



Ontario
Securities
Commission

Commission des
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de l'Ontario

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Citation: Paolucci (Re), 2020 ONSEC 32

Date: 2020-12-21

File No.: 2020-25

**IN THE MATTER OF
DINO PAOLUCCI**

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In Writing

Decision: December 21, 2020

Panel: Wendy Berman Vice-Chair and Chair of the Panel

Submissions: Vivian Lee For Staff of the Commission

No submissions made by or on behalf of
Dino Paolucci

REASONS AND DECISION

I. OVERVIEW

- [1] On September 6, 2019, Dino Paolucci was convicted in the United States District Court for the Eastern District of Pennsylvania (the **US Court**) of four counts of securities fraud in violation of Title 15 of the United States Code, Sections 78j(b) and 78ff, Title 17 of the Code of Federal Regulations, Section 240.10b-5, and Title 18 of the United States Code, Section 2. After pleading guilty to the offences,¹ Mr. Paolucci was sentenced to 84 months of imprisonment and ordered to forfeit US\$2 million.²
- [2] Staff of the Ontario Securities Commission (**Staff**) applies for a protective order in the public interest pursuant to s. 127(10) of the *Securities Act*, RSO 1990 c S.5 (the **Act**), which provides that an order may be made under s. 127(1) of the Act against a person who has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives. Staff submits that this precondition has been met and that it is in the public interest based on these circumstances to make an inter-jurisdictional enforcement order permanently prohibiting Mr. Paolucci from participating in Ontario's capital markets.
- [3] For the reasons that follow, I find that Mr. Paolucci's conviction arose from a course of conduct related to securities, and that it is in the public interest to permanently prohibit Mr. Paolucci's participation in Ontario's capital markets by issuing the order requested by Staff.

II. SERVICE AND PARTICIPATION

- [4] Staff served Mr. Paolucci with the Notice of Hearing, Statement of Allegations and Staff's hearing brief, written submissions and brief of authorities by courier at the US correctional facility where Mr. Paolucci is currently incarcerated.³ Staff obtained confirmation from a representative of the US correctional facility that Mr. Paolucci personally received these materials on August 12, 2020.⁴
- [5] I find that service was properly effected on Mr. Paolucci on August 12, 2020.
- [6] Staff elected to proceed by way of the expedited procedure for a written hearing provided for in the Commission's *Rules of Procedure and Forms*.⁵ As stated on the Notice of Hearing, Mr. Paolucci had 21 days from the date of service to file a request for an oral hearing, and 28 days from the date of service to file a hearing brief and written submissions. The deadlines for Mr. Paolucci to request an oral hearing and to serve and file written submissions have passed. No request for an

¹ Exhibit 1, Staff's Hearing Brief, Transcript of Change of Plea Hearing Before the Honorable Eduardo C. Robreno United States District Court Judge dated September 6, 2019, Tab 2 (**Guilty Plea Transcript**) at 35

² Exhibit 1, Staff's Hearing Brief, Transcript of Sentencing Hearing before the Honorable Eduardo C. Robreno United States District Court Judge dated December 10, 2019, Tab 3 (**Reasons for Sentence**) and Judgment in a Criminal Case of the United States District Court for the Eastern District of Pennsylvania dated December 10, 2019, Tab 4 (**Judgment**)

³ Affidavit of Service of Michelle Spain, sworn August 13, 2020

⁴ Supplementary Affidavit of Service of Michelle Spain, sworn October 6, 2020

⁵ (2019) 42 OSCB 9714 (**OSC Rules of Procedure**), r 11(3)

oral hearing was made and no materials were filed by or on behalf of Mr. Paolucci.

- [7] Pursuant to the *Statutory Powers Procedure Act*⁶ and the OSC Rules of Procedure,⁷ the Commission may proceed in the absence of a party who has been provided adequate notice of a proceeding. I am satisfied that Mr. Paolucci was provided with adequate notice of this proceeding and that I may proceed in his absence.
- [8] On December 3, 2020, Staff filed a copy of the US government's change of plea memorandum dated September 6, 2019 in respect of Mr. Paolucci's guilty plea (the **Change of Plea Memorandum**).⁸
- [9] Staff confirmed with a member of the US Department of Justice that the Change of Plea Memorandum is the document referenced as the "plea memorandum" and the "sentencing guilty plea memorandum" at both the change of plea and sentencing hearings before the US Court.⁹
- [10] The Change of Plea Memorandum was not contained in Staff's hearing brief. As Mr. Paolucci has failed to participate in this proceeding and this document is part of the criminal proceedings against him before the US Court, I have granted Staff's request to waive any requirement for service of this document on Mr. Paolucci in accordance with the OSC Rules of Procedure¹⁰ and to admit this document as part of the record in this proceeding.

III. FACTUAL BACKGROUND

A. Conduct at Issue, Guilty Plea and Conviction

- [11] Mr. Paolucci is a resident of Ontario and has never been registered with the Commission in any capacity.¹¹
- [12] As part of the guilty plea before the US Court, Mr. Paolucci admitted the facts contained in pages 3 to 26 of the Change of Plea Memorandum.¹² The key facts are as follows.
- [13] From 2012 through 2013, Mr. Paolucci, along with his co-schemers, promoted penny stocks knowing that the trading volume and price of those stocks were manipulated by himself and others to facilitate what is commonly known as "pump and dump schemes".¹³
- [14] Mr. Paolucci worked with others who had gained control of the vast majority of restricted stocks and free trading stocks of four companies that traded on the over-the-counter markets. Mr. Paolucci worked with others to coordinate trading of the stocks to create a false appearance of an active and liquid market and to artificially drive up the share price and trading volume of each stock. This

⁶ RSO 1990, c S.22, s 7(2)

⁷ OSC Rules of Procedure, r 21(3)

⁸ Exhibit 2, United States of America v Dino Paolucci, Government's Change of Plea Memorandum for the United States District Court for the Eastern District of Pennsylvania dated September 6, 2019

⁹ Affidavit of Michelle Spain, sworn on December 8, 2020

¹⁰ OSC Rules of Procedure, r 6(4)

¹¹ Exhibit 1, Staff's Hearing Brief, Dino Paolucci Section 139 Certificate dated December 10, 2019

¹² Guilty Plea Transcript at 27-28 and 30

¹³ Change of Plea Memorandum at 3-4

enabled Mr. Paolucci and his co-schemers to make maximum profits by selling the shares at inflated prices during stock promotions that they orchestrated.¹⁴

- [15] As a result of his misconduct, Mr. Paolucci benefited, either directly or indirectly, in the amount of approximately US\$2 million.¹⁵ The total fraud loss for which Mr. Paolucci and his co-schemers were responsible was between US\$25 million and US\$65 million.¹⁶
- [16] To avoid detection by securities regulators in the US, Mr. Paolucci and his co-schemers used nominee corporations and individuals to conceal their ownership and control of most of the stocks being manipulated. In addition, offshore accounts and nominees were used to veil the identity of recipients of the proceeds of the manipulations.¹⁷
- [17] On September 6, 2019, Mr. Paolucci pled guilty to four counts of securities fraud before the US Court.¹⁸

B. Sentencing

- [18] On December 10, 2019, Mr. Paolucci was sentenced to 84 months imprisonment and ordered to forfeit US\$2 million.
- [19] In ordering this sentence, the US Court considered Mr. Paolucci's guilty plea but concluded that the seriousness of the conduct warranted a significant custodial sentence. The US Court noted that the conduct was "a hard-core" securities violation and that restitution was not an available remedy as there were too many victims.¹⁹

IV. LEGAL FRAMEWORK

- [20] Subsection 127(10) of the Act provides that an order may be made under s. 127(1) where a person has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives. If that precondition is met, the Commission must consider whether it should exercise its jurisdiction to make a protective order in the public interest.
- [21] In determining whether such an order should be made in the public interest, the Commission may consider, among other factors, the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.²⁰ The purpose of such an order is "protective and preventative" and made to restrain potential conduct that could be detrimental to the integrity of Ontario's capital markets and therefore prejudicial to the public interest.

¹⁴ Change of Plea Memorandum at 4 and 12-26

¹⁵ Guilty Plea Transcript at 12, lines 22-25 and 13, line 1; Change of Plea Memorandum at 17, 19, 22 and 26

¹⁶ Guilty Plea Transcript at 16, lines 1-6

¹⁷ Change of Plea Memorandum at 4-5

¹⁸ Guilty Plea Transcript at 35, line 3

¹⁹ Reasons for Sentence at 71, lines 6-13

²⁰ *Reeve (Re)*, 2018 ONSC 55, (2018) 41 OSCB 9433 at para 27

V. ANALYSIS AND CONCLUSION

- [22] Mr. Paolucci pled guilty to four counts of securities fraud arising from his participation in schemes to manipulate the volume and price of the stocks of four companies. I am satisfied that Mr. Paolucci's conviction for securities fraud arises from a course of conduct related to securities. Therefore, the precondition for an order under s. 127(1) of the Act has been met.
- [23] Mr. Paolucci's misconduct was extremely serious. Over a one-year period, Mr. Paolucci manipulated the stock prices of four companies by coordinating trading of the stocks to create a false appearance of an active and liquid market and to artificially drive up the share price and trading volume of each stock. He and his co-schemers were responsible for fraud losses of between US\$25 million and US\$65 million.
- [24] Further, he worked with others to conceal aspects of this activity in order to avoid detection by securities regulators.
- [25] Fraud is one of the most egregious securities regulatory violations.²¹ It causes direct and immediate harm to investors and significantly undermines confidence in the capital markets.
- [26] Given these circumstances, it is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring Mr. Paolucci from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons.
- [27] In my view and for the reasons set out above, a permanent ban prohibiting Mr. Paolucci from participating in the capital markets is necessary to adequately protect investors and the capital markets. I therefore order that:
- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Mr. Paolucci shall cease permanently;
 - b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Mr. Paolucci shall be prohibited permanently;
 - c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Mr. Paolucci permanently;
 - d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Mr. Paolucci shall resign any positions that he holds as a director or officer of any issuer or registrant;
 - e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Mr. Paolucci shall be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

²¹ *Theroux (Re)*, 2019 ONSEC 20, (2019) 42 OSCB 5043 at para 30; *Lim (Re)*, 2018 ONSEC 39, (2018) 41 OSCB 6045 at para 1

- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Paolucci shall be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 21st day of December, 2020.

"Wendy Berman"

Wendy Berman