

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

Citation: Re Briner, 2023 BCSECCOM 168

Date: 20230413

**Order under section 161(6)**

**John David Briner**

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

**Introduction**

- ¶ 1 This is an order under sections 161(1) and 161(6)(b), (c) and (d) of the *Securities Act*, RSBC 1996, c. 418 (Act).
- ¶ 2 The executive director of the Commission applied on July 30, 2021, for orders reciprocating in British Columbia certain of the sanctions imposed on John David Briner (Briner) based on the findings and orders in:
- *Re John Briner and others*, File No. 3-16339, (SEC Administrative Action);
  - *Regina v. John David Briner*, Court File No.: 2040:235454-2-C (Provincial Court Action); and
  - *U.S. Commodity Futures Trading Commission (CFTC) v. John b, Metrowest Law Corp. and others*, Civil Action No.: 15-cv-03307 (CFTC Action).

**The United States Securities and Exchange Commission (SEC) Action**

- ¶ 3 On January 15, 2015, the SEC commenced administrative proceedings against Briner. On May 20, 2015, an administrative law judge found Briner was in default for failing to defend the proceeding. Briner subsequently submitted an offer of settlement to the SEC. Briner consented to the SEC making findings and issuing orders against him.
- ¶ 4 The SEC Administrative action dated September 18, 2015 (SEC Order) found Briner willfully violated sections 17(a)(1), (2) and (3) of the *Securities Act of 1933* (U.S. Securities Act). The underlying scheme was elaborate and deceitful, involving nominee officers of issuers created by Briner, and fictitious claims and agreements. Registration statements misrepresented the ownership of mining assets, Briner's interest in the issuers, and payments made for stocks. Twenty registration statements were filed that repeated the misleading information.
- ¶ 5 The SEC Order found that the material misstatements and omissions that Briner caused to be filed in the issuer's registration statements were false and misleading. Briner received \$20,000 for his work on behalf of the Issuers, including filing the false records.

### **The Provincial Action**

- ¶ 6 The Provincial Court Action relates to an August 31, 2009 SEC complaint filed by the SEC alleging that Briner had violated among other things section 17(a) of the U.S. *Securities Act* [15 U.S.C. § 77(q)(a)] and section 10(b) of the U.S. *Exchange Act* [15 U.S.C. § 78(j)(b)]. It was alleged that Briner had “knowingly created a false and fraudulent appearance of legitimate market activity”. Briner consented to a final court judgement. On November 3, 2010, the court imposed prohibitions on Briner.
- ¶ 7 The allegations concerned a fraudulent scheme involving a company called Golden Apple. It was alleged that Briner created a materially false and fraudulent appearance of legitimate market activity in the stock of that company.
- ¶ 8 On November 3, 2010, Briner consented to a final court judgement for his role in the fraudulent scheme. The court imposed:
- a permanent injunction from engaging in future similar conduct;
  - a five year prohibition from acting as an officer or director of certain issuers;
  - a prohibition from participating in activities involving penny stock; and
  - a monetary penalty of \$92,368.40
- ¶ 9 The Commission made an order under sections 161(1) and 161(6)(d) of the Act based on the findings of the court in the Golden Apple matter (BCSC Order). Under the terms of the BCSC Order, Briner was required to resign any position he held as a director of any issuer, registrant or investment fund manager and prohibited from doing the following until November 3, 2015:
- trading in, and purchasing securities and exchange contracts;
  - becoming or acting as a director of any issuer, registrant, or investment fund manager;
  - becoming or acting as a registrant, investment fund manager or promoter;
  - acting in a management or consultative capacity in connection with activities in the securities market; and
  - engaging in investor relations activities.
- ¶ 10 Briner breached the terms of the BCSC Order and was charged with nine counts of contravening section 155(1)(c) of the Act. Briner plead guilty to five counts and was sentenced to a fine of \$1,000 on February 9, 2016 (Provincial Conviction).

### **U.S. Commodity Futures Trading Commission (CFTC)**

- ¶ 11 On July 27, 2016, the United States District Court for the Northern District of Illinois, Eastern Division granted the CFTC an order of final judgment against Briner, MetroWest Law Corp., Briner’s client Matthew Marcus, and Tech Power Inc., for violations of the *Commodity Exchange Act*, 7 U.S.C. §§1-26 (2012) and the CFTC’s regulations.

- ¶ 12 That court found that Briner and others had engaged in pre-arranged, non-competitive transactions in single stock futures to illegally move at least \$390,000.00 from MetroWest to Tech Power, through fictitious sales.
- ¶ 13 The court imposed a permanent injunction from engaging in future similar conduct and permanent bans on activities involving commodity interests. Briner was also subject to a monetary penalty in the amount of \$280,000 (CFTC Order).

#### **Submissions of the Parties**

- ¶ 14 We find that executive director provided Briner with notice of the application. Briner provided response materials, including an affidavit dated September 24, 2021, in response to the application.
- ¶ 15 The executive director submits that Briner's conduct, including the Provincial Conviction based on his breaches of the BCSC Order, the SEC Order and the CFTC Order involve separate serious misconduct spanning over a decade. This, the executive director submits, raises a concern about whether Briner can be regulated at all. Briner's conduct was exacerbated by:
- the multiple and repeated misrepresentations and omissions, and scope of the underlying scheme in filings with the SEC, reflected in the SEC Order,
  - the abuse of the capital markets related to the fictitious transactions underlying the CFTC Order,
  - breaching an existing Commission Order.
- ¶ 16 Given the foregoing, the executive director submits that permanent prohibitions from participating in the capital markets are warranted.
- ¶ 17 Briner submits that he consents to the orders sought by the executive director, with the exception that he be allowed to continue acting as the sole officer and director of Northwest Hop Farms Inc. (Northwest), the company he operates as his sole business and primary source of income for his family for his wife and eight children. Briner provided financial information outlining the mortgage currently encumbering his family home, and submits that given his past history it is difficult for him to find traditional mortgage financing.

#### **Analysis**

- ¶ 18 Section 161(6) facilitates cooperation between the Commission, other securities regulatory authorities, self-regulatory bodies, exchanges and the courts. If the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia (*McLean v. British Columbia (Securities Commission)* [2013] 3 S.C.R. 895 at para. 54) or before the Commission.

- ¶ 19 The Commission makes reciprocal orders under section 161(6) when such an order will, in the public interest, protect investors and the capital markets in British Columbia.
- ¶ 20 In most circumstances, we would consider the factors outlined in *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, at p. 24, that are identified as relevant to sanctions in the context of an application for orders under section 161(6). In the matter before us, however, Briner has consented to the permanent prohibitions sought by the executive director, and we agree that prohibitions of that nature are required in the circumstances.
- ¶ 21 In particular, Briner is a resident of Chilliwack in British Columbia. He has received significant, permanent prohibitions from participating in the securities industry in the United States of America, as a result of his deliberate, deceptive conduct that significantly harmed unsuspecting investors. He was previously sanctioned by the Commission and subsequently breached those orders. We find that the purpose of section 161(1)(6) is to ensure that the capital markets in British Columbia are protected from persons, such as Briner, who have engaged in conduct in other jurisdictions that would have warranted significant sanctions here. As such, the Commission finds it in the public interest to issue permanent orders in this matter.
- ¶ 22 The only issue that remains before us is whether it is in the public interest to allow Briner the exception that will enable him to continue to be the sole officer and director of Northwest.
- ¶ 23 A key factor which Briner emphasizes in his request to retain his positions as a director and officer of Northwest is that Briner is the sole shareholder of that corporation. It is a reasonable inference that it would be very challenging for Briner to operate Northwest without acting as a de facto director. In addition, it might be very difficult for Briner to find anyone to act as an officer and director of Northwest given that Northwest is a small business with one owner. Perhaps someone could be located to accept such responsibilities, but likely at a cost which exceeds what small private businesses could afford. The net result is that it may not be possible for Briner to successfully operate the business of Northwest unless there is some exception made to the prohibitions which are sought in this application.
- ¶ 24 We have considered Briner's affidavit evidence regarding his reliance on Northwest to support not only himself but also his extended family which includes 5 children and 3 step children. We have also considered the comments of the Honourable Judge St. Pierre in the sentencing for Briner's prior breach of the order of this Commission. It is clear that Judge St. Pierre considered it significant that Briner was struggling to come into compliance with his child support obligations. We are influenced by Judge St. Pierre's comments, and we conclude that it is in the public interest that Briner be able to meet his child support obligations. In our view, that aspect of the public interest can be accommodated while also protecting the public from material risks of future harm from conduct by Briner.

- ¶ 25 The prohibitions which are sought include a prohibition against Briner engaging in promotional activities with respect to any issuer, including with respect to Northwest. That prohibition will provide significant protection to the public, along with the other prohibitions that will be imposed. That level of protection is sufficient to serve the public interest even if Briner remains as a director and officer of Northwest.
- ¶ 26 We conclude that it is appropriate to allow an exception to the prohibitions we will be imposing related to Briner acting as a director and officer, but the exception must be limited to Briner's relationship with Northwest while Northwest remains an issuer whose shares are owned solely by Briner.

**Order**

- ¶ 27 We find that it is in the public interest to order that:
- a) under section 161(1)(d)(i), except as permitted in paragraph (b)(viii) below, Briner resign any position he holds as a director or officer of an issuer or registrant;
  - b) Briner is permanently prohibited:
    - (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives;
    - (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), except as permitted in paragraph (viii) below, 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 market;
    - (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)(vi) from engaging in promotional activities on Briner's behalf in respect of circumstances that would reasonably be expected to benefit Briner,
- (viii) with the exception that Briner may continue to act as director and officer of Northwest during the period that Briner remains the sole shareholder of Northwest.

April 13, 2023

**For the Commission**

Gordon Johnson  
Vice Chair

Judith Downes  
Commissioner