

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

Citation: Re Dhanani, 2016 BCSECCOM 179

Date: 20160530

**Ayaz Dhanani (also known as Azim Virani, Michael Lee, Alex Nebris,
Paul Dhanani, Samuel Ramos, and Rahim Jiwa)**

Panel	Nigel P. Cave Judith Downes Gordon L. Holloway	Vice Chair Commissioner Commissioner
Hearing Dates	December 8 and 9, 2015	
Submissions Completed	March 21, 2016	
Date of Findings	May 30, 2016	
Appearances	Neil Cave For the Executive Director	

Findings

I. Introduction

- [1] This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- [2] On December 4, 2014, the executive director issued a notice of hearing against the respondent (2014 BCSECCOM 486).
- [3] On October 22, 2015, the executive director issued an amended notice of hearing against the respondent (2015 BCSECCOM 390).
- [4] In the amended notice of hearing the executive director alleges that the respondent perpetrated a fraud contrary to section 57(b) of the Act.
- [5] During the hearing, the executive director called four witnesses, a Commission investigator and three investors, tendered documentary evidence and provided written and oral submissions.
- [6] Although he had notice of the hearing, the respondent did not attend the hearing, tender any evidence or provide any written or oral submissions.

II. Background

- [7] Dhanani is a resident of British Columbia. He has never been registered in any capacity under the Act.

- [8] Dhanani had dealings with three investors. The following is a summary of the evidence associated with each of the investors.

a) Investor A

- [9] Investor A first met the respondent in 2012 when they worked together. The two remained in contact after Investor A changed jobs.

- [10] In June 2013, Dhanani sent Investor A the following text

Most of my friends are involved in this so I think I should share with you also. This happens a few times a year. It's a mining company stock. There ipo is on Friday. Hard to get into all the details but my company kinda has the inside on this deal. Most shares prices should go up around 50%! definitely lucrative? gotta put in before Thursday and cash out following week wed. doesn't matter the amount but as long as making money is the good thing.

- [11] The next day, Investor A gave the respondent a cheque for \$13,800. Investor A testified that this money was given to Dhanani to be invested in the mining company that was referred to in the above text. The respondent provided Investor A with a receipt for this amount acknowledging that it was for a "stock purchase".

- [12] The respondent gave Investor A's cheque to his father who then deposited the cheque into his bank account (Dhanani's father shares the same first initial with his son). Dhanani's father withdrew \$6,500 in cash and gave that money to his son.

- [13] Over the next week, the remaining \$7,300 was consumed by further cash withdrawals and by personal expenditures of Dhanani's father.

- [14] Ten days after receiving the \$13,800 from Investor A, Dhanani sent her the following text

\$13,800 investment just over 30% return on investment. Minus brokerage fees etc. total net profit \$4140. So total chq will be for \$17,940.

- [15] Despite protracted attempts by Investor A to get money back from Dhanani, Investor A has never received any funds back from Dhanani.

b) Investor B

- [16] Investor B first met Dhanani when the respondent approached him when Investor B was working as a bank teller. Dhanani introduced himself as "Azim Virani".

- [17] Investor B was shown a picture of the respondent during his testimony and he confirmed that the person with whom he had all of his dealings and who called himself "Azim Virani" was, in fact, Ayaz Dhanani.

- [18] Although all of the testimony given by Investor B and certain of the documents produced by Investor B referred to “Azim Virani”, we find that in each case, the person referred to under that name was Ayaz Dhanani.
- [19] Dhanani told Investor B that his family owned a local hotel and that he might be interested in hiring Investor B. Dhanani and Investor B met several times to discuss this job opportunity. During one of these meetings, Dhanani told Investor B about an investment opportunity in an oil company that was about to complete an initial public offering. Dhanani said that Investor B would make a 40-50% return on an investment in two weeks.
- [20] Investor B then gave Dhanani four bank drafts totaling \$55,000. Investor B testified that in each case Dhanani gave him a security agreement, that purported to guarantee the original principal amount, and a receipt acknowledging payment for a “stock purchase”. Investor B was only able to provide a copy of one security agreement and one receipt. The terms of these documents were consistent with his oral testimony.
- [21] Dhanani gave his father the four bank drafts and his father deposited them into two separate accounts. A total of \$38,500 was withdrawn almost immediately from these accounts, some of which went to Dhanani. The remainder of the \$55,000 was then withdrawn from Dhanani’s father’s accounts to pay personal expenses.
- [22] Investor B testified that after he had given Dhanani the four bank drafts they met and Dhanani promised him that the stock investment was going well.
- [23] Investor B has never received any funds back from Dhanani.

c) Investor C

- [24] Investor C first met Dhanani at a social function. About a month after their first meeting, Dhanani presented Investor C with an investment opportunity. Investor C testified that Dhanani told him that he would invest Investor C’s funds in the shares of a gold mining company that was undergoing an initial public offering which would result in a 20-40% return over a two month period.
- [25] Dhanani sent Investor C a text confirming Investor C’s participation in this investment as follows
- Hello my friend hope you have a good day so far. I got you booked as of now for the stock thing for the 120k. Do me a quick favor and send me your address and email address so can include in the receipt invoices??
- [26] Dhanani instructed Investor C to make out his bank draft to the name of “Zhongyun Zhang”. Investor C testified that Dhanani’s explanation for these instructions was that he made these stock investments in the names of others to avoid paying taxes.

[27] Investor C provided a bank draft in the name of Zhang in the amount of \$120,000 to Dhanani. The funds eventually found their way, through the hands of several intermediaries, into a bank account in the name of Zhongyun Zhang. These funds remain in that account which has been frozen by a Commission order under section 155 of the Act.

[28] In a compelled interview given under oath, Dhanani offered the following explanations for the three purported investments set out above:

1. he received cash from his father for the full amount of the investments for Investors A and B, and then gave that cash to his friend “Azim Virani” who was to make the purported investments. Dhanani said that he lost contact with his friend “Azim Virani” and could not get the investor’s funds returned.
2. he was not involved in any investment transaction with Investor C, that he merely arranged an introduction between Investor C and a third party with respect to a currency transaction.

[29] We do not find Dhanani’s version of events credible for the following reasons:

1. his explanation that Investor A’s and B’s bank drafts were cashed and then given to “Azim Virani” for investment, is not consistent with the banking records which indicate that a substantial portion of those investors’ funds were left in Dhanani’s father’s bank accounts and used on personal expenditures;
2. “Azim Virani” was the alias used by Dhanani throughout his dealings with Investor B and there is no evidence that Azim Virani even exists. Dhanani was unable to provide Commission staff with any means of contacting an individual of that name;
3. his explanation of a lack of involvement in an investment arrangement with Investor C is completely inconsistent with Dhanani’s own texts to Investor C both prior to and after taking Investor C’s money;
4. his explanation of never having taken Investor C’s funds is inconsistent with the testimony of Investor C and the answers given under oath in a compelled interview by one of the intermediaries who facilitated the eventual deposit of those funds in Zhang’s bank account, who said that he received the cheque from Dhanani; and
5. there was a complete lack of any evidence (i.e. no documents or third party witnesses) corroborating any aspect of these explanations anywhere in the proceedings.

III. Analysis and Findings

A. Applicable Law

Standard of Proof

[30] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada held:

49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[31] The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.

[32] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

Fraud

[33] Section 57(b) states

A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct

...

(b) perpetrates a fraud on any person.

[34] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at page 20):

... the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim’s pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim’s pecuniary interests are put at risk).

B. Analysis

i) In respect of a security

[35] In order to contravene section 57(b), the impugned conduct must relate to securities.

[36] The evidence demonstrates that Dhanani repeated a similar pattern of conduct with all three investors. He held himself out as having information relating to an upcoming offering of shares in a company: a mining company in the case of Investor A, an oil company for Investor B, and a gold mining company for Investor C. Dhanani said he

could get the investors involved in a lucrative opportunity to purchase shares in these companies. The investors, in return, believed Dhanani and agreed to invest in these opportunities by providing him funds. The investors did so on the understanding that they would receive shares that would, if all went well, increase in value over a short period of time.

- [37] It is clear that the investors were led to believe they would be purchasing securities within the meaning of section 1(1) of the Act. We find that the conduct of Dhanani described above, including promoting the investment opportunities to each of Investor A, B and C, as well as taking the investors' funds on the understanding that the funds were to be used to purchase shares, was conduct related to securities as required in section 57(b) of the Act. We also find that the respondent committed acts of deceit, discussed below, as part of this scheme.

ii) *Actus reus of fraud*

- [38] The executive director says that the respondent committed the prohibited act of deceit necessary to establish fraud when Dhanani deceived the three investors by taking their funds for the purported stock investments and then not making any investments as promised. Instead, the funds from the investors were taken in cash by Dhanani and his father and the remainder used on personal expenses.
- [39] We find that Dhanani committed a deceit when he took Investor A's, B's and C's funds on the promise of investing them in the shares of companies about to go public and then failing to do so.
- [40] We also find that this deceit resulted in deprivation. As established by *R. v. Abramson* [1983] B.C.J. No.1305, the investors' pecuniary interests were put at risk from the moment that they provided their funds to the respondent based on his deceit. In this case, there has also been actual deprivation as the funds (other than those of Investor C) have been lost and, in the case of Investor C, his funds are frozen in an account belonging to a third party.

iii) *Mens rea of fraud*

- [41] We also find that the respondent had the requisite subjective knowledge of the deceit and the deprivation. Dhanani was aware that he told the investors that he would invest their funds and that he did not. This must be so as Dhanani took control of each of the three investors' funds and gave them to others in a manner that was inconsistent with the purpose for which he took the money.
- [42] We find that the respondent perpetrated a fraud on each of Investor A, B and C in the collective amount of \$188,800 in contravention of section 57(b) of the Act.

[43] We direct the parties to make their submissions on sanction as follows:

By June 24, 2016	The executive director delivers submissions to the respondent and to the secretary to the Commission
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By July 8, 2016	The respondent delivers response submissions to the executive director and to the secretary to the Commission
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Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By July 15, 2016	The executive director delivers reply submissions (if any) to the respondent.
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May 30, 2016

For the Commission

Nigel P. Cave
Vice Chair

Judith Downes
Commissioner

Gordon L. Holloway
Commissioner