



Capital
Markets
Tribunal

Tribunal
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financiers

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Citation: *Singh (Re)*, 2024 ONCMT 3
Date: 2024-01-16
File No. 2023-15

**IN THE MATTER OF
DAVID SINGH**

REASONS FOR DECISION

(Subsection 127(1) and 127(4.0.1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: James Douglas (chair of the panel)
Cathy Singer
Jane Waechter

Hearing: By videoconference, December 8, 2023

Appearances: Hanchu Chen For Staff of the Ontario Securities
Sakina Babwani Commission
No one appearing for David Singh

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REASONS FOR DECISION

1. OVERVIEW

- [1] On November 9, 2021, the Ontario Court of Justice found David Singh guilty of contravening Ontario securities law by engaging in unregistered trading, the illegal distribution of securities without a prospectus, and the perpetration of securities fraud on Ontario investors.¹
- [2] Singh was sentenced to a concurrent total of three and a half years incarceration. The Court also imposed a free-standing restitution order in the amount of \$4,859,552.58²
- [3] Staff of the Ontario Securities Commission brought this inter-jurisdictional enforcement proceeding for an order under s. 127(1) of the *Securities Act*³ (**Act**) permanently banning Singh from participating in Ontario's capital markets. OSC Staff relies on s. 127(4.0.4) of the *Act* which provides that the Capital Markets Tribunal may make a s. 127(1) protective order in respect of a person who has been found by a court to have contravened Ontario securities law.
- [4] On December 8, 2023, we granted an order permanently banning Singh from participating in Ontario's capital markets.⁴ These are our reasons for making that order.

2. STATUTORY AMENDMENT

- [5] On December 4, 2023, the *Act* was amended. The amendments relevant to this proceeding are that:
- a. s. 127(10), which expressly permitted the Tribunal to make an inter-jurisdictional enforcement order under s. 127(1) in several articulated circumstances, was repealed;

¹ Exhibit 3, Hearing Brief of the Ontario Securities Commission, Reasons for Judgment, November 9, 2021, Tab 3 (**Reasons for Judgment**)

² Exhibit 3, Hearing Brief of the Ontario Securities Commission, Reasons for Sentencing, May 9, 2022, Tab 4 (**Reasons for Sentencing**)

³ RSO 1990, c S.5

⁴ *Singh (Re)* (2023), 46 OSCB 10037

- b. s. 127(4.0.1) was added and maintains the Tribunal’s permissive authority to make inter-jurisdictional enforcement orders relating to criminal convictions by a court in any jurisdiction under laws respecting securities, except that the Tribunal may now make such an order without providing the respondent an opportunity to be heard; and
- c. s. 127(4.0.4) was added and provides that the Tribunal may make an order under s. 127(4.0.1) where the relevant circumstances arose prior to the amendments being enacted on December 4, 2023.

[6] We asked OSC Staff to make submissions in advance of the hearing on what effects, if any, the amendments to the *Act* had on this proceeding.

[7] OSC Staff submitted that, apart from the permissive authority to grant the requested relief now arising under s. 127(4.0.1) of the *Act* as opposed to the former s. 127(10), the amendments have no substantive effect on this proceeding. We agree with OSC Staff. Where an inter-jurisdictional enforcement order is sought in relation to a criminal conviction under laws respecting securities in any jurisdiction, the Tribunal must still determine:

- a. whether a person or company has been convicted of an offence arising under the laws respecting securities in that jurisdiction; and
- b. whether it is in the public interest to issue an order under s. 127(1) of the *Act*.

[8] We also agree with OSC Staff that the procedural change that a respondent is not entitled to an opportunity to be heard under s. 127(4.0.1) need not be addressed in this proceeding as Singh had already been provided with such an opportunity at the time the amendments came into force.

3. SERVICE AND PARTICIPATION

[9] In this proceeding, OSC Staff elected to use the expedited procedure for inter-jurisdictional enforcement proceedings as set out in rule 11(3) of the *Capital Markets Tribunal’s Rules of Procedure and Forms* (the **Rules**). Among other things, that procedure allows a respondent who is served with a Notice of Hearing to request an oral hearing, or to file a hearing brief and written submissions.

- [10] On June 15, 2023, OSC Staff served all required materials on Singh.⁵ On June 16, 2023, Singh requested an oral hearing which was fixed for December 8, 2023 and Singh was provided until September 1, 2023 to file any written materials, which he failed to do. On December 4, 2023, Singh wrote to the Registrar to advise that he would not be attending the hearing because he does not have legal representation. He did not request an adjournment of the hearing date.⁶
- [11] Pursuant to the *Statutory Powers Procedure Act*⁷ and the Rules, the Tribunal may proceed in the absence of a party where that party has been given adequate notice of a proceeding. We were satisfied that Singh received adequate notice of this proceeding and that we could proceed in his absence. Additionally, the amendments to the *Act* referred to above allow the Tribunal to make inter-jurisdictional enforcement orders in circumstances such as the case before us without providing the respondent an opportunity to be heard.

4. BACKGROUND

- [12] Singh is an Ontario resident and former registrant. Between November 1, 2014 and January 31, 2018, Singh owned and controlled two companies: Rockfort Mortgage Investment Corporation and Greenview Mortgage Investment Corporation.⁸
- [13] Singh sold shares of Rockfort and Greenview to investors and represented that their money would be used to fund mortgages on residential and commercial properties. Singh promised investors a return in the range of eight to ten percent.⁹ Seventy-eight individuals invested in Rockfort and Greenview in the total amount of \$5,657,896.64.¹⁰
- [14] The Court found that Rockfort and Greenview did not own any mortgages and Singh had no intention of seeking out mortgages. Instead, Singh used a

⁵ Exhibit 1, Affidavit of Service of Michelle Spain, Affirmed on June 16, 2023

⁶ Exhibit 2, Affidavit of Michelle Spain, Affirmed on December 6, 2023

⁷ RSO 1990, c S.22, s 7(2)

⁸ Reasons for Judgment at para 58

⁹ Reasons for Judgment at para 58

¹⁰ Reasons for Sentencing at para 4

significant portion of investors' funds to pay his personal expenses. He also made material misrepresentations in the offering memorandum to bolster the reputation of his companies and lure in investors. All this conduct constituted a fraud on investors.¹¹

[15] The Court found that Singh's conduct also constituted engaging in the business of trading securities without registration and the distribution of securities without a prospectus or a prospectus exemption.¹²

[16] The Court accordingly found Singh guilty of committing offences under s. 122(1)(c) of the *Act* in relation to:

- a. engaging in the business of trading in securities without being registered (contrary to s. 25(1) of the *Act*);
- b. illegal distribution of securities without a prospectus (contrary to s. 53(1) of the *Act*); and
- c. perpetrating a fraud on Ontario investors (contrary to s. 126.1(1)(b) of the *Act*).¹³

[17] Singh was sentenced concurrently to:

- a. nine months incarceration for the unregistered trading;
- b. nine months incarceration for the failure to file a prospectus; and
- c. three and a half years incarceration for securities fraud.

The Court also imposed a free-standing restitution order in the amount of \$4,859,522.58.¹⁴

5. ANALYSIS

[18] The issues we needed to decide were:

- a. whether Singh had been convicted by the court of an offence under the *Act* as required by sub-paragraph 2 of s. 127(4.0.1) of the *Act*; and

¹¹ Reason for Judgment at paras 107-134

¹² Reasons for Judgment at paras 94-106

¹³ Reasons for Sentencing at para 2

¹⁴ Reasons for Sentencing at para 36

- b. whether it is in the public interest to make a s. 127(1) protective order against Singh.

5.1 Singh has been convicted of an offence under the Act

[19] Paragraph 2 of s. 127(4.0.1) of the *Act* permits the Tribunal to make an order under s. 127(1) where a person has been convicted by a court in any jurisdiction of an offence under the laws respecting securities.

[20] As noted above, Singh was convicted by the Court of having committed offences contrary to s. 122(1)(c) of the *Act*. Accordingly, we are satisfied that the Tribunal may make an order in the public interest under s. 127(1) of the *Act*.

5.2 It is in the public interest to make a s. 127(1) protective order against Singh

[21] The Tribunal's public interest jurisdiction under s. 127(1) of the *Act* is neither punitive nor remedial, but rather is protective and prospective.¹⁵ The jurisdiction is informed by the purposes of the *Act* set out in s. 1.1, which include the protection of investors and the fostering of capital market integrity.

[22] In deciding whether making an inter-jurisdictional enforcement order against Singh is in the public interest in the context of a proceeding brought pursuant to s. 127(4.0.1) of the *Act*, we are also mindful that we should not ordinarily attempt to second guess the evidentiary findings made and legal conclusions reached by the Court.¹⁶

[23] Bearing in mind the foregoing and accepting the factual and legal conclusions of the Court, we have no hesitation in concluding that a protective order in the public interest is warranted against Singh. The registration and prospectus qualification provisions of the *Act* are cornerstones of the securities regulatory regime in Ontario. They are intended to safeguard investors and foster capital market integrity. A breach of either, on its own, would in almost all instances engage the public interest jurisdiction of the Tribunal. In Singh's case, these breaches are accompanied by a contravention of one of the securities fraud

¹⁵ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

¹⁶ *Black (Re)*, 2014 ONSEC 16 at paras 24, 34

prohibitions contained in the *Act*. Fraud has been described by this Tribunal as one of the most serious forms of market misconduct.¹⁷ It is difficult for us to conceive of a circumstance where a finding of fraud in contravention of Ontario securities law would not engage the public interest jurisdiction of the Tribunal under s. 127(1) of the *Act* and attract appropriate sanctions thereunder.

5.3 Appropriate sanctions

[24] The Tribunal has identified the following non-exhaustive list of factors applicable to the determination of appropriate sanctions:

- a. the respondents' level of activity in the marketplace, or in other words, the "size" of the contravention;
- b. the seriousness of the misconduct;
- c. 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").¹⁸

[25] Applying these factors to the facts of this case, we make the following observations and findings:

- a. Singh's contraventions of Ontario securities law, and in particular his fraudulent conduct, spanned a period of approximately three years, involved the sum of approximately \$5.5 million and affected multiple investors, many of whom were found by the Court to be unsophisticated and to have suffered significant personal financial consequences;¹⁹

¹⁷ *Solar Income Fund Inc (Re)*, 2023 ONCMT 3 (***Solar Income***) at para 20

¹⁸ *Solar Income* at para 13

¹⁹ Reasons for Sentence at paras 4-5

- b. Singh's conduct, particularly his fraudulent conduct, was serious and highly reprehensible, exacerbated by the fact that, as found by the Court, it was planned and deliberate;²⁰
- c. not only did Singh's contraventions involve the aforesaid total amount of approximately \$5.5 million, the Court found that he personally converted at least \$2 million to his personal use,²¹ a factor which adds to the censure warranted by the conduct at issue;
- d. as indicated above, Singh's conduct was not isolated but rather occurred over a period of three years and involved ongoing and repeated acts of fraud;
- e. not only does Singh have extensive market experience over the course of his long career in the capital markets sector, but he is also a former registrant in Ontario, meaning he ought to have known better than to commit the contraventions at issue and therefore attracting an even higher degree of censure than might otherwise have been the case;
- f. while the Court in its sentencing reasons found certain personal factors relevant to mitigation, such as Singh's community engagement and familial devotion,²² we do not find any of those factors relevant to the issue of whether Singh should be permitted to continue any form of participation in the Ontario capital markets; and
- g. as to specific and general deterrence, the serious, deliberate and extended nature of Singh's contraventions, coupled with the fact that he is a former registrant, weigh in favour of sanctions that provide significant deterrence to Singh personally and to others, similarly situated, who might be tempted to engage in similar conduct.

[26] Given our findings concerning the factors relevant to the issue of appropriate sanctions, we have no hesitation in granting the order requested by OSC Staff permanently banning Singh from all participation in the Ontario capital markets.

²⁰ Reasons for Sentence at para 28

²¹ Reasons for Sentence at para 6

²² Reasons for Sentence at para 31

6. CONCLUSION

[27] For the reasons set out above, we ordered that:

- a. pursuant to paragraph 2 of s. 127(1) of the *Act*, trading in any securities or derivatives by Singh cease permanently;
- b. pursuant to paragraph 2.1 of s. 127(1) of the *Act*, acquisition of any securities by Singh be prohibited permanently;
- c. pursuant to paragraph 3 of s. 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Singh permanently;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the *Act*, Singh resign any positions that he holds as a director or officer of any issuer or registrant;
- e. pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the *Act*, Singh 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 s. 127(1) of the *Act*, Singh is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 16th day of January, 2024

"James Douglas"

James Douglas

"Cathy Singer"

Cathy Singer

"Jane Waechter"

Jane Waechter