

BRITISH COLUMBIA SECURITIES COMMISSION
Section 161 of the *Securities Act*, RSBC 1996, c. 418

Citation: Re McDowell, 2024 BCSECCOM 393

Date: 20240910

Order under section 161(6)

Sharief Deona McDowell

I. Introduction

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418.
- [2] The executive director of the Commission applied on May 30, 2024 (Application), for orders against Sharief Deona McDowell (McDowell) under sections 161(1) and 161(6)(a)(i) of the Act based upon certain findings and orders made by the United States District Court (Criminal Action) and the Commodity Futures Trading Commission (CFTC) (CFTC Action).
- [3] In his Application, the executive director tendered affidavit evidence and submissions to the Commission. We find that the executive director provided notice of the Application to McDowell. Although McDowell was provided the opportunity to be heard, she did not participate in the hearing.
- [4] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges, and 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).

II. Background

A. Criminal Action

- [5] On December 13, 2022, McDowell plead guilty to one count of wire fraud, contrary to section 1343 of Title 18 United States Code.
- [6] On July 7, 2023, United States District Judge, Andre Birotte, Jr., sentenced McDowell to:
 - (a) Imprisonment for 63 months;
 - (b) Upon release from imprisonment, a supervised release for three years, with conditions including a prohibition to engage in any business involving loan programs, telemarketing activities, investment programs, or any other business involving the solicitation of funds or cold calls to customers without the express prior approval of her probation officer;
 - (c) A special assessment of \$100; and
 - (d) Restitution in the amount of US\$2,446,093.96.
- [7] The United States District Court found that:

- (a) Beginning in or around October 2018, and continuing through at least March 2022 McDowell knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud investors and to obtain investors' money by means of materially false and fraudulent pretenses, representations, and promises.
- (b) As part of the fraudulent scheme, McDowell started Presidential Investments Inc. LLC (Presidential Investments), a company purposing to invest and trade in commodity futures and options contracts. McDowell operated and controlled Presidential Investments and directed others to open business bank accounts held in Presidential Investments' name. McDowell had access to and control of Presidential Investments' bank accounts.
- (c) McDowell knowingly solicited money from investors by falsely representing that she, through Presidential Investments, would use the investors' money to purchase commodity futures and options contracts on the investors' behalf. McDowell did not use the investors' money to purchase commodity futures and options contracts on their behalf. Instead, she knowingly misappropriated the money for purposes she did not disclose to the investors. McDowell used investors' money to pay for personal expenses and gifts for third parties, and to make payments to other investors, which she falsely represented were disbursements from the investors' own investment accounts.
- (d) To execute the scheme, McDowell fabricated trade confirmations and account statements, which she sent to investors via e-mails, to deceive the investors into thinking that she executed trades on their behalf and that their investments were generating returns.
- (e) McDowell admitted that she intentionally defrauded at least 28 investors and, as a result of the scheme, caused the investors to lose a total of almost US\$2.7 million.
- (f) McDowell committed this fraud in violation of a prior judicial order which permanently prohibited her from directly or indirectly engaging in conduct, including, but not limited to, cheating, defrauding, or deceiving any other person in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option contract.
- (g) Dee is an alias McDowell used when interacting with investors.

B. CFTC Action

- [8] In an Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Finding, and Imposing Remedial Sanctions (CFTC Order), the CFTC noted that McDowell had submitted an Offer of Settlement and had admitted to the facts set forth in her plea agreement in the Criminal Action.
- [9] The CFTC accepted McDowell's Offer of Settlement and ordered that McDowell receive the following sanctions:
 - 1. A permanent ban from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity;

2. Permanent bans from, directly or indirectly:
 - (a) entering into any transactions involving “commodity interests”, for her own personal accounts or for any accounts in which she has a direct or indirect interest;
 - (b) having any commodity interests traded on her behalf;
 - (c) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - (d) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interest;
 - (e) applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC; and/or
 - (f) acting as a principal, agent or any other officer or employee of any person, registered, required to be registered, or exempted from registration with the CFTC;
3. Civil monetary penalty in the amount of US\$2,376,509.96; and
4. Restitution in the amount of US\$2,376,509.96.

[10] The following facts are contained in the CFTC Order:

- (a) McDowell was not registered with the CFTC in any capacity during or after the period of October 2018 to March 2022, but was registered with the CFTC in various capacities between 1999 and 2009.
- (b) From October 2018 through a least March 2022, McDowell engaged in a fraudulent scheme through Presidential Investments, a company she founded and controlled, in which she solicited and accepted more than US\$2 million from at least 29 individuals or entities for the purported purpose of trading commodity futures contracts and options on commodity futures contracts on their behalf. She then misappropriated the funds for her personal use.
- (c) When McDowell solicited prospective and existing clients, she knowingly made false and misleading statements. Among other misrepresentations, McDowell told clients that Presidential Investments used the funds the investors transferred to trade options on futures contracts on the investor’s behalf. McDowell also told clients that she would trade futures contracts to grow their accounts in order to reach the margin amounts needed to invest in options.

- (d) Contrary to her representations, McDowell did not conduct any trading on behalf of her clients and instead misappropriated client funds for her direct personal benefit.
- (e) To conceal and perpetuate her scheme, McDowell created and distributed fabricated trade confirmations to clients that falsely reflected profitable returns from her supposed trading activity.
- (f) To deter clients from demanding withdrawals from their accounts, McDowell misrepresented to them that she was in the process of selling Presidential Investments, had hired an attorney to assist with the acquisition, and could not release any funds until the sale was finalized. These representations were false. In addition, when certain clients requested to receive funds from their accounts with Presidential Investments, McDowell falsely represented that their funds could not be returned because the bank where Presidential Investments held one or more of its accounts had frozen the accounts or restricted wire transfers from those accounts.
- (g) At McDowell's direction, 29 clients deposited a total of at least US\$2,608,768.96 with Presidential Investments for the purpose of futures and options trading. McDowell paid clients approximately US\$232,259 in principal and an additional US\$357,872 in false profits, typically by diverting incoming funds from certain clients and passing them to other clients in the manner of a Ponzi scheme. After accounting for the repayment of principal to clients, McDowell misappropriated approximately US\$2,376,509.96 of client funds, including to pay for various personal expenses and Ponzi payments to other clients.
- (h) By March 2022, Presidential Investments' bank accounts were either closed or had a collective balance of zero. McDowell eventually stopped responding to communications from all clients of Presidential Investments and has not returned the majority of their investment funds despite repeated requests.
- (i) Acting as a commodity trading advisor, McDowell violated the CEA provisions by:
 - (i) directly or indirectly cheating, defrauding, deceiving, and/or misleading other persons in connection with an offer to enter into, the entry into, the confirmation of the executive of, and/or the maintenance of commodity option transactions;
 - (ii) making false and misleading statements and otherwise deceiving clients and misappropriating funds provided by clients for futures and options trading; and
 - (iii) failing to register as a commodity trading advisor.

Position of the executive director

- [11] The executive director is seeking that McDowell resign any position she 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;
 - (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

- [12] 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.
- [13] Under section 161(6)(a) of the Act, 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 or elsewhere of an offence" respecting trading in derivatives.
- [14] McDowell plead guilty to wire fraud in the Criminal Action and consented to the CFTC Order. She received an prison sentence of 63 months, a restitution order, and a special assessment in the Criminal Action and permanent bans from the commodity markets, a civil penalty, and restitution in the CFTC Order.
- [15] The executive director provided the plea agreement from the United States District Court for the Central District of California which stated that McDowell was a resident of

California. The executive director also provided affidavit evidence that one of the investors in McDowell's scheme was a resident of British Columbia.

- [16] In his Application, the executive director submitted that McDowell's guilty plea in the Criminal Action and consent to the CFTC order have been held to be mitigating factors but that a previous history of registration is an aggravating factor because the prior registrant should have been aware of the registration requirements. As noted above, McDowell had been registered with the CFTC between 1999 and 2009.
- [17] The executive director cited *Re Castano*, 2018 BCSECCOM 338, *Re EagleMark*, 2017 BCSECCOM 42, and *Re Bai*, 2018 BCSECCOM 156, in support of his position that permanent bans are appropriate.
- [18] *Castano* is a reciprocal order from a conviction for fraud at the Supreme Court of British Columbia. Castano raised \$2,500,550 from investors and his scheme caused the investors to lose over \$1.5 million. The court found that he misappropriated the funds. Castano also admitted to trading without being registered and distributing securities without filing a prospectus. He received a sentence of 27 months in prison and a restitution order. The reciprocal order imposed permanent bans on Castano.
- [19] *EagleMark* is a sanctions decision. In his submissions, the executive director focused on the sanctions the respondent Lian received. In the liability hearing the panel found that Lian perpetrated fraud by spending US\$2.4 million of US\$3.2 million invested on unrelated expenditures and contravened a cease trade order and a temporary order. In the sanctions decision, the panel imposed permanent market prohibitions, a disgorgement order, and an administrative penalty.
- [20] *Bai* is also a sanctions decision. In the liability decision, the panel found that Bai perpetrated a fraud on nine investors for \$1,401,000 by misappropriating investor funds. In the sanctions decision, the panel imposed permanent market prohibitions, a disgorgement order, and an administrative penalty.
- [21] We have considered the executive director's Application, the circumstances of McDowell'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.
- [22] McDowell's misconduct was extremely serious. She committed fraud against many investors using millions of their dollars for their personal gain. The size and scope of McDowell's misconduct demonstrates that she is a significant risk to the public and the capital markets. We find that she is unfit to participate in the capital markets of British Columbia and that permanent prohibitions are warranted.

Order

- [23] We find that it is in the public interest to order that:
 - (a) under section 161(1)(d)(i), McDowell resign any position she holds as a director or officer of an issuer or registrant;
 - (b) McDowell is permanently prohibited:

- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives;
- (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;
- (vii) under section 161(1)(d)(vi), from engaging in promotional activities on McDowell's own behalf in respect of circumstances that would reasonably be expected to benefit McDowell;
- (viii) under section 161(1)(d)(vii), from voting a security or exercising a right attaching to a security or a derivative; and
- (ix) under section 161(1)(d)(viii), from engaging in any activity in relation to the administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark.

September 10, 2024

For the Commission

Gordon Johnson
Vice Chair

Warren H. Funt
Commissioner