

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

Citation: Re Rochefort, 2024 BCSECCOM 395

Date: 20240910

Order under section 161(6)

Randolph Michael Rochefort

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Introduction

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418.
- [2] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges, and the courts. If the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 54).
- [3] On June 14, 2024, the executive director of the Commission applied (Application) for an order imposing sanctions on Randolph Michael Rochefort (Rochefort) under sections 161(1) and 161(6)(a) of the Act based on his conviction for four counts of theft over \$5,000 made by the Provincial Court of British Columbia.
- [4] In his Application, the executive director tendered affidavit evidence and submissions to the Commission.
- [5] We find that the executive director provided notice of the Application to Rochefort. Although Rochefort was provided the opportunity to tender evidence and make submissions, he did not participate in the hearing.

Background

- [6] On November 7, 2022, Rochefort plead guilty to four counts of theft over \$5,000, contrary to section 334(a) of the *Criminal Code*, RSC 195, c C-46.
- [7] The Honourable Judge Rogers sentenced Rochefort to:
 - (a) a conditional sentence of two years less one day; and
 - (b) restitution in the amount of \$76,986.
- [8] An agreed statement of facts was entered as an exhibit in sentencing. In it, Rochefort agreed that:
 - (a) Rochefort was a director of Reserve Cascadia Tours Ltd, a company incorporated by him in British Columbia on May 23, 2000 (Reserve). Through Reserve, Rochefort solicited investments for a real estate development project in Alberta.

- (b) Rochefort was entitled to receive commission on all funds he raised soliciting investments for the development project. In the normal course, when Rochefort raised funds, he would arrange for investors to pay funds to the share seller and then arrange for delivery of shares or warrants to the investor.
- (c) Beginning in April 2013, Rochefort directed investors in the development project to forward their investment funds to Reserve on the understanding that their funds would then be forwarded to the development project and he would arrange delivery of the shares or warrants purchased by each investor. Instead, Rochefort misappropriated \$76,986 from five investors and used those funds for personal use including retail and debit purchases and cash withdrawals.

[9] In our decision, we relied on the reasons for sentence, agreed statement of facts, and submissions on sentence in the Provincial Court decision.

Position of the executive director

[10] The executive director is seeking that Rochefort resign any position he holds as a director or officer of an issuer or registrant under section 161(1)(d)(i) of the Act and permanent prohibitions:

- (i) under section 161(1)(b)(ii), from trading in or purchasing 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 this 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 acting in a management or consultative capacity in connection with activities in the securities market; and
- (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 his own behalf in respect of circumstances that would reasonably be expected to benefit him.

Analysis

- [11] The Commission is established under the Act to regulate the capital markets in British Columbia. Central to the Commission's mandate under the Act is to protect the investing public from those who would take advantage of them, and to preserve investor confidence in the regulated capital markets.
- [12] Under section 161(6)(a), the Commission may, after providing an opportunity to be heard, make an order in respect of a person if the person has been convicted in Canada of an offence involving securities or derivatives.
- [13] The executive director tendered affidavit evidence that Rochefort is a resident of Victoria, British Columbia.
- [14] The executive director submitted in his Application that Rochefort's guilty plea was a mitigating factor because saves time and public resources. In the reasons for sentence, the judge noted that Rochefort had expressed remorse for his conduct and understood the impact of his crimes.
- [15] The executive director cited *Re Basi*, 2011 BCSECCOM 573, *Re Dhala*, 2015 BCSECCOM 336, and *Re Davis*, 2016 BCSECCOM 375, in support of his position that permanent market bans are appropriate.
- [16] In *Basi*, an investor's \$15,000 gave the respondent to purchase shares of a company. Basi fraudulently used \$11,055 that money to pay down personal debt and other personal uses. The Commission panel imposed permanent market bans on Basi plus disgorgement of \$11,055 and an administrative penalty of \$100,000.
- [17] In *Dhala*, the respondent took \$38,250 from four investors to ostensibly buy shares of a company. Instead, Dhala used the funds for personal expenses. The Commission panel imposed permanent market bans on Dhala, disgorgement of \$26,900, and an administrative penalty of \$125,000.
- [18] In *Davis*, the panel found that the respondent perpetrated fraud on an investor in the amount of \$7,000 when he purported to sell the investor shares he did not own. Davis used the funds on personal expenditures. The Commission panel imposed permanent market bans on Davis and an administrative penalty of \$15,000.
- [19] Each of the three cases relied on by the executive director was a fraud that purported to involve securities. Each case resulted in permanent market bans on the respondents. Rochefort's misconduct involved larger sums than the three cases.
- [20] We have considered the Application, the circumstances of Rochefort's misconduct, and the factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.
- [21] Rochefort's misconduct was extremely serious. He fraudulently took almost \$77,000 from investors who trusted him and used it for his personal expenses. Rochefort intended to and did deceive investors who trusted him. His misconduct demonstrates that he is a risk to the capital markets. We find that he is unfit to participate in the British Columbia capital markets and that permanent prohibitions are warranted.

- [22] Despite Rochefort's misconduct, his securities history indicates that trading in his own accounts for his sole benefit does not pose a risk to the public and the capital markets so long as he provides a registered representative with a copy of this order.

Order

- [23] We find that it is in the public interest to order that:

- (a) under section 161(1)(d)(i), Rochefort resign any position he holds as a director or officer of an issuer or registrant;
- (b) Rochefort is permanently prohibited:
 - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except in accounts in his own name with a person registered to trade in securities under the Act if he has 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 this 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)(d)(vi), from engaging in promotional activities on Rochefort's own behalf in respect of circumstances that would reasonably be expected to benefit Rochefort.

September 10, 2024

For the Commission

Gordon Johnson
Vice Chair

Warren H. Funt
Commissioner