the section should be read broadly to achieve the purposes set out above and should not be read narrowly to either limit orders:
 - (i) to amounts obtained, directly or indirectly by that respondent; or

- (ii) to a narrower concept of “benefits” or “profits” although that may be the nature of the order in individual circumstances.

[26] While the application of the above principles can, in certain circumstances, be challenging, this is not one of those cases. Dhanani personally obtained the \$188,800 from the three investors as a consequence of his fraudulent misconduct. Dhanani and his family were clearly enriched by these funds. That a portion of these funds may be held in a bank account which is the subject of a freeze order does not mean that it is not appropriate in these circumstances to make an order under section 161(1)(g) for the full amount of the funds obtained from investors. Any potential issue relating to the frozen funds, and what effect any subsequent court ordered payment out of those funds should have on our section 161(1)(g) order, can be dealt with at a later date by way of a variation application to the Commission under section 171.

C. Administrative Penalty

[27] As noted above, both of the decisions in *Cho* and *Spangenberg* deal with misconduct that is similar in nature to that in this case. Although both cases involved allegations over and above that of fraud, fraud was the central element of the misconduct in both cases. The amounts raised were similar as were the number of investors impacted by the misconduct. All of the respondents in *Cho*, *Spangenberg* and in this case represent the most serious risks to our capital markets. The cases are all similar in that they involve multiple elements of deceit and the application of the proceeds of the fraudulent misconduct for personal expenses. None of the cases involve mitigating factors.

[28] We find the executive director’s requested administrative penalty to be appropriate when looked at from the perspective of both specific and general deterrence.

V. Appropriate Orders

[29] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

- (a) under sections 161(1)(b) and (d)(i) through (v) of the Act, that Dhanani resign any position he holds as a director or officer of any issuer or registrant and that he permanently
 - (i) cease trading in, and be prohibited from purchasing, any securities and exchange contracts;
 - (ii) be prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - (iii) be prohibited from becoming or acting as a registrant or promoter;
 - (iv) be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and

- (v) be prohibited from engaging in investor relations activities;
- (b) under section 161(1)(g) of the Act, that Dhanani pay to the Commission \$188,800;
and
- (c) under section 162 of the Act, that Dhanani pay to the Commission an administrative
penalty of \$225,000.

December 16, 2016

For the Commission

Nigel P. Cave
Vice Chair

Judith Downes
Commissioner

Gordon Holloway
Commissioner