

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

Citation: Re Uitvlugt, 2023 BCSECCOM 78

Date: 20230215

Order under section 161(6)

Christopher Uitvlugt

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

Introduction

- [1] This is an order under sections 161(1) and 161(6)(a)(i) of the *Securities Act*, RSBC 1996, c. 418.
- [2] The executive director of the Commission applied on May 18, 2022 (Application) for orders against Christopher Uitvlugt under sections 161(1) and 161(6)(a)(i) of the Act based upon on certain orders made by the Superior Court of Justice (East Region) in Ontario.
- [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 Uitvlugt. Although Uitvlugt was provided the opportunity to be heard, he 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 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).

Background

- [5] On June 15, 2018, Uitvlugt was charged with one count of fraud contrary to section 380(1)(a) of the *Criminal Code*, RSC 1985, c C-46, (*Criminal Code*), one count of possession of property obtained by crime contrary to section 354(1) of the *Criminal Code*, and one count of conspiracy to commit fraud contrary to section 465(1)(c) of the *Criminal Code*.
- [6] On November 16, 2018, Uitvlugt pled guilty to one count of fraud involving money of a value exceeding \$5,000, contrary to section 380(1)(a) of the *Criminal Code*.
- [7] On November 12, 2019, the Honourable Justice Tranmer of the Superior Court of Justice sentenced Uitvlugt to five years in jail (less the time spent in pre-trial custody) plus a forfeiture order.

- [8] Uitylugt was the CEO of Next Level Investments, an Ontario incorporated company that became Next Level Capital Group in December 2016 (collectively, Next Level). Next Level solicited money from investors by offering clients the opportunity to make a 550 percent rate of return on three-month term investments. These profits were supposed to be gained through foreign exchange trading by Uitylugt.
- [9] 874 investors gave Next Level \$4.8 million. Approximately \$24,000 of that was used for foreign exchange trades. The remainder was used to pay out investors and for personal expenses such as his Lamborghini and Audi vehicles. Uitylugt admitted to operating the Ponzi scheme. Most of the investors lost their investment.
- [10] Approximately \$2,232,000 in money and property was restrained or recovered by the police.

Analysis and Order

- [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] Uitylugt is a resident of Saanichton, British Columbia. He received a 5 year jail sentence and a forfeiture order as a result of his Ponzi scheme fraud. Uitylugt's conduct harmed the investors who trusted him. It is clear from the foregoing facts, and Uitylugt's admitted participation in the scheme, that Uitylugt is a risk to the capital markets.
- [13] In his Application, the executive director submitted that Uitylugt's guilty plea was a mitigating factor because it saved time and public resources and allowed Next Level's investors to avoid a hearing.
- [14] We have considered the executive director's Application, the circumstances of Uitylugt'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.
- [15] Uitylugt's misconduct was extremely serious. He committed fraud against many investors using millions of their dollars for his personal gain. The size and scope of Uitylugt's misconduct demonstrates that he is a significant risk to the public and the capital markets. We find that he is unfit to participate in the capital markets of British Columbia and that permanent prohibitions are warranted.

Orders

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

(b) Uitvlugt 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; and
- (vii) under section 161(1)(d)(vi) from engaging in promotional activities on Uitvlugt's own behalf in respect of circumstances that would reasonably be expected to benefit Uitvlugt.

February 15, 2023

For the Commission

Gordon Johnson
Vice Chair

Jason Milne
Commissioner