



Capital
Markets
Tribunal

Tribunal
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financiers

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Citation: *Scheinman (Re)*, 2023 ONCMT 42
Date: 2023-11-13
File No. 2023-23

**IN THE MATTER OF
DEREK SCHEINMAN**

REASONS AND DECISION

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

Adjudicators: Sandra Blake (chair of the panel)

Hearing: In writing, final written submissions received October 5, 2023

Appearances: Hansen Wong For Staff of the Ontario Securities
Commission

No one appearing for Derek Scheinman

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REASONS AND DECISION

1. INTRODUCTION AND BACKGROUND

- [1] On February 5, 2021, Derek Scheinman pled guilty and was convicted in the Ontario Court of Justice of defrauding investors in a mortgage investment corporation of at least \$10 million and defrauding the limited partners of a partnership over which he had control of at least \$13 million.¹
- [2] Staff of the Ontario Securities Commission seeks an order from the Capital Markets Tribunal to protect Ontario investors by permanently prohibiting Scheinman from participating in Ontario's capital markets. Staff relies on the inter-jurisdictional enforcement provisions found in s. 127(10) of the Ontario *Securities Act*² (the **Act**), which provides that the Tribunal may make an order in the public interest in respect of a person who has been convicted of an offence arising from a course of conduct related to securities.
- [3] For the reasons below, I find that Scheinman's conviction arose from transactions and a course of conduct related to securities and it is in the public interest to issue an order imposing the permanent bans requested by Staff.

2. SERVICE AND PARTICIPATION

- [4] Staff served Scheinman on September 12, 2023, with the Notice of Hearing, Statement of Allegations and Staff's Hearing Materials by courier at the address provided by Correctional Services Canada as the address where Scheinman is on supervised parole.³ No signature was obtained on delivery. Therefore, pursuant to rule 6(3)(e) of the Capital Markets Tribunal Rules of Procedure and Forms (the **Rules**), I find that service was properly effected on Scheinman the fifth business day after the materials were sent, being September 19, 2023.

¹ Exhibit 1, Staff's Hearing Brief, Reasons for Sentence before the Honourable Justice P. Bourque dated September 24, 2021, (Ontario Court of Justice) in the matter of *R v Derek Scheinman*, Tab 2 (**Reasons for Sentence**) at pp 2-3

² RSO 1990, c S.5

³ Exhibit 2, Affidavit of Service of Rita Pascuzzi sworn October 5, 2023

[5] The Notice of Hearing states that this proceeding shall be heard in writing and that Scheinman 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. Pursuant to rule 11(3) of the Rules, the deadlines for Scheinman to request an oral hearing and to serve and file written submissions were October 10 and 17, 2023, respectively. No request for an oral hearing was made and no materials were filed on behalf of Scheinman.

[6] I am satisfied that Scheinman was provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers Procedure Act*⁴ and rule 21(3) of the Rules, the Tribunal may proceed in Scheinman's absence.

3. CRIMINAL CONVICTION AND SENTENCING

[7] Between 2006 and 2017, Scheinman operated a financial services business accepting money to invest in mortgages.⁵ Through an entity he managed, Grossman Silver Horizon Limited Partnership (the **Grossman Partnership**), and a corporation known as New Horizon Mortgage Investment Corporation (**New Horizon**), Scheinman controlled tens of millions of dollars of investment proceeds.

[8] The Limited Partners of Grossman Partnership provided all the capital for investing in mortgages.⁶ In the Agreed Statement of Facts, filed in connection with the criminal proceeding, Scheinman admitted that he created fictitious mortgages and diverted \$13 million from the Grossman Partnership.⁷

[9] Some of the funds diverted from Grossman Partnership were paid to investors in New Horizon. However, most of the funds were diverted for personal expenses and funding Scheinman's lavish lifestyle.⁸

[10] Investors in New Horizon, a mortgage investment corporation operated by Scheinman, were brought in by promises of high returns or because they knew

⁴ RSO 1990, s S.22, s 7(2)

⁵ Exhibit 1, Staff's Hearing Brief, Agreed Statement of Facts - *R v. Derek Scheinman*, Tab 5 (**Agreed Statement of Facts**) at p 2

⁶ Agreed Statement of Facts at p 1

⁷ Agreed Statement of Facts at p 2

⁸ Agreed Statement of Facts at p 2

Scheinman personally. Although investors received subscription agreements and share certificates, reporting was sporadic. Account statements were received shortly after initial investments, but over time Scheinman stopped communicating.⁹ The Agreed Statement of Facts states that Scheinman defrauded New Horizon and its investors of approximately \$10 million.¹⁰

[11] Scheinman pled guilty to two counts of fraud over \$5,000 contrary to s. 380(1)(a) of the *Criminal Code*.¹¹

[12] On September 24, 2021, Scheinman was sentenced to a four-year sentence less four months to be served in a federal penitentiary.¹² He was also prohibited for five years 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.¹³ Finally, property listed in an Order for Disposition of Property was ordered forfeited to Her Majesty the Queen in right of Ontario to be disposed of pursuant to the order.¹⁴

4. ANALYSIS

[13] The issues to be decided are as follows:

- a. Has Scheinman been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?
- b. Is it in the public interest to order sanctions against Scheinman?
- c. If it is in the public interest to order sanctions, what sanctions are appropriate?

⁹ Agreed Statement of Facts at p 3

¹⁰ Agreed Statement of Facts at p 4

¹¹ RSC, 1985, c C-46

¹² Reasons for Sentence at p 9

¹³ Exhibit 1, Staff's Hearing Brief, Prohibition Order (Financial Employment/Volunteer Work) dated September 24, 2023, Tab 3

¹⁴ Exhibit 1, Staff's Hearing Brief, Order for Disposition of Property dated September 24, 2021, Tab 4

4.1 Has Scheinman been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

- [14] Scheinman was convicted in Ontario of two counts of fraud and admits in the Agreed Statement of Facts to engaging in fraudulent conduct related to securities.¹⁵
- [15] I must determine whether the criminal offence arose from a transaction, business or course of conduct related to securities or derivatives. I conclude that it did for the reasons below.
- [16] The term “security” is defined in s. 1(1) of the *Act* to include an “investment contract”. The Supreme Court of Canada has held that an investment contract will be found where: (1) there is an investment of funds with a view to a profit; (2) in a common enterprise; and (3) the profits are to be derived solely from the efforts of others.¹⁶
- [17] With respect to the Grossman Partnership, the Limited Partners made investments of money into a real estate business venture with Scheinman (or with his company) with an intention to profit. The money was pooled and then invested into mortgage loans. The success of the investment depended entirely on Scheinman as he was responsible for managing the business venture. Consequently, the business arrangement between Scheinman and the Limited Partners constitutes an “investment contract”.
- [18] The term “security” also includes in its definition “a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription.”¹⁷
- [19] With respect to New Horizon, investors purchased units and received subscription agreements and share certificates in consideration for their investment, therefore also meeting the definition of a “security” under the *Act*.
- [20] Scheinman thereby engaged in a course of conduct related to securities.

¹⁵ Reasons for Sentence at p 5

¹⁶ *Pacific Coast Coin Exchange v Ontario Securities Commission*, 1977 CanLII 37 (SCC) at 129

¹⁷ *Act*, s 1(1), definition of “security” at (e)

4.2 Is it in the public interest to order sanctions against Scheinman?

- [21] Scheinman is subject to a Prohibition Order of the Ontario Court of Justice prohibiting him for five years 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.
- [22] In *Tang (Re)*,¹⁸ the Tribunal held that only the Tribunal, not the courts, has the capacity to protect the investing public from future harm.
- [23] Having regard to the Tribunal's mandate to protect the investing public and the purposes of the *Act* set out in s. 1.1, including to provide protection to investors from unfair, improper or fraudulent practices, I find that it is in the public interest to order sanctions against Scheinman.

4.3 What sanctions are appropriate?

- [24] Staff submits that Scheinman should be permanently prohibited from participating in Ontario's capital markets.
- [25] Justice Bourque of the Ontario Court of Justice accepted Scheinman's guilty plea as the "only real mitigating factor" because it "is in itself is a statement of remorse."¹⁹ The matter resolved sooner than if there had been a trial, especially during the pandemic. None of the victims had to testify and be subject to cross-examination.²⁰
- [26] Consistent with Justice Bourque's findings, I find the following aggravating factors in determining appropriate sanctions:
- a. The seriousness of the fraudulent misconduct is significant. Scheinman defrauded investors of at least \$10 million and the Limited Partners of Grossman Partnership of at least \$13 million, affecting the lives of many innocent people.

¹⁸ 2016 ONSEC 13 at paras 47, 64

¹⁹ Reasons for Sentence at p 4

²⁰ Reasons for Sentence at p 4

- b. The duration and sophistication of the fraud is considerable. This was not an “act of bad judgment or desperation”²¹ but a criminal act that continued over many years.
- c. Scheinman was previously registered under the *Act* as a salesperson under the category of Mutual Fund Dealer and Limited Market Dealer.²² As a former registrant, he knew or ought to have known that his conduct was in breach of the *Act*.

[27] Scheinman’s conduct was fraudulent, making it among the most egregious kinds of misconduct related to the capital markets. His conduct demonstrates that he cannot be trusted. A permanent ban from the capital markets is required to protect investors by restraining future conduct by Scheinman that would be detrimental to the integrity of the capital markets. A permanent ban is also necessary to act as a general deterrent to other like-minded individuals who might be inclined to engage in similar conduct.

5. CONCLUSION

[28] For the reasons above, I find that it is in the public interest to impose the sanctions requested by Staff. I therefore order that:

- a. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Scheinman cease permanently;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, acquisition of any securities by Scheinman is prohibited permanently;
- c. pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Scheinman permanently;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, Scheinman resign any positions that he holds as a director or officer of any issuer or registrant;

²¹ Reasons for Sentence at p 4

²² Exhibit 1, Staff’s Hearing Brief, Section 139 Certificate re: Derek Scheinman dated May 17, 2023, Tab 6

- e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Scheinman is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and,
- f. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Scheinman is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 13th day of November, 2023

"Sandra Blake"

Sandra Blake