

REPLY TO:
Karin Blok
T: 604-899-6975 / F: 604-899-6633
Email: kblok@bcsc.bc.ca

By Regular Mail

June 14, 2024

Dear Mr. Rochefort:

Randolph Michael Rochefort
Reciprocal Order Application
Our File No.: 55090

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 convictions for four counts of theft over \$5,000.

CRIMINAL CONVICTION

1. On November 7, 2022, you entered guilty pleas to four counts of theft over \$5,000 contrary to section 334(a) of the *Criminal Code*.
2. That same day, the Honourable Judge Rogers, of the Provincial Court of British Columbia, sentenced you to the following:
 - (a) a conditional sentence of two years less one day; and
 - (b) restitution of \$76,986.
3. The reasons for sentence are set out at *R. v. Rochefort*, Victoria Registry, File No. 182915-1 (Reasons for Sentence). The facts underlying your guilty plea are contained in an Agreed Statement of Facts filed as an exhibit at sentencing (the ASF).

Summary of Findings

4. You were a director of Reserve Cascadia Tours Ltd, a company incorporated by you in British Columbia on May 23, 2000 (Reserve). Through Reserve you solicited investments for a real estate development project in Alberta involving the Standing Stone companies.

ASF, para. 1

5. You were entitled to receive commission on all funds you raised soliciting investments for Standing Stone. In the normal course, when you raised funds you would arrange for investors to pay funds to the share seller and then arrange for delivery of shares or warrants to the investor.

ASF, paras. 3-4

6. Beginning in April 2013, you directed investors in Standing Stone to forward their investment funds to Reserve on the understanding that their funds would then be forwarded to Standing Stone and you would arrange delivery of the shares or warrants purchased by each investor. Instead, you misappropriated \$76,986 from five investors and used those funds for personal use including retail and debit purchases and cash withdrawals.

ASF, paras. 5-6

THIS APPLICATION

7. 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.
8. 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.
9. 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] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39, and 56

10. In [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining orders under section 161(1).
11. The following factors from *Re Eron* are relevant in this proceeding:
 - (a) the seriousness of your conduct,
 - (b) the harm suffered by investors as a result of your conduct,
 - (c) the extent to which you were enriched;
 - (d) factors that mitigate your conduct;
 - (e) the risk to investors and the capital markets posed by your continued participation in the capital markets of British Columbia,

- (f) your fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- (g) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- (h) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (i) orders made by the Commission in similar circumstances in the past.

[Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22

Application of the Factors

Seriousness of the Conduct

- 12. Your conduct in contravening s. 334(a) of the *Criminal Code* is analogous to a contravention of s. 57(1)(b) (fraud) of the Act.
- 13. Fraud is one of the most egregious securities regulatory violations.

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

- 14. You took money from investors for the purpose of investing in Standing Stone and instead used those funds for your own personal use. This is serious misconduct.

Harm suffered by investors

- 15. Your conduct resulted in financial losses to the investors.
- 16. The losses suffered by the investors resulted in significant financial harms to victims who were of limited means. One of the victims was living on a disability pension. Another was just starting out and hoped to one day use the funds to purchase a property. Another was planning to use the funds for her retirement. The victims described your conduct as having eroded their ability to trust others and having caused psychological harm, shame, regret and self-doubt.

Submissions on Sentence, p. 8, ll. 1-22
Reasons for Sentence, para. 3

Enrichment

- 17. You wrongfully obtained \$76,986 from five investors which you used for your own personal benefit. A restitution order in the full amount was imposed as part of your sentence. We are not aware of whether you have paid any of the restitution.

Mitigating Factors

- 18. 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

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

Reasons for Sentence, para. 1

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

Reasons for Sentence, para. 4

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

Risk to investors and the capital markets

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

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

23. You misappropriated a significant amount of money from multiple investors. 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.

Participation in our capital markets/ Fitness to be a registrant or a director or officer

24. Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating, individuals and companies must comply with securities laws. Compliance is vital to ensuring the protection of the public and the integrity of the capital markets.

25. Honesty is a critical 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

26. Your conduct demonstrates that you are not fit to participate in our capital markets. Your counsel noted to the sentencing judge that you accept that you are not qualified to be soliciting investments. In fact, 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.

Submissions on Sentence, p. 12, ll. 19-21

Deterrence

27. 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

28. You solicited funds from investors on the understanding that you would forward those funds to Standing Stone and provide the investors with their investments. You did neither. Rather you used those funds for your own personal purposes and caused significant financial and emotional harm to investors.
29. 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

30. As noted, your conduct in contravening s. 334(a) 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. The Commission imposed permanent market bans in each of them.
- [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.
31. 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 less than 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.

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).

The Davis Consideration

32. 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.
33. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

34. At your sentencing the Court imposed a conditional sentence of two years less a day with various conditions, none of which restricted your access to the capital markets.
35. The Commission can impose sanctions that are similar to or different from the sanctions imposed by the Court, but the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.
36. 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 proceeding:
- (a) the circumstances of your misconduct including the Settlement Agreement;
 - (b) the factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above; and
 - (d) the public interest.
37. Based on the factors set out above, 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 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 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.

38. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

39. In making this application, the Executive Director relies on the following, copies of which are enclosed:

- (a) *R. v. Rochefort*, Victoria Registry, File No. 182915-1 (Reasons for Sentence)
- (b) Agreed Statement of Facts
- (c) Submissions on Sentence
- (d) [*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (e) [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22
- (f) [*Manna Trading Corp. Ltd. \(Re\)*](#), 2009 BCSECCOM 595
- (g) [*Re Flexfi Inc.*](#), 2018 BCSECCOM 166
- (h) [*Re Braun*](#), 2019 BCSECCOM 65
- (i) [*Re SBC Financial Group Inc.*](#), 2018 BCSECCOM 267
- (j) [*Re Thow*](#), 2007 BCSECCOM 758
- (k) [*Re Basi*](#), 2011 BCSECCOM 573
- (l) [*Re Dhala*](#), 2015 BCSECCOM 336
- (m) [*Re Davis*](#), 2016 BCSECCOM 375
- (n) [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149

YOUR RESPONSE

40. 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 **Monday, July 22, 2024.**


41. 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

42. 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.
43. The Commission will send you a copy of its decision.
44. **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:

2C3CEEE01F714DD...

6/14/2024 | 10:34 AM PDT

Douglas B. Muir
Director, Enforcement

KAB/crc
Enclosures

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