Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Rosborough (Re)*, 2023 ONCMT 2
Date: 2023-01-10
File No. 2020-33

IN THE MATTER OF
TREVOR ROSBOROUGH, TAYLOR CARR and DMITRI GRAHAM

REASONS AND DECISION

(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Timothy Moseley (chair of the panel) Cathy Singer James Douglas	
Hearing:	By videoconference, October 7, 2022	
Appearances:	Alvin Qian	For Staff of the Ontario Securities Commission
	Isaac Paonessa	For Taylor Carr
	No one appearing for Dmitri Graham	

TABLE OF CONTENTS

REASONS AND DECISION

1. OVERVIEW

[1] This case relates to trading in securities of WeedMD Inc, an Ontario reporting issuer. Staff of the Ontario Securities Commission alleged that the three respondents engaged in insider trading in WeedMD shares while in possession of material non-public information relating to a planned expansion. Staff also alleged that one of the respondents, Dmitri Graham, made three misleading statements in his examination during Staff's investigation.

[2] Rosborough previously reached a settlement with Staff[1] in which he admitted to having been tipped and to having traded while in possession of material non-public information. These reasons relate to Staff's request for sanctions and costs orders against Graham and against Taylor Carr, following a finding by the merits panel that they contravened Ontario securities law.[2]

[3] The merits panel found the following with respect to Carr and Graham:

a. while an employee of WeedMD, Carr tipped Rosborough about a planned expansion of WeedMD before that information had been generally disclosed, contrary to s. 76(2) of the *Securities Act*[3] (the ***Act***);

b. between November 14 and 22, 2017, with knowledge of the undisclosed planned expansion, Carr entered into numerous transactions in WeedMD shares, contrary to s. 76(1) of the *Act*, making a profit of $1,215.03; and

c. in his examination during Staff's investigation in April 2020, Graham made one misleading statement to Staff, about whether he had assisted Rosborough with work-related activities at a time when Rosborough was not registered, contrary to s. 122(1)(a) of the *Act*.

[4] The merits panel dismissed the other allegations against Graham, including the allegation that he engaged in insider trading contrary to s. 76(1) of the *Act*.

---

[1] *Rosborough (Re)*, 2021 ONSEC 20

[2] *Rosborough (Re)*, 2022 ONCMT 11

[3] RSO 1990, c S.5

[5] For the reasons set out below, we conclude that it would be in the public interest to make the following orders regarding sanctions and costs:

a. Carr and Graham shall pay administrative penalties of $15,000 and $40,000 respectively;

b. Carr shall disgorge to the Commission the amount of $1,215.03;

c. Carr and Graham shall be prohibited from trading in any securities or derivatives, and from acquiring any securities, and shall be prohibited from being directors or officers of an issuer and acting as registrants or promoters, for periods of three and five years respectively; and

d. Carr and Graham shall pay costs of the investigation and proceeding, in the amounts of $5,000 and $15,000 respectively.

2. GRAHAM'S PARTICIPATION SINCE THE MERITS DECISION

[6] Graham did not fully participate in the sanctions and costs hearing. We have proceeded in his absence, and we set out here the factual background to our decision to do so.

[7] In the merits decision, the Tribunal required that the parties contact the Registrar by June 17, 2022, to arrange an attendance for the purpose of scheduling the sanctions and costs hearing, and to arrange a schedule for the exchange of materials in advance of that hearing. On June 17, Staff wrote to the Registrar (with a copy to Graham and to Carr's counsel) offering dates for that attendance, all of which were acceptable to all parties.

[8] The attendance took place on July 7 with all parties present. The Tribunal ordered[4] that the sanctions and costs hearing proceed on October 7. Staff was to file any evidence and submissions by July 22, Carr and Graham were to file responding materials by August 12, and Staff was to file any reply materials by August 19.

[4] (2022) 45 OSCB 6708

[9] Staff filed its material on July 22 as required. On that same day, the Registrar wrote to all parties reminding them that the hearing would take place on October 7, and advising of the composition of the panel.

[10] On August 11, Graham sent to the Registrar, with copies to the other parties:

a. copies of income tax summary pages for 2016 and 2017, and one T4 slip for each of 2018, 2019 and 2020;

b. a September 10, 2021, letter to Graham from a law firm, seeking recovery of funds on behalf of the firm's client; and

c. a February 23, 2022, letter from the Mutual Fund Dealers Association of Canada (**MFDA**) to Graham, summarizing sanctions imposed by a hearing panel on February 16, 2022.

[11] Graham provided no written submissions, nor an affidavit, nor any explanation regarding the documents he had filed.

[12] On October 5, two days before the hearing, the Registrar wrote to the parties to advise that the Tribunal had moved the start time of the hearing from 10:00 a.m. to 10:30 a.m. on October 7. All participants in the hearing, including Graham, would have received automated emails the day prior to, and an hour prior to, the start time of the hearing, providing a link to join the videoconference.

[13] The hearing began at 10:30 a.m. on October 7 as scheduled, but Graham did not appear. At our direction, the Registrar tried to contact Graham by email. Those efforts were unsuccessful. We continued the hearing in Graham's absence.

[14] On October 10, Graham wrote to the Registrar. He apologized for his absence, advising that he thought the date was "after the long weekend", which would have been October 11 or later. He said that he had been "under the weather for the last week and a half" and had not been "thinking about much else besides getting [his] strength back." He simply asked that this be brought to the panel's attention. He made no request about next steps.

[15] On October 12, at our direction, the Registrar wrote to Graham, asking him to advise whether he was asking us to permit him to make submissions orally (by videoconference) or in writing. Graham did not respond. On October 27, at our

direction, the Registrar wrote to Graham, advising that he was required to respond by November 4, failing which, we would make our decision without hearing from him. Graham has not responded.

[16] We have given Graham every opportunity to participate in this hearing and he has chosen not to, beyond filing the documents referred to above. Without any testimony or submissions regarding the income tax documents and the collection letter, we must disregard them. We ruled during the hearing that we would not introduce the documents into evidence, and we therefore did not mark them as an exhibit during the hearing, given Graham's absence, but we do so now simply so that they form part of the adjudicative record. However, we place no weight on them. The letter from the MFDA formed part of an affidavit filed by Staff on this hearing, so we do not have the same issue with that document, and in fact we rely on it below.

[17] We turn now to our analysis of the appropriate sanctions and costs against each of Carr and Graham.

3. ANALYSIS

3.1 Introduction

[18] The Tribunal may impose sanctions under s.127(1) of the *Act* where it finds it to be in the public interest to do so. The Tribunal must exercise that jurisdiction in a manner consistent with the purposes of the *Act*, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in the capital markets.[5]

[19] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets.[6]

[20] Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[7] Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular

---

[5] *Act*, s. 1.1

[6] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[7] *Bradon Technologies Ltd. (Re),* 2016 ONSEC 19 at para 28; and at para 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60

case. We refer below to decisions of the Tribunal in other cases, which are helpful but of limited precedential value when determining the appropriate length of a market ban or the amount of an administrative penalty.[8]

[21] In this case Staff seeks the following sanctions:

a. restrictions on participation in the capital markets (*e.g.*, prohibitions against trading, or holding director or officer positions) for three years in respect of Carr and for five years in respect of Graham;

b. an administrative penalty of $26,125 against Carr and $75,000 against Graham; and

c. disgorgement of $1,215.03 against Carr.

[22] Carr does not contest the three-year market prohibitions or disgorgement order being sought against him. He does submit, however, that Staff's requested administrative penalty is excessive. He proposes an administrative penalty of $3,645 (being three times the profit that Carr earned from his illegal insider trading).

[23] As for costs of the investigation and proceeding, Staff submits that Carr should be required to pay $5,000, and Graham should be required to pay $30,000. Once again, Carr submits that Staff's request is excessive. Carr proposes that he pay costs of $2,590.

[24] We begin by reviewing the relevant factors, and how they apply to each of Carr and Graham. We then address each of the requested sanctions in turn.

3.2 Factors relevant to sanctions and costs

[25] In previous decisions, the Tribunal has identified a non-exhaustive list of factors to be considered in determining an appropriate sanctions and costs order, which include:

a. the respondents' level of activity in the marketplace, or in other words, the "size" of the contravention;

b. the seriousness of the misconduct;

---

[8] *Quadrexx Hedge Capital Management Ltd (Re),* 2018 ONSEC 3 (***Quadrexx***) at para 20

c. the size of the profit made or loss avoided from the misconduct;

d. whether the misconduct was isolated or recurrent;

e. the respondents' experience in the marketplace;

f. any mitigating factors; and

g. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[9]

[26] Applying these factors to the misconduct in this case, and first considering Carr, we conclude that his misconduct was serious. The prohibition against insider trading is a significant component of investor protection and of the fostering of fair and efficient capital markets and confidence in them.[10] The Tribunal has previously described insider trading as "a cancer that erodes public confidence in the capital markets".[11]

[27] We agree with Staff's submission that the seriousness of Carr's insider trading is aggravated by the fact that even though he was aware of his employer's policy that he was required to pre-clear any trades in shares of WeedMD, he did not do so. We do not accept Carr's submission that this is a matter entirely between employer and employee, and that we should therefore disregard it. In this respect, publicly traded corporations are gatekeepers in the capital markets. A failure to adhere to an internal policy that seeks to protect against insider trading is a relevant consideration for us.

[28] Carr has never been registered with the Commission in any capacity. He has no experience in securities. He submits that he made an error by acceding to Rosborough's repeated requests for information, although in his admissions he does not give an explanation for why, in addition to yielding to Rosborough's requests, he traded for his own account as well.

[29] Carr's misconduct was isolated, and he earned a profit of $1,215.03 as a result of it. This is a very small amount in the context of other cases that come before

---

[9] *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746

[10] *Finkelstein v Ontario Securities Commission*, 2018 ONCA 61, citing *Woods (Re)*, (1995) 18 OSCB 4625

[11] *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1135

this Tribunal, a fact that does not relieve Carr of responsibility for the contravention but that, along with the isolated nature of the misconduct, moves this case toward the lower end of the scale of seriousness.

[30] As a mitigating factor, Staff acknowledges Carr's meaningful efforts to resolve potential allegations against him before this proceeding commenced, and his admissions of facts and contraventions of Ontario securities law. His doing so not only saved time and resources, it also demonstrates remorse on his part. We consider this to be a significant mitigating factor in Carr's favour.

[31] As for Graham, his misconduct was also serious. As the Ontario Court of Appeal has held, it "is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisers, provide full and accurate information to the OSC."[12]

[32] Graham's misstatement to investigators about whether he had assisted a non-registrant with work-related activities hindered the Commission's ability to administer and enforce the *Act* in a timely and efficient way, something the Commission is mandated to do by s. 2.1 of the *Act*. The seriousness of this misconduct is aggravated by the fact that Graham had affirmed, prior to making the misstatement, that he would tell the truth.

[33] Graham's misconduct is also made significantly more serious by the fact that he had been a registrant for almost four years at the time of his misstatement. Registrants are expected to be aware of their duties,[13] including the obligation to be truthful with their regulators.

[34] We have no evidence of any remorse on Graham's behalf, or any other mitigating factors.

[35] We turn now to consider the specific sanctions that Staff requests, beginning with restrictions on participation in the capital markets.

---

[12] *Wilder v Ontario Securities Commission*, 2001 CanLII 24072 (ON CA) at para 22

[13] *North American Financial Group Inc (Re)*, 2014 ONSEC 28 at para 29

3.3 Restrictions on participation in the capital markets

[36] Staff submits that Carr ought to be prohibited from participating in Ontario's capital markets for a period of three years. Carr does not contest the market prohibitions requested by Staff. We agree that such an order would be proportionate to his misconduct as described above, and that it would protect investors and help to restore confidence in the capital markets.

[37] Staff asks that we prohibit Graham from participating in Ontario's capital markets for a period of five years. As we noted above, we have no submissions from Graham about appropriate sanctions.

[38] A five-year prohibition against Graham, for one misstatement to Staff, might seem disproportionate compared to the three-year prohibition against Carr, for tipping and insider trading. However, in our view that disparity is justified by Carr's significant co-operation, as detailed above, and by the fact that Graham had been a registrant for almost four years at the time of his misconduct. Further, we consider the need for specific and general deterrence to be significantly greater for Graham, given his unexplained failure or refusal to participate fully in this proceeding, and given the findings by the MFDA that he engaged in various serious acts of misconduct, including attempting to mislead the MFDA.

[39] We agree with Staff that a five-year restriction on Graham's participation in the capital markets would be appropriate.

3.4 Financial Sanctions

3.4.1 Introduction

[40] We now address Staff's request for financial sanctions. Staff seeks:

a. an administrative penalty of $26,125 against Carr and of $75,000 against Graham; and

b. disgorgement of $1,215.03 against Carr.

3.4.2 Administrative penalties

3.4.2.a Carr

[41] Carr submits that the administrative penalty requested by Staff is excessive and that an amount of $3,645, being three times the profit he earned on his illegal insider trading, would be appropriate. Carr submits that if we impose too high an administrative penalty, that may discourage individuals in the future from cooperating with Staff as Carr has done.

[42] Staff refers us to several precedent cases:

a. In the settlement that Rosborough entered into in this proceeding,[14] Rosborough admitted to engaging in insider trading of WeedMD shares with knowledge of the material non-public information that Carr provided. That trading yielded a profit of $492.32. Rosborough had been a registrant for eleven years and he had previously been sanctioned by the MFDA for using pre-signed forms. He was given credit for his co-operation in reaching the settlement and for his future co-operation as a witness in the balance of this proceeding. The Tribunal approved the agreed-upon administrative penalty of $35,000 against him.

b. In *Agueci (Re)*,[15] the Tribunal imposed administrative penalties totaling $350,000 against Agueci, who was an employee of a registrant and who had tipped others by passing along material confidential information relating to five of her employer's reporting issuer clients. The total of $350,000 included $25,000 for each of nine instances of tipping, as well as penalties relating to misleading Staff and improperly disclosing information that was protected by s. 16 of the *Act*.

c. In a settlement in *Anderson (Re)*,[16] the Tribunal approved the agreed-upon administrative penalty of $18,770, which was equal to the profit earned by the respondent on her illegal insider trading in shares of two issuers. The Tribunal also ordered her to disgorge the same amount.

---

[14] *Rosborough (Re)*, 2021 ONSEC 20

[15] 2015 ONSEC 19

[16] (2015), 38 OSCB 4539

d. In settlements by the two respondents in *Talawdekar (Re)*,[17] the Tribunal approved administrative penalties against one respondent of $23,000 for illegal insider trading and $55,326.40 for tipping. The latter amount was a substantial portion of the profit made by the tippee, the other respondent, whose settlement was approved taking into account his voluntary payment of $35,000.

[43] Staff also notes that Carr currently lives outside Ontario. Staff submits that as a result, the restrictions on participation in the capital markets will have less of a deterrent effect on Carr, and any administrative penalty should be higher than it would otherwise be, to compensate for that.

[44] We cannot accept that submission. We have no evidence about how long Carr intends to live outside the province and, in any event, it is entirely possible for non-residents to participate in Ontario's capital markets, both through trading and through positions with Ontario-based issuers. We were given no authority for the proposition that an administrative penalty should be increased for the suggested reason. We do not rule out the possibility in another case, but we are not persuaded that we should adopt that approach here.

[45] In view of the isolated nature of Carr's misconduct, the small profit he made, and his substantial efforts to expedite this proceeding, we determine that it would be in the public interest to impose an administrative penalty of $15,000.

3.4.2.b Graham

[46] We have no submissions from Graham regarding Staff's proposed $75,000 administrative penalty. We must still satisfy ourselves that any penalty we impose is proportionate to Graham's misconduct (*i.e.*, one misstatement to Staff during the investigation) and that the penalty would be in the public interest.

[47] Staff submits that the sanctions requested for Graham fall within the range of appropriate sanctions for contravention of s.122(1)(a) of the *Act* and are in the public interest. We agree with Staff's submission that significant sanctions are necessary to deter Graham and to signal to others in similar positions that

[17] (2015), 38 OSCB 3356 and (2015), 38 OSCB 4092

making misleading statements to the Commission or those acting under its authority will not be tolerated and will carry significant consequences.

[48] Staff cites the following cases to assist in determining the appropriate administrative penalty:

a. *Cheng (Re)*,[18] in which the Tribunal approved a settlement involving the respondent Tremblay, who falsely denied knowing about the respondent Cheng tipping a third person. Tremblay was not only a registrant, he was the chair of the board, and Ultimate Designated Person, of a registered fund manager and asset management firm. The Tribunal approved the agreed-upon administrative penalty of $125,000.

b. In *Norshield Asset Management (Canada) Ltd*,[19] the Tribunal imposed an administrative penalty of $125,000 against each of two individual respondents who had misled Staff in the course of a compliance review, in an effort to conceal violations of Ontario securities law.

c. In the *Agueci* case referred to at paragraph [42](b) above, the Tribunal imposed an administrative penalty of $100,000 against Agueci for misleading Staff, as part of the overall total of $350,000. The Tribunal also imposed an administrative penalty of $250,000 against Wing, another respondent, who was a senior and long-time registrant whose misleading of Staff was wide-ranging and done at a time when Wing was both Chief Compliance Officer and Ultimate Designated Person at his firm.

[49] Staff's proposed administrative penalty of $75,000 for Graham is, in our view, excessive for the isolated finding of misconduct against him. Taking into account all of the factors referred to in paragraph [38] above, we determine that it would be in the public interest to impose an administrative penalty of $40,000.

3.4.3 Disgorgement

[50] Staff's last requested financial sanction is a disgorgement order against Carr in the amount of $1,215.03, being the profit that Carr earned from the illegal insider trading. Such an order is authorized by paragraph 10 of s. 127(1) of the

[18] 2018 ONSEC 43

[19] 2010 ONSEC 16

Act, which refers to "any amounts obtained as a result of the non-compliance". In this case, it is clear that $1,215.03 is such an amount.

[51] Carr does not oppose Staff's request, and we consider it to be in the public interest to make that order.

3.5 Costs

[52] Finally, we address Staff's request that Carr and Graham pay a portion of the costs incurred by the Commission in this proceeding and in the investigation of this matter. Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation and hearing if the respondent has been found to have contravened Ontario securities law.

[53] Reimbursement of the Commission's costs by a respondent who contravenes Ontario securities law is reasonable in view of the fact that the Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and others. A costs order is discretionary and is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[20]

[54] Staff provided evidence to establish that it incurred costs of $198,995.95. Staff analyzed the costs incurred and separated the investigation and proceeding into several phases, depending on the extent to which each of the three respondents was involved.

[55] Staff submits that $54,328.84 of the costs are attributable to Carr. It applies a discount of approximately 91% and requests that Carr pay costs of $5,000. Carr submits that a costs order of $2,590 would be appropriate and questions Staff's methodology. Carr questions the number of days of the relevant phase, arguing that the first phase should end on a date in September 2020 (earlier than Staff's date) on which we are told a confidential settlement conference was held. Assuming one did, clearly no settlement resulted from it, and as Staff points out, Carr continued to be an active respondent following that date.

[20] *Quadrexx* at para 118; *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 at para 111

[56] Accordingly, we cannot accept the further reduction that Carr proposes. Further, we agree with Staff's submission that the 91% reduction Staff has applied is already a large discount. Such a discount is warranted given Carr's co-operation in significantly narrowing the issues in this proceeding, but we think the discount that has been applied is appropriate. We therefore find Staff's request for $5,000 to be reasonable and we will make that order for costs as against Carr.

[57] As for Graham, Staff submits that the sum of $93,723.94 is attributable to him. Staff applied a 68% discount to reflect the fact that the merits panel dismissed some of the allegations against Graham, and to narrow the time claimed to the lead investigator and litigation counsel during the investigation and litigation phases. Staff therefore requests that Graham pay costs of $30,000.

[58] In our view, a costs order of $15,000 as against Graham would be appropriate. The merits panel dismissed almost the entire case against Graham, including the insider trading allegations, which by their nature would account for greater costs of investigation and hearing preparation. The amount of $15,000 better aligns with the merits panel's sole finding against Graham.

4. CONCLUSION

[59] For the above reasons, we will issue an order as follows:

a. pursuant to paragraph 9 of s. 127(1) of the *Act*:

   i. Carr shall pay an administrative penalty of $15,000; and

   ii. Graham shall pay an administrative penalty of $40,000;

b. pursuant to paragraph 10 of s. 127(1) of the *Act*, Carr shall disgorge to the Commission the amount of $1,215.03;

c. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Act*, Carr and Graham shall be prohibited from trading in any securities or derivatives, and from acquiring any securities,

   i. Carr for a period of three years; and

   ii. Graham for a period of five years;

d. pursuant to paragraphs 7, 8, 8.1 and 8.2 of s. 127(1) of the *Act*, Carr and Graham shall be required to resign any positions they hold as directors or

officers of any issuers or registrants, and shall be prohibited from becoming or acting as directors or officers of any issuer or registrant,

i. Carr for a period of three years; and

ii. Graham for a period of five years;

e. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, Carr and Graham shall be prohibited from becoming or acting as registrants or promoters,

i. Carr for a period of three years; and

ii. Graham for a period of five years; and

f. pursuant to s. 127.1 of the *Act*:

i. Carr shall pay to the Commission $5,000 for the costs of the investigation and proceeding; and

ii. Graham shall pay to the Commission $15,000 for the costs of the investigation and proceeding.

Dated at Toronto this 10th day of January, 2023

"Timothy Moseley"

Timothy Moseley

"Cathy Singer"

Cathy Singer

"James Douglas"

James Douglas