

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

Citation: Re Zhang, 2023 BCSECCOM 304

Date: 20230612

Meiyun Zhang

Panel	Gordon Johnson	Vice Chair
	Audrey T. Ho	Commissioner
	James Kershaw	Commissioner
Hearing date	May 10, 2023	
Submissions completed	May 10, 2023	
Ruling date	May 10, 2023	
Date of Reasons	June 12, 2023	
Counsel		
Veda Kenda	For the Executive Director	
P. Scott Horne	For Meiyun Zhang	

Reasons for Ruling

I. Introduction

- [1] On April 25, 2023, the Commission issued a temporary order (Temporary Order) prohibiting Meiyun Zhang (Zhang) from various activities in the securities market until May 10, 2023.
- [2] On May 10, 2023, the panel heard the executive director's application to extend the Temporary Order until May 10, 2024. We received submissions from the executive director. Counsel for Zhang attended but, with the explanation that he did not have appropriate instructions to do so, did not make substantive submissions. The Temporary Order was extended with reasons to follow.

II. Terms of order

- [3] The terms of the Temporary Order which were extended are as follows:
- (a) Under section 161(1)(b)(ii), Zhang is prohibited from trading in or purchasing securities or derivatives, except that she may purchase securities in her own account through a registrant;

- (b) Under section 161(1)(c), all of the exemptions set out in the Act, regulations or any decision as defined in the Act do not apply to Zhang;
- (c) under section 161(1)(d)(i), Zhang resign any position she holds as a director or officer of any issuer other than an issuer all the securities of which are owned beneficially by her or members of her immediate family;
- (d) under section 161(1)(d)(ii), Zhang is prohibited from becoming or acting as a director or officer of any issuer other than an issuer all the securities of which are owned beneficially by her or members of her immediate family;
- (e) under section 161(1)(d)(iii), Zhang is prohibited from becoming or acting as a registrant or promoter;
- (f) under section 161(1)(d)(iv), Zhang is prohibited from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities markets;
- (g) under section 161(1)(d)(v), Zhang is prohibited from engaging in promotional activities by or on behalf of an issuer, security holder or another person that is reasonably expected to benefit from the promotional activity; and
- (h) under section 161(1)(d)(vi), Zhang is prohibited from engaging in promotional activities on her own behalf in respect of circumstances that would reasonably be expected to benefit her;

until May 10, 2024.

[4] These are our reasons.

III. Applicable law

[5] Sections 161(2) and 161(3) of the Act read as follows:

(2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.

(3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held, and a decision is rendered.

[6] Section 161(3) of the Act provides that the commission, with or without a hearing, may make an order extending a temporary order if it considers it necessary and in the public interest. An

extension order under section 161(3) is not limited to a specific period but can be made until the hearing is held under section 161(1), and a decision is rendered.

Standard of Proof

- [7] As set out in *Fairtide Capital Corp. (Fairtide)*, 2002 BCSECCOM 993, the regulatory context is important when considering temporary orders. A temporary order is a regulatory tool given to the commission.
- [8] The Act is a regulatory statute with a public interest mandate, and its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. The public interest purpose in imposing regulatory enforcement orders is neither remedial nor punitive, but protective and prospective in nature. These powers are intended to prevent likely future harm to the integrity of our capital markets.
- [9] The commission has consistently held that there is no bright line test for determining whether an extension is necessary and in the public interest. Rather, as stated in *Fairtide*, the “commission considers evidence using its expertise and specialized understanding of the markets and the securities related activities it supervises, to determine what is in the public interest in any given circumstance.” Further, as stated in *Re BridgeMark Financial*, 2019 BCSECCOM 14, there must be some flexibility to extend temporary orders in the public interest.
- [10] The standard of proof in this case requires the executive director to produce *prima facie* evidence of the misconduct alleged and to show that the extension order is necessary and in the public interest. This standard was articulated by the panel in *Fairtide*. The standard is applied in cases where circumstances involve a known respondent and clearly defined misconduct.
- [11] The term “*prima facie*” is used to characterize something as being accepted on its face unless disproved. Generally, *prima facie* evidence means evidence sufficient to establish a fact until the contrary is proven.

IV. Submissions of the parties

- [12] The executive director’s submission is that the evidentiary basis for extending the order is well established by the affidavit evidence before us and that the circumstances which justified the issuance of the Temporary Order are still present.
- [13] The executive director submits that one of the circumstances that justifies the extension of the Temporary Order is the conduct of Zhang. Zhang obtained an earlier adjournment based upon medical evidence delivered at the time and on the condition from the panel that Zhang provides regular updates to the hearing office on her medical condition. That condition has not been met and Zhang has been uncooperative in procedures that are necessary to the conduct of this proceeding, most of which are necessary only because of adjournments granted to accommodate Zhang.
- [14] The executive director also points to the seriousness of the fraudulent conduct alleged against Zhang, the degree of evidence presented regarding that conduct and the lack of information available about Zhang’s address and the evolution of her condition.

[15] With respect to the quality of the evidence against Zhang, the *prima facie* evidence tendered by the executive director is detailed and clear:

A. Evidence that Zhang committed a Fraud on Investor A

- (a) Investor A knew Zhang and saw her as a friend.
- (b) Zhang told Investor A that his investment would be used to exchange Chinese Renminbi (RMB) and US Dollars (USD) to Canadian Dollars (CAD) for Chinese students and tourists in Canada. Zhang told Investor A that the returns would come from the difference in exchanging US dollars and RMB to Canadian dollars.
- (c) Zhang promised Investor A returns at 10% per month, that is, Investor A would get a return of \$1000 for every \$10,000 invested.
- (d) Zhang said that he would be paid back the principal in two to three months.
- (e) Between April 6, 2015, and June 22, 2016, Investor A invested a total of \$227,700 with Zhang.
- (f) Tracing of funds shows that Investor A received \$96,550 back from his investment. Of that amount:
 - i. \$49,950 came from Investors B and C; and
 - ii. \$46,600 came from Zhang and her husband.
- (g) As a result, Investor A's net loss was \$131,150.
- (h) Investor A's funds did not go to Chinese students or tourists as promised by Zhang. Instead, tracing bank account records shows that the funds were used to, among other things:
 - i. pay returns to Investor B in the amount of \$20,981; and
 - ii. pay Zhang and her husband \$160,860.

B. Evidence that Zhang committed a Fraud on Investor B

- (a) Investor B met Zhang in June 2014.
- (b) Zhang told Investor B that:
 - i. she had a business to help students get a visa by depositing money for the student to show Immigration Canada that they have enough money to pay for expenses to live here;

- ii. the money was going to a school in Calgary who would loan the money to the students to put in their bank accounts to show Immigration Canada that they have sufficient funds;
 - iii. the schools rely on Zhang's investors to fund transfers to the students' bank accounts; and
 - iv. after the students renewed their visas, they would return the investors' principal investment. Investor B would get 10% return each month and her principal would be held by the students for about six months and then returned.
- (c) In just over one year, Investor B invested \$1,745,414 with Zhang.
- (d) Investor B received \$757,735 back from her investment. Tracing of funds shows of the amount paid back:
- i. \$90,570 came from her own investment;
 - ii. \$531,612 came from Zhang or her husband; and
 - iii. \$10,000 from Investor C's investments with Zhang.
- (e) As a result, Investor B's net loss was \$987,679.
- (f) Investor B's funds did not go to Chinese students as promised by Zhang. Instead, tracing of bank account records shows that the funds were used to, among other things:
- i. pay returns to Investor A, B and C in the amount of 67,355;
 - ii. pay returns to herself in China in the amount of \$68,304;
 - iii. pay returns to Investor B in China in the amount of \$68,304; and
 - iv. pay Zhang \$217,369.

C. Evidence that Zhang committed a Fraud on Investor C

- (a) Investor C met Zhang in June of 2015.
- (b) Zhang asked Investor C to invest in her business that helped Chinese students in Canada show Immigration Canada that they have sufficient funds to cover living expenses when they renewed their student visas. Investors would transfer funds to the students' bank accounts. Zhang told Investor C that she would get a return each month and the principal would be held by the students for about six months and then returned after the students renewed their visas.
- (c) Investor C would receive a 6-8% monthly return.

- (d) Zhang told Investor C that the investment was without risk.
- (e) On August 10, 2015, Investor C invested \$10,000 with Zhang.
- (f) Soon after, funds were deposited into Investor C's account as purported interest and bonuses.
- (g) Between August 10, 2015, and January 21, 2016, Investor C invested \$1,178,996 with Zhang.
- (h) Tracing of funds through the bank records shows that Investor C was paid back \$601,962. Of that amount, \$451,767 came from Investor C's own investments.
- (i) In the end, Investor C's net loss was \$577,034.
- (j) Investor C's funds did not go to Chinese students as promised by the Zhang. Instead, bank account records show that the funds were used to, among other things:
 - i. pay returns to Investor A in the amount of \$42,100;
 - ii. pay returns to Investor B in the amount of \$10,000; and
 - iii. pay Zhang \$940,396.
- (k) Zhang paid \$601,962 back to Investor C in returns. Investor C's net loss was \$577,034.

[16] As we have noted above, during the hearing, counsel for Zhang said that he lacked instructions to make substantive submissions. The written submission of Zhang's counsel did contain the following paragraph which might be considered a substantive submission:

The Commission very recently accepted, on the strength of an opinion from Ms Zhang's physician, that Ms Zhang is not able to participate in the currently scheduled hearing. It appears probable that she is unable to participate in the activities temporarily enjoined by the Commission, and counsel is unaware of her participating in those activities.

V. Analysis and conclusions

[17] It is not necessary for us to set out extensive analysis of the evidence. The summary of evidence which we have reproduced above easily meets the test to establish a *prima facie* case supporting the allegations set out in the notice of hearing. We say that with a clear understanding that this is a preliminary stage and at a hearing on the merits, the affidavit evidence received so far might not turn out to be the same as what may be presented to us at the hearing, and there may be other evidence which contradicts or modifies what we have heard so far. We have before us clear, first hand evidence of conduct which, on a *prima facie* basis, establishes a breach of the Act as alleged in the Notice of Hearing.

[18] We do not end our analysis there. The Act requires us to determine whether the extension sought is necessary and in the public interest. There can be many aspects of the public interest. Here the

primary public interest consideration relates to whether there is a risk to the public should the Temporary Order not be extended.

- [19] The existence of *prima facie* evidence of prior breaches of the Act might support an inference that there is a continuing risk to the public, but that risk should be evaluated carefully and in context. Here are the elements of the present context which are most compelling to us now:
- (a) The specific breaches alleged against Zhang are among the most serious possible under the Act. Fraud can only be established if *mens rea* is proven. As a result, the conduct alleged here involves both a high degree of intentionality and the potential for significant harm in terms of both the impact on the individual investors involved and the confidence which investors generally have in the integrity of the capital markets;
 - (b) The evidence of past conduct in breach of the Act indicates some risk of future breaches;
 - (c) Although temporary orders are only occasionally sought against respondents to reduce risks which might be present during the period after a notice of hearing is issued until the hearing is completed, there is normally an expectation that the hearing process will be completed within a reasonable time. The hearing related to this notice of hearing is taking far longer than normal despite current efforts to find alternative forms of hearing, and the risks to the public are continuing during the extended period;
 - (d) Zhang obtained the initial lengthy adjournment which we granted in part on the strength of her commitment to be co-operative in the hearing process and particularly to provide regular updates on her medical condition. Zhang has ceased providing such cooperation by declining to provide effective contact information and by not providing updates on her condition unless it is in her interest to do so in order to obtain further adjournments. Zhang's motivation for discontinuing her cooperation is unknown but her action increases our concern about risk to the public before a hearing can be held. Although Zhang has delivered evidence of limitations on capacity which has led us to conclude that at this moment Zhang could not properly participate in a conventional hearing, the evidence does not support a conclusion that Zhang lacks the capacity to make false statements to investors of the nature which she is alleged to have made in the past;
 - (e) The submission from Zhang's then counsel suggesting that Zhang is unable to participate in the activities currently prohibited is, as we conclude above, not supported by the evidence before us. However, the submission does suggest that Zhang is not reliant on any of the activities which are prohibited under the terms of the Temporary Order to support herself. If she was so dependent, we would have considered that as an element of our public interest analysis;
- [20] The inability to hold a hearing on the merits promptly is a significant factor in our analysis of the public interest under section 161(3) of the Act. In support of that, we note that section 161(2) of the Act, which authorized the granting of the Temporary Order in the first place, explicitly

connects our discretion to issue a temporary order to the length of time that will be required to hold a hearing. It logically follows that the length of time required to hold a hearing must also be a factor in any application to extend such an order. The underlying reasons for the delay in these proceedings initially called for patience and forbearance in the interests of preserving and promoting the public interest in ensuring that the hearing in this matter be conducted fairly. Significant time has passed and with Zhang ceasing to cooperate in the hearing process, it is both reasonable and necessary that this panel now take this demonstrative interim step in the public interest.

[21] After considering all of the relevant factors we concluded that it is in the public interest that the Temporary Order be extended until May 10, 2024.

June 12, 2023

For the Commission

Gordon Johnson
Vice Chair

Audrey T. Ho
Commissioner

James Kershaw
Commissioner