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

Citation: Re Dean, 2023 BCSECCOM 141 Date: 20230329

Order under section 161(6)

Faiyaz A. Dean

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 (the Act).

[2] The executive director of the Commission applied on June 3, 2022 (Application) for orders against Faiyaz A. Dean (Dean) under sections 161(1) and 161(6)(b) of the Act based upon orders made by the United States District Court, Southern District of New York, in *Securities and Exchange Commission v. Francisco Abellan Villena, et al.*, Case No. 18-cv-04309 (PKC).

[3] In his Application, the executive director tendered affidavit evidence, supporting materials, and submissions to the Commission.

[4] Dean responded to the Application, providing written submissions and affidavit evidence. The executive director replied to this response with written submissions and further affidavit evidence.

Background

[5] Dean is a Canadian citizen and resident of Vancouver, British Columbia. He is a lawyer who is currently licensed to practice in Washington State. Dean is currently a non-practicing lawyer in British Columbia.

[6] On May 15, 2018, the United States Securities and Exchange Commission (SEC) filed a complaint in the United States District Court, Southern District of New York, naming Dean as a defendant, amongst others (Complaint). The Complaint alleged that Dean and others "engaged in a fraudulent scheme to effect illegal, unregistered sales of and manipulate the market for shares of … Biozoom Inc." (Biozoom). The Complaint further alleged that the scheme "generated roughly $34 million in illicit proceeds from sales of Biozoom shares to retail investors and others at artificially inflated prices."

[7] Dean did not enter an appearance or participate in the SEC proceeding.

[8] On November 19, 2018, a certificate of default was filed. The certificate noted that Dean had "not filed an answer or otherwise moved with respect to the complaint".

[9] On November 25, 2019, the SEC filed a motion for default judgment against Dean with an attached memorandum and declaration. The SEC's memorandum in support of default judgment stated:

> As for Dean, the SEC effected service on him by two means, including personal service in Canada (Doc. 17 and 17-1). Although Dean's counsel during the SEC's investigation has not been authorized to enter an appearance in this matter, the SEC has also conferred with him about its intention to seek the instant default judgment.

[10] On November 25, 2019, final judgment was filed against Dean. The court found Dean had violated:

(a) section 10(b) of the Securities Exchange Act 1934 (Exchange Act) (fraud in the connection with the purchase or sale of securities);

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

(c) section 17(a) of the Securities Act 1933 (Securities Act) (use of interstate commerce for purpose of fraud or deceit); and

(d) section 5 of the Securities Act (unregistered securities offerings).

[11] The court ordered:

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

(b) Dean be permanently restrained from participating in an offering of penny stock (any security that has a price of less than five dollars); and

(c) Dean pay a civil penalty of US $160,000 to the SEC.

Submissions from the parties

The executive director's submissions

[12] The executive director submitted that Dean's actions were part of a serious market manipulation fraud that resulted in a permanent ban from the penny stock markets in the United States and a monetary sanction. The executive director noted that the total fraud was approximately US $34 million and that Dean was enriched by almost US $120,000.

[13] The executive director did not identify any mitigating or aggravating factors in his submissions.

[14] The executive director argued that Dean's "flagrant disregard for securities law in the U.S." demonstrated a risk to investors and the capital markets and that Dean was unfit to act as a "registrant, director or officer or as an advisor to any private or public issuers".

[15] The executive director seeks permanent bans from the British Columbia capital markets and acting as a director or officer of an issuer or registrant to deter Dean and others from similar future misconduct.

Dean's submissions

[16] Dean opposed the executive director's proposed orders and took the following positions:

(a) The panel is not able to "draw any conclusions about what a U.S. default judgment means in relation to the facts alleged" in the SEC's Complaint because U.S. default judgment law "is an issue of fact that cannot be established without expert evidence." As such, the panel "is not permitted to accept the SEC allegations as fact" like the US District court did.

(b) The US District Court gave no reasons in its final judgment and made no findings of fact.

(c) Alternatively, the panel "may not issue orders that are more onerous" than the orders made by the US District court. As a result, the panel could only make orders that echoed the US District court's final judgment such as prohibitions from trading on Canadian venture exchanges.

(d) In the further alternative, orders against Dean are not in the public interest because he played "at most a peripheral role" in the scheme and "poses no forward looking risk to BC's capital markets."

[17] Dean claimed that his conduct fell "short of market manipulation" under the Act and was too tangential to warrant sanctions being imposed on him. He claimed that:

(a) there was no evidence of any harmed suffered by investors;

(b) he had no history of securities misconduct;

(c) he posed no future risk to British Columbia's capital markets;

(d) he was no longer a practicing lawyer in British Columbia and thus was not "in a position to repeat the alleged misconduct";

(e) there was no need for general deterrence because the underlying misconduct occurred ten years ago in the United States; and

(f) he was not enriched by the scheme.

The executive director's reply submissions

[18] In his reply, the executive director stated:

(a) The US District court noted in the first paragraph of its final judgment that it had "reviewed Plaintiff Securities and Exchange Commission's Motion for a Default Judgment against Defendant, all supporting documents, and any opposition thereto, and based on the evidence and authorities presented therein", provided its decision.

(b) Section 161(6) permits a panel to make an order under 161(1) of the Act after a foreign court has found that a person contravened the laws of that jurisdiction and that there is no statutory restriction about interpreting that court's decision.

(c) Section 161(6) of the Act does not contain any statutory requirement for expert evidence to interpret a foreign court's decision.

(d) The principle of comity is effective only when the threshold for reciprocity is low and that there must be evidence of a denial of justice in the foreign court's order for a panel to not accept that order.

(e) A panel can issue orders that are different or more onerous than the foreign court's orders.

Analysis

Foreign default judgments and expert reports

[19] Section 161(6)(b) 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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> > (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

[20] Section 161(1) of the Act begins:

> 161 (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following…

[21] BC Policy 15-601 describes procedures for hearings. Section 2.1 states:

> 2.1 Procedures – The Commission conducts hearings less formally than the courts. The Act and Regulation include very few procedures the Commission must follow in hearings. Consequently, except for these, the Commission is the master of its own procedures. In deciding procedural matters, the Commission considers the rules of fairness set by the courts and the public interest in having matters heard fully and decided promptly.

[22] The Supreme Court of Canada in *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at paras. 1 – 2 and 54, stated:

> [1] In Canada, the individual provinces and territories bear primary responsibility for the regulation of stocks, bonds, and other securities. However, because modern securities markets transcend provincial and territorial borders, the provinces and territories have in recent years taken steps to harmonize their securities laws and to improve cooperation between their securities regulators.
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> [2] As a result of these efforts, the British Columbia Securities Commission (the "Commission"), like all of its provincial and territorial peers, has been empowered to bring proceedings in the public interest against persons who, among other things, have agreed with another jurisdiction's securities regulator, by way of a settlement agreement, to be subject to regulatory action; see s. 161(6)(d) of the Securities Act, R.S.B.C. 1996, c. 418. In the jargon of the industry, these proceedings are known as "secondary proceedings" because they piggy-back on another jurisdiction's efforts.
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> [54] … s. 161(6) obviates the need for inefficient parallel and duplicative proceedings in British Columbia by expressly providing a new basis on which to initiate proceedings. In other words, s. 161(6) achieves the legislative goal of facilitating interprovincial cooperation by providing a triggering "event" other than the underlying misconduct. The corollary to this point must be the ability to actually rely on that triggering event — that is, the other jurisdiction's settlement agreement (or conviction or judicial finding or order, as the case may be) — in commencing a secondary proceeding.

[23] The panel in *Re Pierce*, 2016 BCSECCOM 188, at para. 27, stated that, in an application that relied on section 161(6) (section 161(6)(c) in *Pierce*), the Commission:

> …should treat the originating body's order and findings of fact as facts when determining whether to issue an order in the public interest. To require the executive director to relitigate that order and findings of fact would be contrary to the legislative intent and would result in "inefficient parallel and duplicative proceedings".

[24] *Pierce* was followed by the panel in *Re Sharp*, 2023 BCSECCOM 73, which applied it to section 161(6)(b).

[25] Under section 161(6)(b) of the Act, 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 has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives.

[26] It is well-established under United States and Canadian law that a default judgment conclusively establishes the liability of a defendant and any allegations relating to liability are considered true. As a consequence of default, defendants are deemed to have admitted the allegations of the complaint. It is widely held that a court, when faced with a default judgment, is required to accept all of the factual allegations as true. A commission panel in *Durante (Re),* 2004 BCSECCOM 634 stated the following at paragraphs 9 and 26:

> Under U.S. law, a default judgment is an admission of the facts alleged in the complaint.

> Under U.S. law, the effect of the default judgments is that Durante is taken to have admitted the allegations in the SEC complaints.

[27] Recently in *Sharp*, a panel made an order against Sharp after the executive director made an application pursuant to section 161(6)(b) of the Act. The Commission relied on the US default judgment in Sharp's SEC proceedings. The panel stated, at para. 17:

> …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.

[28] Common law permits the recognition and enforcement of foreign judgments in Canada. The majority of the Supreme Court of Canada in *Beals v. Saldanha*, 2003 SCC 72, held that, when there is a real and substantial connection to a foreign jurisdiction, decisions from courts in that jurisdiction should be recognized domestically:

> [28] … Subject to the legislatures adopting a different approach by statute, the "real and substantial connection" test should apply to the law with respect to the enforcement and recognition of foreign judgments.

[29] Dean's submissions state that "[f]oreign law relating to American federal or state default judgments is an issue of fact that cannot be established without expert evidence" and that, as a result, the Commission cannot take judicial notice of foreign law. He relies on *H&H Marine Engine Service Ltd. v. Volvo*, 2009 BCSC 1389, for this principle. *H&H* can be distinguished on its facts. It applies where a party chooses to plead claims in a domestic court using foreign laws.

[30] The case upon which *H&H* relies for the principle that foreign law is an issue of fact, *Yordanes v. Bank of Nova Scotia*, [2006] OJ No. 280, considered the statement of claim in a class action which sought remedies using Argentine laws. In *H&H* itself, the court was asked to interpret international arbitration rules.

[31] These are both factually different applications of the principle from *H&H* on which Dean seeks to rely. That principle does not apply where a British Columbia court or tribunal is asked to take notice of a foreign court's final judgment.

[32] This distinction was recently discussed in *United States Securities and Exchange Commission v.* Sharp, 2023 BCSC 425, regarding a *Mareva* injunction. The court held, at para. 67:

> …In this case, I am not being asked to apply US securities law, as I am not adjudicating the US Proceeding, Rather I am asked to consider the plaintiff's case in the US Proceeding as one element of the test in determining whether to exercise my discretion in favour of injunctive relief. In my view, this distinction is important. In a case such as this one, in which the alleged behaviour is clearly and manifestly fraudulent, to require expert evidence that such behavior violates US law would be to create a technical impediment to

> injunctive relief that is inconsistent with the flexible and discretionary nature of the *Mareva* injunction.

[33] Moreover, Dean's submissions on this point cannot be reconciled with the many instances where default judgment in foreign jurisdictions has been accepted by courts and tribunals for domestic remedies such as *Durante* and *Sharp*. In *Beals*, the Supreme Court of Canada allowed a Florida court's default judgment to be enforced against the appellants in Ontario.

[34] Dean's submissions are also contrary to principles of statutory interpretation. When interpreting statutes, the Supreme Court of Canada in *Rizzo v. Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at para. 21, held:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[35] Section 161(6)(b) of the Act states that the Commission may make an order when a person has contravened securities laws "in Canada or elsewhere". "In Canada or elsewhere" is repeated in every other subsection of section 161(6). Section 161 is entitled "enforcement orders". Read in context and in harmony with the remainder of the section, it is clear that the legislature intended the Commission to be able to use decisions from other jurisdictions in order to make orders under 161(1).

[36] There is no statutory language in sections 161(6) or 161(1) of the Act that requires expert opinions to proceed with orders against a person who has been found in a foreign jurisdiction to have contravened the securities laws of that jurisdiction. The imposition of such a requirement when none exists in the legislation would be inconsistent with the legislature's intention to avoid inefficient parallel and duplicative proceedings as noted in *McLean* above.

[37] We find that we have the expertise and jurisdiction to interpret what the basis for a default judgment is. Dean failed to respond to the SEC's allegations despite being served. The SEC then obtained a certificate of default and brought a motion for default judgment with a memorandum in support. We accept that the court reviewed the file, held that Dean violated US securities laws, and sanctioned him. As a result, section 161(6)(b) of the Act permits us to make orders under section 161(1) if it is in the public interest.

More onerous orders

[38] Dean submits that, absent additional evidence of wrongdoing, the panel is not permitted to give orders that are more onerous than the original jurisdiction. He claims that the executive director is seeking orders that are more onerous than those imposed by the US final judgment. Dean relies on the BC Court of Appeal's decision in *Lines v. British Columbia (Securities Commission)*, 2012 BCCA 316, at para. 33:

> I do not say that the Commission may never impose a sanction under s. 161(6)(d) that is materially more onerous than the terms of the agreement on which it is based: that question is for another day. It seems to me, however, that justice as well as transparency and intelligibility require that the Commission have evidence or an admission of a defendant's wrongdoing – and of course that the defendant be in a position to challenge such evidence at a hearing – before such an order could reasonably be made under s. 161(6)(d).

[39] Dean claims that the only evidence that the executive director relies on is the default judgment and that that judgment "is not sufficient evidence or an admission of the Respondent's wrongdoing for the panel to make orders more onerous than the New York Orders."

[40] Section 161(6)(b) of the Act allows the Commission to make an order under section 161(1) if the person "has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or derivatives". The only limitation is the requirement that a respondent be given an opportunity to be heard.

[41] Section 161(1) of the Act states that the Commission may give orders if it "or the executive director considers it to be in the public interest".

[42] Neither section 161(6)(b) or 161(1) of the Act contains any legislative language that limits the orders that the Commission may impose on a respondent.

[43] The Supreme Court of Canada in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37, at paras. 36, 39, and 56, noted that the purpose of public interest orders, such as in section 161(1), are to be "protective and preventative, intended to be exercised to prevent likely future harm" to the capital markets.

[44] If orders under section 161(1) of the Act are in the public interest, then the Commission considers the evidence and applies that to the factors relevant to sanction, including those listed in *Re Eron Mortgage Corporation,* [2000] 7 BCSC Weekly Summary 22.

Evidence relied on

[45] Dean claims that the executive director did not submit any evidence or admissions as a basis for section 161(1) orders. He is incorrect. The executive director provided:

(a) The SEC's Complaint;

(b) Declaration of Jennie Krasner;

(c) Certificate of Default;

(d) SEC Motion for Default Judgment;

(e) Final Judgment;

(f) Affidavit #1 of Jennifer Wong;

(g) Affidavit #1 of Colette Colter; and

(h) Affidavit #1 of Maryrose Abustan.

[46] Moreover, the US court's final judgment explicitly states that:

> "the Court has reviewed Plaintiff's Securities and Exchange Commission's Motion for a Default Judgment against Defendant, all supporting documents, and any opposition therefore, and based on the evidence and authorities presented therein, the Court hereby finds that Defendant has violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act")…Rule 10b-5…Section 17(a) of the Securities Act of 1933 (the "Securities Act")…and Section 5 of the Securities Act…and orders as follows…"

[47] We find that Dean has been given an opportunity to be heard, that a US court has found him to have contravened the laws of that jurisdiction respecting securities, and that we are permitted by the Act and common law to make orders under section 161(1) that we consider to be in the public interest. There are no legislative or common laws that require that we only make orders that are exactly equivalent to the originating jurisdiction's orders.

The public interest

[48] Dean submits that that orders against him "are unnecessary to protect or prevent harm to BC's capital markets, or for deterrence."

[49] Dean is the subject of a civil judgment for extremely serious securities misconduct. He was found to have been part of a fraudulent scheme to manipulate the market.

[50] Having found that we are authorized by section 161(6)(b) of the Act to consider the imposition of orders against Dean, the question arises as to whether it is in the public interest to do so.

[51] *Eron* 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.

[52] 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

[53] Market manipulation frauds are one of the most serious misconducts contemplated by the Act. As noted by the panel in *Re Lim*, 2017 BCSECCOM 319, at para. 12, market manipulations "require a finding of intent on the part of the respondent and some element of deceit".

[54] There is no doubt that Dean's misconduct that resulted in the SEC sanctions was extremely serious. Dean, and others, participated in a fraudulent scheme to manipulate the shares of Biozoom and sell unregistered shares of Biozoom. The result of this scheme was approximately US $34 million in illicit proceeds from the sale of Biozoom shares.

[55] Dean furthered the scheme by:

(a) Acquiring the shares of an inactive shell company for his co-conspirators;

(b) Hiding his co-conspirators' control of the shell company's shares by placing the shares in the names of Argentine nominees who had no interest or control over the shares;

(c) Falsifying transaction documents to hide the fact that the acquired shares could not be freely re-sold;

(d) Arranging to have the Biozoom shares deposited in accounts in the names of the Argentinian nominees at US brokerages;

(e) Directing and facilitating the opening of the Argentinian nominees' brokerage accounts and deposits of the shell company's shares; and

(f) Facilitating deposit of Biozoom shares into the Argentinian nominees' brokerage accounts.

[56] Securities fraud, market manipulation, using manipulative and deceptive devices, and unregistered securities offerings are all serious misconduct in British Columbia and are harmful to both investors and the integrity of the capital markets. The seriousness of Dean's actions was exacerbated by the sophistication of the scheme.

Harm to investors

[57] Dean submitted that there was no evidence that the fraudulent scheme resulted in harm to investors. In his reply submissions to Dean, the executive director provided the SEC's litigation release No. 24141 which stated that the SEC established a fair fund and "returned more than $14 million to harmed investors."

[58] In *Nuttall (Re),* 2012 BCSECCOM 97, at para. 17, the panel stated:

> In cases where the misconduct involves illegal distributions, fraud, market manipulation, illegal insider trading, or other market misconduct, panels have consistently held that harm to investors can be inferred in the absence of evidence.

[59] Dean's fraudulent market manipulation involved artificially high stock prices which were sold to unsuspecting investors who, consequently, suffered harm when the prices fell. Dean claims that his role in the fraudulent scheme was "relatively minor". He is wrong. He had an essential role in the market manipulation and, because of his actions, investors were harmed.

Enrichment

[60] Because of Dean's actions, his co-conspirators were enriched by US $34 million. Dean received almost US $120,000.

[61] Dean submits that the US $120,000 "for services performed" and that the allegations do not establish if the amount was for "legitimate professional services" for his co-conspirators. Dean's claim that the money he received from his part in a market manipulation is somehow legitimate is audacious. We find that he was enriched.

Mitigating/aggravating factors/past misconduct

[62] Dean submits that there are no aggravating factors because he has no prior history of securities regulatory misconduct.

[63] The Commission previously held in *Re Greenway*, 2012 BCSECCOM 69, at para. 29, that experienced securities lawyers ought to know the rules of the securities industry and that their failure to uphold those rules is an aggravating factor.

[64] Dean told his co-conspirators that he was a specialist in taking companies public and used his legal skills to enable securities fraud. We find that this is an aggravating factor.

Risk to investors and the capital markets

[65] Dean submits that he does not pose a future risk to British Columbia's capital markets band that his current non-practicing status as a lawyer in British Columbia "mitigates any risk".

[66] As the executive director states in his reply submissions, there is no evidence that Dean's current restrictions are permanent in British Columbia and there is evidence that Dean is still an active lawyer in Washington State.

[67] Dean is a resident of British Columbia with an outstanding matter before the Law Society of British Columbia. He played a significant role in a sophisticated market manipulation. Dean did this while being licensed as a lawyer and sworn to uphold the law. Dean's actions display contempt for securities regulations. He continues to be a serious risk to investors and British Columbia's capital markets.

Fitness to be a registrant, director, officer, or advisor

[68] As the panel in *Re SBC Financial Group Inc.,* 2018 BCSECCOM 267, at para. 34, noted: "Honesty is a critical part of being a registrant or a director or an officer of an issuer. In fact, it is part of the basic duties of those positions."

[69] In his reply submissions, the executive director provided a BC Company Summary that shows that Dean is the sole director of the active company, Dean Executive Corp., formerly Dean Law Corporation.

[70] For the same reasons that he is a risk to investors and the capital markets, Dean has demonstrated that he is not fit to be a registrant, director, officer, or advisor in British Columbia.

Specific and general deterrence

[71] Dean submitted that his conduct does not require orders for specific or general deterrence. He stated that he "is no longer permitted to practice law" and therefore cannot repeat the fraud. As noted above, this is false. Dean is an active lawyer in Washington State and has not been disbarred by the Law Society of British Columbia.

[72] Dean did not participate in the SEC proceedings and his submissions before the Commission show that he has not accepted any responsibility for his role in the market manipulation. Contrary to Dean's submissions, the US court accepted the SEC's submissions when it granted final judgment.

[73] As the panel stated in *Re Gozdek*, 2022 BCSECCOM 10, deterrence is a less important consideration in section 161(6) applications because sanctioning has already occurred. Primarily we are seeking to protect the public from future risk of harm.

[74] We need to consider the effect that Dean's conduct had on the integrity of the public markets. Any sanction should be sufficient to deter people from engaging in similar conduct in the future. In particular, we need to consider the effect on deterring those in the legal profession who work in the securities industry from engaging in actions like Dean's.

Previous orders

[75] The executive director cited *Re Deyrmenjian*, 2019 BCSECCOM 93, *Re Lim*, 2017 BCSECCOM 319, and *Poonian (Re)*, 2015 BCSECCOM 96 is support of his position that permanent market bans are appropriate. All three cases involved market manipulations and resulted in permanent market bans.

[76] Dean submitted that these cases are not appropriate because his conduct did not amount to a market manipulation, his enrichment was not as much as in the cases, and because a permanent ban would be punitive. Dean stated that *Re Cerisse*, 2017 BCSECCOM 27, and *Re Hamilton*, 2019 BCSECCOM 115, are more appropriate.

[77] In *Cerisse*, the panel dismissed the market manipulation allegations against the respondents. In *Hamilton*, a panel found that Hamilton concealed his ownership in a corporation which he sold without public disclosure and provided misleading information to US securities regulators. Hamilton received seven year market prohibitions.

[78] Dean submitted that *Cerisse* is more appropriate because his conduct "is not deserving of sanction". In the alternative, if we determine that orders against Dean are in the public interest, Dean states that his conduct was not as serious as the respondent in *Hamilton* and "that orders less severe than those imposed against Hamilton are appropriate."

[79] The facts in this case are significantly more serious than those in *Cerisse* or *Hamilton* and more closely align with the cases the executive director provided.

[80] The Southern District of New York court accepted as true the factual allegations of the complaint and the supporting documents for the motion for default judgment and determined that Dean had violated numerous US securities laws. He received significant, permanent prohibitions from participating in the securities industry in the United States as a result of his deliberate, deceptive conduct that helped to generate approximately US $34 million in proceeds. This conduct significantly harmed unsuspecting investors.

[81] The purpose of section 161(6)(b) of the Act 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. We find it in the public interest to issue orders in this matter.

[82] Dean did not provide any evidence of circumstances that would limit orders against him, such as those referenced in *Davis*. As such, we find that there are no mitigating factors.

Order

[83] After providing Dean an opportunity to be heard, and considering the record and the submissions of the parties, we find that it is in the public interest to order that, pursuant to section 161 of the Act:

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

(b) Dean is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives a registered dealer a copy of this decision, he may trade and purchase securities 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 Dean's own behalf in respect of circumstances that would reasonably be expected to benefit Dean.

March 29, 2023

For the Commission

Gordon Johnson	Jason Milne
Vice Chair	Commissioner