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

Citation: Re Sharp, 2023 BCSECCOM 73 Date: 20230213

Order under section 161(6)

Frederick Langford Sharp

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

Introduction

[1] This is an order under sections 161(1) and 161(6)(b) of the *Securities Act*, RSBC 1996, c. 418.

[2] The executive director of the Commission applied on May 27, 2022 (Application) for orders against Frederick Langford Sharp under sections 161(1) and 161(6)(b) of the Act based upon on certain orders made by the United States District Court, District of Massachusetts.

[3] The United States District Court issued its Final Judgment as to Sharp on May 12, 2022 in *Securities and Exchange Commission (SEC) v. Frederick Sharp et al,* No. 21-cv-112756-WGY, where the court found that Sharp violated sections 5(a), 5(c), 17(a)(1) and 17(a)(3) of the *Securities Act of 1933* [15 U.S.C. § 77a] (Securities Act 1933) and Sections 10(b) of the *Securities Exchange Act of 1934* [15 U.S.C. § 78a] (Exchange Act), and Rules 10b-5(a) and (c) of the Exchange Act, and had aided and abetted others' violations of those provisions (SEC Proceeding).

[4] 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 Sharp. Although Sharp was provided the opportunity to be heard, he did not provide any evidence or submissions.

[5] 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] 3 S.C.R. 895, at para. 54).

Background

[6] On August 5, 2021, the SEC filed a complaint (Complaint) in the United States District Court, in the District of Massachusetts naming Sharp as a defendant amongst others.

[7] The Complaint alleged:

(a) Sharp resides in West Vancouver in British Columbia.

(b) Sharp and his employees, Zhiying Yvonne Gasarch, and Courtney Kelln, were known as the Sharp Group. Beginning in or before 2010 and continuing to 2020, the Sharp Group was in the business of facilitating illegal stock sales in the public securities markets.

(c) Sharp was the mastermind of the scheme and the leader of the Sharp Group. Sharp cultivated relationships with his clients and routinely served as a liaison between his clients and offshore trading platforms.

(d) Sharp knowingly aided and abetted violations of U.S. securities laws. Sharp's schemes enabled his clients to defraud investors by secretly controlling the stock of numerous penny stock companies and then sell those securities in conjunction with misleading promotions.

(e) To facilitate the scheme, Sharp employed multiple devices, schemes and artifices to defraud. These included:

(i) creating and using encrypted communications hardware and networks;

(ii) using offshore trading platforms to obfuscate who controlled public companies; and

(iii) creating an accounting system to keep track of his clients' stock positions, proceeds, commissions, and fees.

(f) Sharp's fraudulent misconduct generated over $1 billion in gross proceeds.

[8] Sharp did not appear or participate in the SEC Proceeding.

[9] On November 15, 2021, the District Court of Massachusetts entered a Notice of Default against Sharp.

[10] On December 15, 2021, the SEC filed a motion for default judgment against Sharp and a memorandum in support of its motion. Sharp did not respond to the motion.

[11] In its May 12, 2022, Final Judgment, the court found Sharp violated:

(a) section 10(b) of the Exchange Act (fraud in the connection with the purchase or sale of securities);

(b) Rule 10b-5(a) and (c) of the Exchange Act (employment of manipulative and deceptive devices);

(c) Section 17(a)(1) and (3) of the Securities Act 1933 (fraud in the offer or sale of securities);

(d) section 5(a) and (c) of the Securities Act 1933 (unregistered offerings of securities); and

(e) section 20(e) of the Exchange Act (aiding and abetting) his clients' violations of those provisions.

[12] Under the Final Judgment, the court ordered:

(i) Sharp be permanently restrained from violating section 10(b) of the Exchange Act, Rule 10b-5, and sections 5 and 17(a) of the Securities Act 1933;

(ii) Sharp be permanently barred from participating in the issuance, purchase, offer, or sale of any security, except for his own personal account;

(iii) Sharp be permanently barred from participating in an offering of a penny stock (any security that has a price of less than five dollars);

(iv) disgorgement in the amount of $21,760,936, representing net profits gained as a result of the misconduct, together with prejudgment interest of $7,173,947; and

(v) a civil penalty in the amount of $23,990,781.

Analysis

[13] 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.

[14] The District Court of Massachusetts accepted as true the factual allegations of the Complaint against Sharp, and determined that Sharp had violated numerous United States securities laws.

[15] In *Durante (Re),* 2004 BCSECCOM 634, at paragraphs 9 and 26, the panel found that default judgment in the United States is an admission of the facts alleged in a complaint.

[16] In *Re Skerry*, 2021 BCSECCOM 30, the panel made a section 161(6) order against Skerry. The Commission relied on the United States default judgment in Skerry's SEC proceedings.

[17] We agree with the reasoning at paragraph 27 of *Re Pierce*, 2016 BCSECCOM 188, that in an application that relies on section 161(6)(b) (s. 161(6)(c) in *Re Pierce*), we should treat the originating body's order and findings of fact as facts when determining whether

to issue an order in the public interest. The alternative – requiring the executive director to re-litigate the earlier order and findings - would result in inefficient and duplicative proceedings, which would be contrary to the public interest.

[18] Sharp is a resident of West Vancouver, British Columbia. He received significant, permanent prohibitions from participating in the securities industry in the United States of America as a result of his deliberate, deceptive conduct that generated over $1 billion in gross proceeds. This conduct significantly harmed unsuspecting investors.

[19] We find that the purpose of section 161(6)(b) is to ensure that the capital markets in British Columbia are protected from persons who have engaged in conduct in other jurisdictions that would have warranted significant sanctions here. As such, the Commission finds it in the public interest to issue orders in this matter.

[20] In making this order, we have considered the circumstances of the 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. Sharp's misconduct was extremely egregious, and we find there to be no mitigating factors.

Order

[21] To prevent Sharp from engaging in similar conduct in British Columbia, we find that it is in the public interest to order that:

(a) under section 161(1)(d)(i), Sharp resign any position he holds as a director or officer of an issuer or registrant;

(b) Sharp is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives the registered dealer a copy of this decision, he may trade in or purchase exchange traded funds or mutual funds securities only through a registered dealer in:

(A) RRSPs, RRIFs, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for his own benefit;

(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 Sharp's own behalf in respect of circumstances that would reasonably be expected to benefit Sharp.

February 13, 2023

For the Commission

Gordon Johnson
Vice Chair

Jason Milne
Commissioner