

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

Citation: Re Stuart, 2023 BCSECCOM 165

Date: 20230412

**Order under section 161(6)**

**Marilyn Dianne Stuart**

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

**Introduction**

- [1] This is an order under sections 161(1) and 161(6)(a) of the *Securities Act*, RSBC 1996, c. 418.

The executive director of the Commission applied April 1, 2022, (Application) for orders against Marilyn Dianne Stuart (Stuart) under sections 161(1) and 161(6)(a)(i) of the Act based upon certain orders made by the Ontario Court of Justice.

- [2] In his Application, the executive director tendered affidavit evidence and submissions to the Commission. We find that the executive director provided notice of the Application to Stuart. Although Stuart was provided the opportunity to be heard, she did not participate in the hearing.
- [3] Section 161(6) facilitates cooperation between the Commission and 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 SCC 67, at para. 54).

**Background**

- [4] On December 2, 2019, Stuart plead guilty to one count of fraud over \$5,000, *Criminal Code*, RSC, 1985, c. C-46, section 380(1)(a), at the Ontario Court of Justice in Newmarket, Ontario.
- [5] On December 19, 2019, the Honourable Justice Rose sentenced Stuart to:
- (a) Two years less one day to be served in the community if the conditions of the order were obeyed;
  - (b) Restitution in the amount of \$1.1 million to MFDA Investor Protection Corporation; and
  - (c) A 20-year prohibition from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the

real property, money or valuable security of another person under section 380.2 of the *Criminal Code*.

[6] The Ontario Court of Justice found that

- (a) Stuart defrauded investors of their investment funds in WH Stuart Mutual Ltd. (WH Stuart).
- (b) The misconduct occurred between January 1, 2004 and May 31, 2013.
- (c) During the material times, Stuart and her husband, Walter Howard Stuart, were the principals in the investment firm, WH Stuart. WH Stuart held itself out to the public as a place which would guarantee a return of investment of 5 – 10% annually.
- (d) Stuart's clients consisted of mostly retired people who had transferred their pensions to WH Stuart on the promise of getting this return. The clients expected their money to be invested in cash or cash equivalents.
- (e) WH Stuart did not invest the money as promised. Instead, WH Stuart paid investor funds to other investors to give them the impression that their return had been met. It was a Ponzi scheme.
- (f) WH Stuart used investors' money to fund its operations, to make repayments to Stuart, Stuart's family members, related companies, other clients, and to purchase investment products for other clients.
- (g) Stuart had complete control over the finances of WH Stuart. She had signing authority and functional control of the bank accounts where investor monies were deposited, and directed operations including WH Stuart's financial affairs. Stuart also performed WH Stuart's regulatory functions such as client complaint handling and financial reporting to the Mutual Fund Dealers Association (MFDA).
- (h) Stuart was also a part owner of S21C Technologies Limited (S21C). S21C was the in-house computer database record system designed and used by the company to manage client accounts and to give investors independent access to monitor their accounts. Stuart used this software to support the Ponzi scheme by manipulating information given to investors to give them the false impression that their funds were growing and could be redeemed.
- (i) WH Stuart was licensed by the MFDA. The MFDA's indemnity fund paid out \$7.2 million as a result of WH Stuart's fraudulent scheme.

[7] Stuart is currently 76 years old. She has health issues. At the time of her sentencing, Stuart resided in Keswick, Ontario.

### **Analysis**

- [8] The Commission is established under the Act to regulate the capital markets in British Columbia. Central to the Commission's mandate under the Act is to protect the investing public from those who would take advantage of them, and to preserve investor confidence in the regulated capital markets.
- [9] Stuart received a 2 year less a day conditional sentence, a prohibition order, and a forfeiture order as a result of her Ponzi scheme fraud. Stuart's conduct harmed the investors who trusted her. It is clear from the foregoing facts, and Stuart's admitted participation in the scheme, that Stuart is a risk to the capital markets.
- [10] In his Application, the executive director submitted that Stuart's guilty plea was a mitigating factor because it saved time and public resources.
- [11] However, Stuart is a recidivist. The Alberta Securities Commission (ASC) issued permanent market prohibitions against Stuart in an order dated August 23, 2000 (*WH Stuart Mutuals Ltd, Re*, (2000) 9 ASCS 3321). The ASC found that Stuart "orchestrated a crude but deliberate scheme to circumvent Alberta securities law" when, in 1993 and 1994, WH Stuart sold limited partnership units to Alberta investors without a prospectus or being registered to do so.
- [12] The ASC panel ordered that Stuart be prohibited for life from becoming or acting as a director or officer of any issuer that is a registrant. The panel declined to order any prohibitions from Stuart trading in securities or from acting as a director or officer of any issuer other than a registrant.
- [13] We have considered the executive director's Application, the circumstances of Stuart's misconduct, and the factors from *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.
- [14] Stuart's misconduct was extremely serious. She committed fraud against many investors using millions of their dollars for his personal gain. The size and scope of Stuart's misconduct demonstrates that she is a significant risk to the public and the capital markets. We find that she is unfit to participate in the capital markets of British Columbia and that permanent prohibitions are warranted.

### **Order**

- [15] We find that it is in the public interest to order that:
- (a) under section 161(1)(d)(i), Stuart resign any position she holds as a director or officer of an issuer or registrant;
  - (b) Stuart 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), 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;
- (vii) under section 161(1)(d)(vi), from engaging in promotional activities on Stuart's own behalf in respect of circumstances that would reasonably be expected to benefit Stuart;
- (viii) under section 161(1)(d)(vii), from voting a security or exercising a right attaching to a security or a derivative; and
- (ix) under section 161(1)(d)(viii), from engaging in any activity in relation to the administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark.

April 12, 2023

**For the Commission**

Gordon Johnson  
Vice Chair

Jason Milne  
Commissioner