



Capital
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Tribunal

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Citation: *DeBono (Re)*, 2024 ONCMT 8
Date: 2024-02-06
File No. 2023-30

**IN THE MATTER OF
CHARLES DEBONO**

REASONS AND DECISION

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

Adjudicator: Jane Waechter

Hearing: In writing, final written submissions received January 12, 2024

Appearances: Sean Grouhi For Staff of the Ontario Securities
Commission

No one appearing for Charles DeBono

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REASONS AND DECISION

1. BACKGROUND

- [1] Charles DeBono is an Ontario resident who pleaded guilty in the Ontario Superior Court of Justice to one count of criminal fraud over \$5,000 and one count of money laundering¹. As described below, DeBono's criminal conviction arose from securities-related conduct. The Court sentenced him to 7 years in jail and made other orders, including a restitution order requiring him to pay over \$29 million to impacted investors.
- [2] The Court found that "[t]his was a large-scale fraud perpetrated as a Ponzi scheme by a calculating offender. [DeBono] duped hundreds of people across Canada and elsewhere to part with their money, in some instances their life savings, so that he could live in luxury."²
- [3] Staff of the Ontario Securities Commission ask for an interjurisdictional enforcement order under the *Securities Act*³ (the **Act**), specifically that DeBono be removed from the capital markets permanently.
- [4] My reasons for granting the requested order follow.

2. SERVICE AND PARTICIPATION

- [5] Staff elected to use the expedited procedure for inter-jurisdictional enforcement proceedings in Rule 11(3) of the *Capital Markets Tribunal 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.
- [6] Staff served DeBono with the Notice of Hearing and Statement of Allegations and he acknowledged receipt.⁴ He has neither requested an oral hearing nor filed

¹ Exhibit 1, Staff's Hearing Brief, *R v DeBono*, 2022 ONSC 3809, Reasons for Sentence dated June 28, 2022 (**Reasons for Sentence**) at para 4

² Reasons for Sentence at para 62

³ RSO 1990, c S.5

⁴ Exhibit 2, Affidavit of Service of Rita Pascuzzi sworn October 26, 2023

written submissions within the required timeframe. Given that he has been served and has not responded, the Tribunal may proceed in his absence.⁵

[7] After Staff filed this application, the interjurisdictional enforcement provisions of the Act were amended as described in more detail below.⁶ I asked Staff for submissions about the effect of those amendments on this application. Staff replied that the amendments have no effect. I agree with that assessment.⁷

3. BACKGROUND

[8] We rely on the findings of fact, comments, and conclusions of the Court in sentencing DeBono and summarize some of those findings.

[9] DeBono sold a passive business opportunity involving point-of-sale debit terminals. He did this through a business called Direct Debit, which was based in an auto repair shop in Barrie, Ontario.⁸

[10] Under the arrangement, over 500 investors paid to purchase a debit terminal, received a unique identifier for the terminal and, for a period of time, received a return of 15 cents on each transaction that was processed through that terminal.⁹

[11] Investors didn't know that DeBono had purchased only 10 point-of-sale terminals, nor that their earnings came from money paid to DeBono by subsequent investors. The Court found that the arrangement was a Ponzi scheme. DeBono also used investor money to fund an extravagant lifestyle.¹⁰

[12] DeBono used techniques associated with legitimate investments. He solicited investors through advertisements on independent investor websites and at booths set up at legitimate trade shows. He used written marketing materials, commissioned salespersons, and an address in Toronto's financial district. Once

⁵ *Statutory Powers Procedures Act*, RSO 1990, c S.22, s 7(2); Capital Markets Tribunal Rules of Procedure and Forms, r 21(3)

⁶ *Building a Strong Ontario Together Act (Budget Measures)*, 2023, SO 2023, c 21, Sch 10, s6(2) (**Strong Ontario Together Act**)

⁷ *Singh (Re)*, 2024 ONCMT 3

⁸ Reasons for Sentence at paras 1, 6, 8

⁹ Reasons for Sentence at paras 7, 12

¹⁰ Reasons for Sentence at paras 2, 13

signed up, investors received lists purporting to show the placement of individually identified debit terminals at actual businesses.¹¹

[13] DeBono used an alias when dealing with members of the public. Investors were sent fabricated monthly remittance “earnings” reports. They received monthly payments they were told came from actual debit terminal transactions.¹²

[14] Eventually, DeBono moved to the Dominican Republic, where he used additional proceeds to build a hotel and continue to fund his lifestyle. Over time, DeBono moved funds and assets offshore and out of reach of his victims. While investigators were able to restrain some assets, DeBono did not pay restitution to his victims by the time of his criminal conviction.¹³

[15] DeBono has never been registered with the Commission in any capacity.¹⁴

4. ANALYSIS

4.1 Introduction

[16] Staff rely on section 127(1) of the Act, which empowers the Tribunal to make certain protective orders against an individual if in the Tribunal’s opinion it is in the public interest to do so.

[17] Staff also initially relied on s. 127(10), which was repealed in the recent amendments to the interjurisdictional enforcement provisions. The provisions that are now relevant to this proceeding are:

- a. s. 127(4.0.1) which continues the Tribunal’s authority to make inter-jurisdictional enforcement orders relating to criminal convictions by a court in any jurisdiction under laws related to securities; and
- b. s. 127(4.0.4) which provides that the Tribunal may make an order under s. 127(4.0.1) where the relevant circumstances arose prior to the amendments enacted on December 4, 2023.¹⁵

¹¹ Reasons for Sentence at paras 7, 9, 11

¹² Reasons for Sentence at para 63

¹³ Reasons for Sentence at para 63

¹⁴ Exhibit 1, Staff’s Hearing Brief, Section 139 Certificate re: Charles DeBono dated July 26, 2023

¹⁵ *Strong Ontario Together Act*

[18] As such, the issues in this application are:

- a. whether DeBono was convicted by the Court of an offence arising from a transaction, business or conduct related to securities as required by paragraph 3 of s. 127(4.0.1) of the Act; and
- b. whether it is in the public interest to make a s. 127(1) protective order against DeBono.

4.2 Conviction of an Offence Related to Securities

[19] Section 127(4.0.1) of the Act provides that the Tribunal may make a protective order against a person or company under s. 127(1) if:

The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[20] DeBono has been convicted of one count of fraud over \$5,000, and one count of money laundering.¹⁶ In order for s. 127(4.0.1) to apply, these offences must be related to securities.

[21] Staff submits that DeBono's arrangement involving point-of-sale debit is an investment contract. An "investment contract" is included in the definition of "security" under s. 1(1) of the Act. The term "investment contract" is not defined in the Act. The Supreme Court of Canada, in its seminal decision of *Pacific Coast Coin Exchange v Ontario Securities Commission*, set out the required analysis. According to *Pacific Coast Coin*, an investment contract has four characteristics:

- a. an investment of money,
- b. with the intention of profit,
- c. in a common enterprise — namely "one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties", and

¹⁶ Reasons for Sentence at para 4

- d. where “the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise”.¹⁷

[22] The Supreme Court in *Pacific Coast Coin* stated that any interpretation of "investment contract" must be broad enough to include "the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."¹⁸

[23] The point-of-sale arrangement that DeBono sold is one of those countless and variable schemes. It has all the characteristics of an investment contract:

- a. members of the public gave their money to DeBono,
- b. with an intention of profit, which was to be paid based on the use of the point-of-sale terminal,
- c. from a “common enterprise” in which the investors supply capital and DeBono would place the terminals in businesses where they would generate income, and
- d. the arrangement depended on the essential managerial efforts of DeBono for the success of the enterprise. DeBono promoted the Debit Direct arrangement as a passive business opportunity. Further, the Court found that “[Debit Direct] claimed to take full responsibility for placing the debit terminals at high volume businesses across Canada, as well as for all costs and maintenance associated to the debit terminals.”¹⁹

[24] My finding that there is an investment contract, and therefore a security, is not affected by the fact that DeBono did not do what he promised investors. He used the investment funds to pay returns through a Ponzi scheme and for personal purposes, making it a securities fraud.

[25] DeBono’s fraud conviction related to the Debit Direct investment scheme satisfies the requirement in s. 127(4.0.1) for a conviction for a transaction,

¹⁷ *Pacific Coast Coin Exchange v Ontario Securities Commission*, 1977 CanLII 37 (SCC) (***Pacific Coast Coin***) at 128-29

¹⁸ *Pacific Coast Coin* at 127

¹⁹ Reasons for Sentence at para 6

business or course of conduct related to securities. Accordingly, the Tribunal may make protective orders in the public interest under subsections 127(1) and (4.0.1) of the Act.

4.3 Is it in the Public Interest to Order Sanctions Against DeBono

[26] The Tribunal’s public interest jurisdiction under s. 127(1) of the *Act* is neither punitive nor remedial, but rather is protective and prospective.²⁰ The jurisdiction is informed by the purposes of the Act set out in s. 1.1, which include investor protection and fostering fair, efficient and competitive capital markets.

[27] In my view, a protective order under s. 127(1) will give effect to the purposes of the Act. I base this conclusion on the Court’s findings of a serious premeditated fraud by DeBono and the Tribunal’s jurisdiction to address securities-related convictions. DeBono’s severe mistreatment of investors provides a compelling reason to engage the public interest jurisdiction of the Tribunal under s. 127(1) of the Act. His misconduct should attract appropriate sanctions.

4.4 Appropriate Sanctions

[28] 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,
- 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).²¹

²⁰ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

²¹ *Solar Income Fund Inc (Re)*, 2023 ONCMT 3 (***Solar Income***) at para 13

[29] Applying these factors to the facts of this case, I make the following observations and findings, which are substantially drawn from the reasons of the Court:²²

- a. *Level of activity* - DeBono's securities fraud involved hundreds of investors, with over \$29 million in losses to investors. DeBono's was a sophisticated scheme with detailed planning, compelling marketing, and detailed falsified documents.
- b. *Seriousness of misconduct* -This Tribunal has described fraud as one of the most serious forms of market misconduct.²³ This was not a fraud committed in the course of the operation of a legitimate business. It was a Ponzi scheme driven by greed on DeBono's part.
- c. *Profit made* - DeBono raised over \$29 million from investors and lived an extravagant lifestyle with some of those funds.
- d. *Isolated or recurring* – DeBono perpetrated this fraud over a period of several years.
- e. *Experience in the market* - DeBono does not have a history as a registrant in the capital markets and there is no evidence that he participated in the capital markets in any other capacity in the past.
- f. *Any mitigating factors* - DeBono has not participated in this application and therefore has not raised any mitigating factors for my consideration.
- g. *General and specific deterrence* – The requested sanctions will prevent DeBono from participating in the capital markets in Ontario (specific deterrence) and should deter those thinking of trying their hands at a Ponzi scheme (general deterrence). In similar securities frauds, the Tribunal has ordered permanent bans from participating in Ontario's capital markets and has found that such bans promote both specific and general deterrence.²⁴

²² Reasons for Sentence at para 63

²³ *Solar Income* at para 20

²⁴ *Uitvlugt (Re)*, 2022 ONCMT 19 at paras 1, 11, 22; *Stuart (Re)*, 2021 ONSEC 8 at paras 1, 14, 16, 30; *Andrew Keith Lech*, 2010 ONSEC 9 at paras 37-49, 67

[30] I am satisfied that the Tribunal should give significant weight to the serious nature of the misconduct in this case.

5. CONCLUSION

[31] After balancing of the seriousness of the offence, specific and general deterrence, along with the aggravating factors, and the lack of mitigating factors, described above, I find that DeBono should not be permitted to participate in Ontario's capital markets. I grant all terms of the order requested, namely that:

- a. DeBono cease trading in any securities or derivatives permanently,
- b. DeBono is prohibited from acquiring any securities permanently,
- c. any exemptions contained in Ontario securities law do not apply to DeBono permanently,
- d. DeBono resign any positions that he holds as a director or officer of any issuer or registrant, including as an investment fund manager,
- e. DeBono is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including as an investment fund manager, and
- f. DeBono is prohibited permanently from becoming or acting as a registrant, including as an investment fund manager or promoter.

Dated at Toronto this 6th day of February, 2024

"Jane Waechter"

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