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

Citation: Re Mulholland, 2022 BCSECCOM 468 Date: 20221201

Order under section 161(6)

Gregg R. Mulholland

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

Introduction

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

¶ 2 The executive director of the Commission applied on June 24, 2021, for orders against Gregg R. Mulholland (Mulholland) under section 161(1) of the Act based upon orders imposed in:

(a) United States of America v. Mulholland and others, Cr. No. 14-476 (S-2) (ILG) (Criminal Action)

(b) Securities and Exchange Commission (SEC) v. Gregg R. Mulholland, Case No. 15 Civ. 03668 (SEC Civil Action); and

(c) In the Matter of Gregg R. Mulholland, file no. 3-17775 (SEC Administrative 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 Mulholland.

¶ 4 Mulholland responded to the executive director's application, providing written submissions. The executive director provided a reply to this response.

Background

¶ 5 Mulholland, also known as "Stamps" and "Charlie Wolf", was, prior to his incarceration, a resident of West Vancouver, British Columbia. Between 2009 and 2014, he was involved in a fraudulent pump and dump scheme to manipulate the public trading market for various US microcap or penny stocks.

¶ 6 Mulholland controlled a group of approximately a dozen individuals (the Mulholland Group) which was responsible for fraudulently manipulating the stock of more than forty US publicly traded companies, including Vision Plasma Systems, Inc. (VLNX). Mulholland and the Mulholland Group beneficially owned and controlled at least 84% of VLNX's stock through secretive offshore corporations.

¶ 7 The Mulholland Group transferred more than $250 million in fraudulent proceeds through offshore escrow accounts into accounts controlled by the Mulholland Group in the US and Canada.

Criminal Action

¶ 8 Mulholland was indicted in the Criminal Action on February 26, 2016, with conspiracy to commit securities fraud, conspiracy to defraud the United States, money laundering conspiracy, and two counts of securities fraud.

¶ 9 On May 9, 2016, Mulholland signed a plea agreement, pleading guilty to money laundering conspiracy, and was sentenced to 12 years in prison on February 6, 2017.

SEC Civil Action

¶ 10 In the SEC Civil Action, on June 23, 2015, the SEC filed a complaint against Mulholland for unregistered distribution of VLNX's securities.

¶ 11 Mulholland consented to the final judgment of the SEC Civil Action on December 22, 2016. In his consent, Mulholland acknowledged that the permanent injunction in the final order may have collateral consequences with other regulatory organizations.

¶ 12 On January 9, 2017, final judgment was filed in the SEC Civil Action. Mulholland was permanently barred from:

(a) participating in the issuance, purchase, offer, or sale of any security;

(b) soliciting any person or entity to purchase or sell any security; and

(c) engaging in any activity for the purpose of inducing or attempting to induce the purchase or sale of any security, causing any person or entity to engage in any activity for the purpose of inducing or attempting to induce the purchase or sale of any security, or deriving compensation from any activity engaged in for the purpose of inducing or attempting to induce the purchase or sale of any security.

¶ 13 The SEC Civil Action complaint also noted that Mr. Mulholland was a recidivist who had entered into a settlement for a separate pump and dump scheme with the SEC in 2012 which resulted in a penny stock ban and $5,309,434.94 in disgorgement, interest, and civil penalties, none of which Mr. Mulholland had paid as of the date of the SEC Civil Action Complaint.

SEC Administrative Action

¶ 14 In the SEC Administrative Action, on December 5, 2016, Mulholland made an offer to settle in which he admitted that he was the secret owner of an unregistered broker/dealer in Belize and that he participated in the offering of VLNX's stock. He offered to be barred from:

(a) association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

(b) participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

¶ 15 On January 13, 2017, the SEC filed an order imposing the terms of Mulholland's offer.

Submissions from the parties

¶ 16 The executive director submitted that Mulholland's actions were a serious, sophisticated market manipulation fraud over three to four years that resulted in a criminal conviction and sentence of 12 years in prison. Further, Mulholland received permanent bans from the public markets in the United States, and significant monetary sanctions. The executive director noted that Mulholland was enriched by $21 million and that many investors were harmed by his pump and dump.

¶ 17 The executive director identified both mitigating and aggravating factors in his submissions. As a mitigating factor, the executive director submitted that Mulholland admitted liability pre-hearing. As aggravating factors, the executive director submitted that Mulholland:

(a) Structured his activities to hide his involvement in the scheme, hide his illegal trading activity, and evade securities laws; and

(b) Is a recidivist who previously participated in a different market manipulation fraud which resulted in him being banned from future injunction violations and ordered to disgorge $5,309,434.94, which he did not pay.

¶ 18 The executive director argued that Mulholland's deceptive conduct demonstrated no concern for investors or for legitimate market participation, that he poses a serious risk to investors, and the capital markets and that permanent bans were appropriate to deter Mulholland and others from similar future misconduct.

¶ 19 Mulholland provided a written response, attaching unsworn records from the US Eastern District of California Court.

¶ 20 Mulholland requested that no restrictions or sanctions be applied outside of the United States. He submitted that the United States courts did not find any fraud, loss, or victims that resulted from his Criminal and SEC Actions, and claimed that he was not a recidivist. He stated that "pernicious methods" were used "to force my capitulation for an agreement containing no financial or criminal liability." He opposed the executive

director's application so that he would not be restricted from potential future compensation or serving as an officer or director of a non-American company.

¶ 21 In his reply, the executive director noted that Mulholland:

(a) had not addressed the factors in *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22;

(b) had failed to provide an argument as to why there should not be permanent market orders against him;

(c) was still subject to the US orders against him; and

(d) did not seek any appeal of those orders.

Analysis

¶ 22 Section 161(6)(a), (b), and (d) of the Act states:

> 161 (6) The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person
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> (a) has been convicted in Canada or elsewhere of an offence
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> (i) arising from a transaction, business or course of conduct related to securities or derivatives, or
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> (ii) under the laws of the jurisdiction respecting trading in securities or derivatives,
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> (b) has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives,
>
> (d) has agreed with a securities regulatory authority, a self-regulatory body or an exchange, in Canada or elsewhere, to be subject to sanctions, conditions, restrictions or requirements.

¶ 23 Section 161(6) permits the Commission to make an order under section 161(1) of the Act if the requirements of the section are met and it is in the public interest to do so. These secondary proceedings allow the Commission to use another jurisdiction's decisions without the need for inefficient parallel and duplicative proceedings in British Columbia or before the Commission. See *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at paras. 2 and 54.

¶ 24 In a section 161(6) application, the Commission should treat the factual findings from the originating jurisdiction as facts when determining what orders are needed. See *Re Pierce*, 2016 BCSECCOM 188, para. 27.

¶ 25 In his submissions, Mulholland provided his motion of writ of habeas corpus in the US to support his position that no sanctions or restrictions be placed on him in BC. After Mulholland provided his response, his motion was dismissed by the US District Court for the Eastern District of California. See *Mulholland v. Thompson*, 2021 U.S. Dist. LEXIS 243727, 2021 WL 6051319 ordering the findings and recommendations in *Mulholland v. Thompson*, 2021 U.S. Dist. LEXIS 162929, 2021 WL 3847572.

¶ 26 Mulholland's motion sought a reduction in his sentence to time served and rescission of a forfeiture order. We agree with the executive director that Mulholland's response does not appeal the money laundering conspiracy conviction in the Criminal Action. The motion also does not address the sanctions in the SEC Civil Action or the SEC Administrative Action.

¶ 27 In the Criminal Action, the superseding indictment described a complex pump and dump scheme involving Mulholland. Mulholland signed a plea agreement and plead guilty to money laundering conspiracy which included the facts from the superseding indictment. He signed a consent to a final judgment in the SEC Civil Action and an offer of settlement in the SEC Administrative Action where he again admitted to the facts of the superseding indictment and agreed to permanent bans in the securities markets.

¶ 28 Mulholland is the subject of criminal and civil judgments for extremely serious securities misconduct. He was convicted of money laundering conspiracy in a long lasting market manipulation that involved the proceeds of securities fraud. Mulholland represents a significant risk to British Columbia's capital markets. Section 161(6) permits us to impose orders under section 161(1) of the Act where a person has, like Mulholland, been convicted, contravened securities laws, and has agreed to be subject to sanctions.

¶ 29 Orders under section 161(1) are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37.

¶ 30 Having found that we are authorized by section 161(6) to consider the imposition of orders against Mulholland, the question arises as to whether it is in the public interest to do so.

¶ 31 In *Re Eron*, the Commission identified factors relevant to sanction as follows (at page 24):

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
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> - the seriousness of the respondent's conduct,

- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

¶ 32 The Commission must also consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public when a person's livelihood is at stake. See *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

Application of the factors

Seriousness of the conduct

¶ 33 There is no doubt that Mulholland's misconduct that resulted in his conviction and the SEC sanctions was exceptionally serious. Mulholland, with others, conducted a $250 million market manipulation to fraudulently pump the price of penny stocks and then dump them. Mulholland did this by conspiring with others to trade using secretive shell companies without being registered.

¶ 34 Market manipulation, money laundering conspiracy, and unregistered trading are all serious misconduct in British Columbia and are harmful to both investors and the integrity of the capital markets. The seriousness of Mulholland's actions was exacerbated by the time period and sophistication of the scheme.

Harm to investors

¶ 35 Mulholland claimed that there were no losses or victims of his actions. While there is no evidence of specific financial loss by investors in the judgments against him, at his sentencing the judge noted that there "are countless victims in this case and they're nameless and faceless largely because there are so many of them." This is correct. Mulholland's fraudulent market manipulation involved rapid increases in the share prices followed by quick decline. There is no question that when Mulholland and his group sold their shares at an artificial high to unsuspecting investors, those investors consequently suffered harm.

Enrichment

¶ 36 The final judgment in the SEC Civil Action noted that Mulholland was enriched in the amount of $21 million as a result of his misconduct.

Mitigating/aggravating factors

¶ 37 There are no material mitigating or aggravating factors.

Past misconduct

¶ 38 Mulholland's claims that he is not a recidivist are without merit. He agreed to a permanent ban from the penny stocks market with the SEC in 2011 because of his involvement in a different pump and dump scheme in 2008. Mulholland did not honour his agreement with the SEC. In fact, when he signed the consent he was already involved with the pump and dump for which he is presently incarcerated. Mulholland's history of prior misconduct indicates that he has no regard for the legal requirements of the securities industry.

Risk to investors and the capital markets

¶ 39 Mulholland's past and present conduct demonstrates a contempt for securities regulations. There is no evidence that he would abide with securities laws in the future. Mulholland is currently incarcerated in the United States but is a former resident of British Columbia whose wife and children continue to live here. Mulholland indicated in his response that he wishes to renounce his United States citizenship and live in Canada. Mulholland continues to be a very serious risk to investors and British Columbia's capital markets.

Fitness to be a registrant, director, officer or advisor

¶ 40 Mulholland's response specifically mentioned that he would like to serve as a director or officer. For the same reasons that he is a risk to investors and the capital markets, Mulholland has demonstrated that he is not fit to be a registrant, director, officer, or advisor.

Specific and general deterrence

¶ 41 In 161(6) applications, deterrence is a less important consideration because sanctioning has already occurred. Primarily we are seeking to protect the public from future risk of harm. See *Re Gozdek*, 2022 BCSECCOM 10.

Previous orders

¶ 42 The executive director has cited *Poonian (Re)*, 2015 BCSECOM 96, *Re Deyrmenjian*, 2019 BCSECCOM 93, *Re Sungro*, 2015 BCSECCOM 281, *Samji (Re)*, 2015 BCSECCOM 29, *JV Raleigh Superior Holdings Inc. (Re)*, 2012 BCSECCOM 492, and *Michaels (Re)*, 2014 BCSECCOM 457 in support of his position that permanent market bans are appropriate. *Poonian (Re)*, *Re Deyrmenjian*, and *Re Sungro* involved market manipulations. *Samji (Re)*, *JV Raleigh Superior Holdings Inc. (Re)*, and *Michaels (Re)* involved illegal distributions. The executive director noted that those decisions, despite not being factually identical, all resulted in permanent bans under section 161(1). In comparison to those cases, Mulholland's scheme was more sophisticated and he received greater enrichment.

¶ 43 We have no hesitation in finding that Mulholland is unfit to participate in the capital markets of British Columbia considering his conviction in the United States, his

settlements with the SEC, and the application of the *Eron* factors to the evidence from those cases.

The Davis *consideration*

¶ 44 Mulholland has been in the securities industry for many years. For most of that time, he was involved with securities fraud. He is a recidivist who was sentenced to 12 years in prison for his role in securities fraud. Mulholland is a risk to the capital markets and his actions warrant a permanent ban.

Order

¶ 45 After giving Mulholland an opportunity to be heard, considering the record and submissions of the parties, and considering it to be in the public interest, we order that, pursuant to sections 161 of the Act:

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

(b) Mulholland is permanently prohibited:

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

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

- one other account for his own benefit provided that any time Mulholland purchases or trades in securities in such account:

(A) the securities are listed and posted for trading on the TSX, the NYSE, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

(B) he does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.

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

December 1, 2022

For the Commission

Gordon Johnson
Vice Chair

Deborah Armour, KC
Commissioner