

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

Citation: Zhang, 2023 BCSECCOM 315

Date: 20230616

**Meiyun Zhang**

<b>Panel</b>	Gordon Johnson	Vice Chair
	Audrey T. Ho	Commissioner
	James Kershaw	Commissioner

**Hearing date** May 10, 2023

**Submissions completed** May 10, 2023

**Ruling date** June 16, 2023

**Appearing**  
Veda Kenda For the Executive Director

P. Scott Horne For Meiyun Zhang

**Ruling**

**I. Introduction**

- [1] This proceeding was initiated by notice of hearing 2020 BCSECCOM 407, dated October 14, 2020. The allegations in the notice of hearing are serious. To summarize briefly, it is alleged that between June 23, 2014 and December 31, 2016, Zhang raised \$3,152,110 from British Columbia investors through a fraudulent scheme and she used the funds raised for purposes other than those promised to the investors, including spending on personal expenses, gambling and cash withdrawals, contrary to section 57(b) of the Act.
- [2] The evidentiary hearing regarding the notice of hearing has been adjourned repeatedly because of Zhang's medical condition. As a result of the delays and in recognition of the seriousness of the allegations against Zhang and the seriousness of her medical issues, on April 25, 2023, we issued a temporary order against Zhang and granted a further adjournment of the hearing (2023 BCSECCOM 192). On May 10, 2023, we extended the temporary order against Zhang (2023 BCSECCOM 237), with reasons to follow and we invited the parties to submit suggestions for a modified hearing process. The reasons for our decision to extend the temporary order are reported at 2023 BCSECCOM 304.
- [3] At a hearing management meeting held on May 10, 2023, we asked the executive director to propose a draft process, with appropriate time lines, to allow this proceeding to be completed in a manner which would be fair to Zhang, given her condition. The executive director's recommendations were received on May 18, 2023. We have adopted much of, but not all, the recommendations of the executive director, outlined below. This decision

sets out our order for how this hearing will be conducted and explains our reasons for taking the approach which we are taking.

## **II. What are the elements of a fair hearing?**

- [4] As outlined in the Commission's hearing policy BCP 15-601 at section 1.2:

The Commission holds administrative hearings, which are less formal than the courts. **The Commission's goal is to conduct its proceedings fairly, flexibly and efficiently.** The procedures set out in this Policy are in furtherance of this goal and the provisions of this policy are to be interpreted in light of this goal. **Where the circumstances require a variation of the procedures set out in this policy in order to achieve this goal, the Commission may do so.**

[emphasis in original]

- [5] The normal process for hearings commenced by the executive director by a notice of hearing under section 161 of the Act bears many hallmarks of proceedings before a Court. The executive director provides disclosure to respondents in advance of the hearing, as well as identifying what evidence he will rely on at the hearing, the identity of the witnesses he will call and what he expects those witnesses will say. At the hearing, the executive director calls his witnesses and introduces evidence, and there is an opportunity for the respondents to cross-examine witnesses or object to the evidence. Once the executive director's case is complete, the respondents are afforded a similar opportunity to call witnesses and introduce evidence and there is an opportunity for the executive director to cross-examine witnesses or object to the evidence. Written and oral submissions proceed after the evidentiary portion of the hearing concludes.
- [6] It is clear from BCP 15-601 that fundamental tenets of a hearing before the Commission is procedural fairness to all parties and efficiency in its processes. The Commission's normal manner for holding hearings outlined above has been implemented to achieve these goals. Also clear from BCP 15-601 is that the Commission is not strictly bound to this normal process. The Commission has the inherent ability to be flexible as circumstances arise to vary its own procedures to achieve a hearing that is fair and efficient.
- [7] This ability to be flexible accords with the principles set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. In particular, the Supreme Court held that the duty of procedural fairness is flexible and variable, and that the participatory rights of an individual must both be appropriate in the context of the decision being made while at the same time ensuring that the person affected has the opportunity to put forward their evidence and argument fully so they can be considered by the decision maker.

## **III. What circumstances are present that we can attempt to accommodate?**

- [8] We have previously stated our conclusion that, although Zhang was initially cooperative in advancing this proceeding, she has since become uncooperative. We will not repeat our analysis which led us to that conclusion. Nor will we plead with Zhang to actively

participate in our processes. She has a right to decline to participate, even if we think it would be in her interest to actively participate in her defense. What we can do, even when faced with a lack of participation from Zhang, is redesign our hearing process to allow her to fairly participate, should she choose to do so.

- [9] We will not provide details of Zhang's medical condition here. But we will summarize the circumstances which exist as a result of a combination of Zhang's medical condition and her other personal characteristics:
- a) Zhang speaks Mandarin and, we are advised, needs a translator to communicate in English;
  - b) Zhang now resides outside British Columbia;
  - c) Zhang is not represented by legal counsel; and
  - d) Zhang suffers from a long-term condition which reduces her mental capacity but which is often variable in its impact. Medical experts have stated that Zhang's condition can be treated with medication, and that Zhang's condition can become worse due to the stress of attending a hearing.

- [10] Given those circumstances, an obvious alternative to moving ahead with in person testimony, cross examinations and submissions is to craft an alternative process which will reasonably accommodate Zhang's circumstances. Such a hearing should proceed in writing to the maximum extent possible. This will allow Zhang an opportunity to consider each important step in the process for an extended window of time, and it will offer Zhang other accommodations which are reasonably available to help Zhang participate despite her circumstances.

#### **IV. Executive director's proposal**

- [11] The executive director delivered a proposal which included many elements designed to accommodate Zhang's circumstances. The key elements of the proposal can be paraphrased as follows:
- a) by November 30, 2023, the executive director will deliver his submissions on liability and supporting evidence in affidavit form together with the email and telephone contact information for each person delivering an affidavit;
  - b) if Zhang wishes to cross examine any witness for the executive director, then within 3 months of receiving the executive director's evidence, Zhang will deliver an application to do so which will include the proposed questions;
  - c) if Zhang applies to cross examine any witness, the executive director will be prohibited from discussing the case with that person until the cross examination is complete or the application to cross examine is dismissed;

- d) the executive director may raise an objection to any proposed cross examination question by stating the objection and the basis for it within 7 days of receiving that application to cross examine;
- e) if the panel orders any cross examinations, it will also rule on the form of the cross examinations;
- f) within 3 months of her receiving the executive director's case, Zhang will indicate whether and how she intends to respond and then Zhang will have another 3 months to deliver the materials;
- g) if Zhang does not express an intention to respond within the time period allowed, or if Zhang expresses an intention to respond but then fails to do so within the time period allowed for that, the panel will consider the liability phase of the proceeding closed and issue its decision;
- h) if Zhang does deliver affidavit evidence the executive director will have 21 days to apply to cross examine affiants; and
- i) 21 days after the executive director's cross examinations are completed, if ordered, or 21 days after Zhang's materials are delivered if no application for cross examination is made, the executive director will deliver any reply submissions.

## **V. Analysis and conclusions**

[12] The critical elements at this time that must be reflected in order to allow Zhang to participate fairly are:

- a) Zhang will be stressed by an in person hearing so, as much as possible, the process should be conducted in writing;
- b) Zhang lacks English language skills and so any effort to accommodate that will make the proceeding easier for her to cope with;
- c) Zhang lives outside British Columbia and so will be best able to participate by video conference rather than in person in any processes which must include personal appearances; and,
- d) most importantly, there is evidence from Zhang's medical professional suggesting that Zhang's condition can be treated with medication and that the severity of her symptoms can vary over time. As a result, any process which allows her a reasonable "window" of time to participate, rather than a specific, brief period,

creates the maximum opportunity for Zhang to participate fairly, if she chooses to do so.

- [13] The executive director's proposed process reflects a sincere and thoughtful effort to craft a process which will be effective and fair to Zhang. We are content to adopt most of what the executive director has proposed. However, we have concluded that a few adjustments are appropriate.
- [14] One adjustment we are ordering is that Zhang be provided with submissions which are both in English and translated into Chinese and with the body (excluding any exhibits) of affidavits in English and translated into Chinese. The basis of that order is not connected to any general obligation of the Commission to translate materials into Chinese for respondents who do not speak English. We do not conclude that any such obligation exists. Instead, the basis of the order is in part related to what would happen in the normal process for a hearing, as described immediately below. Another basis for this unusual approach to translation is that Zhang is self represented and faces significant issues which might, at times, make her informed participation in this process difficult. As a result, reducing the language difficulties which Zhang faces is a step which will make it easier for her to cope with and work through any difficulties that her illness creates.
- [15] If the hearing in this proceeding had proceeded in a normal fashion, this tribunal would have provided an interpreter in the hearing room throughout the hearing, at the cost of the tribunal. We see no reason, in this unusual case, why the cost of translation of specific affidavit evidence and of submissions should not similarly come from the budget of this tribunal. To achieve that end, we direct that the executive director arrange for translation by certified translator for both his submissions and the body of any affidavit relied on, and submit those invoices to the hearing office for payment or reimbursement.
- [16] We feel that the process can be simplified somewhat, and that might make it a bit easier for Zhang to understand.
- [17] We believe that the proposed process for Zhang to deliver notice of an intention to provide materials followed later by delivery of the materials themselves is not necessary to achieve a fair outcome and might add unnecessary delay.
- [18] Another adjustment we are making is to the proposed cross examination process. We are unlikely to permit any cross examination in the absence of a dispute between the evidence of witnesses on a material fact. Cross examinations are only likely if the party conducting the cross examination intends to challenge a witness' version of events. It may be hard to conduct a meaningful cross examination of that type with a witness who has the questions in advance. In addition, it will likely be necessary for the panel to have the evidence and submissions of both parties so we can make a well informed assessment of what evidence has sufficient relevance to justify a cross examination. This requires implementing a modified process to address cross examinations and we have included that in our new order.

[19] We have also made some other, relatively less significant, adjustments to timing and process, the purpose of which should be self evident from the terms of our order.

## **VI. Order**

[20] The liability hearing related to the notice of hearing in this proceeding will be conducted as follows:

- a) on or before November 30, 2023, the executive director will deliver to the hearing office and to Zhang's address for delivery all of the evidence it relies upon to establish liability in affidavit form together with his submissions on liability. The body of all affidavits (excluding exhibits to the affidavits) and all submissions will be accompanied by copies translated into Mandarin by a certified translator;
- b) on or before March 30, 2024, Zhang will deliver all evidence she intends to rely upon in this proceeding in affidavit form, together with her submissions on liability. Zhang's submissions and the body of any affidavit she provides may be in Mandarin, but the exhibits to any affidavits will be in English or will be accompanied by translations into English;
- c) if Zhang does not deliver any affidavit evidence then there will be no cross examination. If Zhang does not deliver either affidavit evidence or submissions by March 30, 2024, then the liability hearing will be complete and the panel will complete and deliver its decision on the merits of the allegations in the notice of hearing;
- d) If Zhang delivers affidavit evidence on or before April 21, 2024, any party may apply to cross examine any witness who has provided an affidavit. Any application must state the topic for the proposed cross examination and why that topic is the subject of a material factual dispute;
- e) unless otherwise ordered, all cross examinations will be conducted by video conference technology;
- f) The executive director will deliver any reply submissions by the dates set out below and in the same manner as described above in paragraph 20(a), at which time the liability hearing will be complete and the panel will complete and deliver its decision on the merits of the allegations in the notice of hearing:
  - i. Before April 15, 2024, if Zhang delivers submissions but no affidavit evidence, or if no party applies to cross examine any affiant, or
  - ii. No more than 15 days after all applications for cross examination have been dismissed or all permitted cross examinations have been completed;

- g) this order may be amended, as appropriate, on application of any party or on the panel's own application, and in particular if Zhang obtains legal representation the panel will consider applications for adjustments to this process which might be beneficial at that point;
- h) if Zhang applies to vary this order based upon her medical condition she will deliver her supporting medical evidence with her application. The panel will evaluate any such evidence not merely to assess bare conclusions about capacity or statements confirming that Zhang has a medical condition, but also to assess whether there is affirmative evidence that Zhang's capacity was significantly impaired during the period when Zhang is or was provided with an opportunity to participate in this proceeding as set out in this order; and
- i) if any party wishes to supplement their written submissions with oral submissions that party will apply in writing to make oral submissions within 7 days of the deadline for delivery of the executive director's reply. Any application will address why that party applying asserts that oral submissions are essential in order to achieve a fair result.

June 16, 2023

**For the Commission**

Gordon Johnson  
Vice Chair

Audrey T. Ho  
Commissioner

James Kershaw  
Commissioner