



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Cheng (Re), 2018 ONSEC 34
Date: 2018-06-15

**IN THE MATTER OF
BENEDICT CHENG, FRANK SOAVE,
JOHN DAVID ROTHSTEIN and ERIC TREMBLAY**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: June 15, 2018

Decision: June 15, 2018

Panel: Mark J. Sandler Commissioner and Chair of the Panel

Appearances: Yvonne Chisholm For Staff of the Commission
Jennifer Lynch
Christina Galbraith

Shara Roy For Benedict Cheng
Patrick Healy

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the Hearing, and as edited and approved by the panel, to provide a public record.

- [1] While employed as the Co-Chief Investment Officer and Portfolio Manager of Aston Hill Asset Management Inc. ("**AHAMI**"), Benedict Cheng became aware of generally undisclosed material facts with respect to Amaya Gaming Group Inc. ("**Amaya**"). He was in a special relationship with Amaya based on his knowledge of AHAMI's participation in the financing of a transaction involving Amaya. Mr. Cheng informed John David Rothstein about some of these generally undisclosed material facts. He also suggested to Mr. Rothstein that he convey those material facts to Frank Soave before they were generally disclosed. Mr. Cheng thereby violated subsection 76(2) of the *Securities Act* (the "**Act**") and/or acted contrary to the public interest.
- [2] Mr. Cheng's involvement in insider tipping was a serious breach of Ontario securities law. The improper use of insider information leads to unfair advantages for those who use it and can undermine confidence in the integrity and fairness of public markets.
- [3] The seriousness of his misconduct was compounded by two other violations of the Act. First, when examined under oath by Staff during its investigation, Mr. Cheng made materially misleading statements, in violation of s. 122(1)(a) of the Act. Second, he disclosed the nature and content of his compelled examination under oath to Mr. Rothstein, despite his understanding of the confidentiality of the investigative process in which he was participating. This constituted a violation of s. 16 of the Act.
- [4] Commission Staff and Mr. Cheng reached a settlement agreement in relation to the matter. That settlement agreement has been filed with the Commission. Part III of the agreement sets out the agreed facts, which I need not elaborate upon further in these brief oral reasons.
- [5] The terms of settlement involve the following:
 - a. Mr. Cheng shall be prohibited from trading in any securities or derivatives and from acquiring securities for a period of six years;
 - b. Any exemptions contained in Ontario securities law shall not apply to Mr. Cheng for a period of six years;
 - c. Mr. Cheng shall resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
 - d. Mr. Cheng shall be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of six years;
 - e. Mr. Cheng shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of six years; and

- f. Mr. Cheng shall pay an administrative penalty in the amount of \$350,000 and costs of the investigation in the amount of \$50,000.
- [6] It was agreed that Mr. Cheng would pay the full \$400,000 representing the administrative penalty and the costs of the investigation by bank draft or certified cheque in advance of this hearing. Staff confirmed that he has done so.
- [7] It was further agreed that Mr. Cheng would cooperate with Staff in its ongoing investigation into illegal insider activities in securities of Amaya and sign an undertaking to that effect. This cooperation includes testifying as a witness for Staff, if and as required, and meeting with Staff to prepare for that testimony. Mr. Cheng has signed that undertaking.
- [8] The Commission is only to deny approval of a settlement agreement in exceptional circumstances. This deference is explained, in part, by the high desirability of encouraging settlement agreements between Staff and respondents, and promoting certainty in the industry. Of course, the Commission is fully entitled to reject a settlement agreement which falls outside the range of reasonable outcomes available in the circumstances and thus, is contrary to the public interest. The Commission is to consider the terms of the settlement agreement in their totality, rather than considering each term in isolation.
- [9] In my view, this settlement agreement falls within the range of reasonable dispositions available in the circumstances, and most importantly, is in the public interest. In particular, it appropriately addresses both general and specific deterrence. All of the terms of the settlement agreement, including but not limited to the \$350,000 administrative penalty and six year prohibitions, are designed to send a strong message not only to Mr. Cheng, but to those who might be inclined to engage in similar conduct. The terms also appropriately reflect the aggravating features of Mr. Cheng's misconduct which distinguish Mr. Cheng from Mr. Rothstein, who previously entered into a settlement agreement which was approved by the Commission.
- [10] The settlement agreement also takes into consideration, as it should, a number of circumstances which are largely mitigating. These include the following:
- a. Mr. Cheng's misconduct has resulted in his loss of employment. I am advised that he has not worked in the Canadian securities industry for almost two years, and that it will likely continue to be difficult for him to find work in Canada. Mr. Cheng provides financial support for his family, including two school-aged children;
 - b. Mr. Cheng has no prior record of breaching Ontario securities law;
 - c. Mr. Cheng did not trade in any of his personal accounts on material non-public information, nor did he profit from any such trading;
 - d. Although this does not excuse his misconduct, Mr. Cheng felt some pressure to provide the tip to placate a customer, who had threatened to pull business from AHAMI if he did not receive something of value; and
 - e. As already noted, Mr. Cheng has agreed to cooperate with Staff and provide testimony at any related merits hearing.

[11] For these reasons, I approve the settlement agreement on the terms proposed by the parties. An Order will be issued in substantially the form appended to the settlement agreement.

[12] I am grateful to counsel for their assistance throughout.

Dated at Toronto this 15th day of June, 2018.

"Mark J. Sandler"

Mark J. Sandler