



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
DAVEED ZARR (formerly known as ASI LALKY)**

REASONS AND DECISION

Hearing: In writing

Decision: October 8, 2015

Panel: Timothy Moseley Commissioner

Submissions by: Clare Devlin For Staff of the Commission
Naila Ruba

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REASONS AND DECISION

I. OVERVIEW

- [1] On August 25, 2014, the British Columbia Securities Commission (the "**BCSC**") issued a decision¹ in which it found that Daveed Zarr ("**Zarr**") had engaged in an illegal distribution, had traded without proper registration, and had made misrepresentations to potential investors, all contrary to British Columbia's *Securities Act*² (the "**BC Act**").
- [2] As a result, on October 31, 2014, the BCSC issued an order imposing various sanctions against Zarr (the "**BC Order**").³ The BCSC ordered that Zarr resign any positions he held as director or officer of an issuer or registrant, and that he pay a \$20,000 administrative penalty. In addition, it restricted his access to and participation in the British Columbia capital markets until the later of October 31, 2018, or the date upon which he paid the administrative penalty.
- [3] Enforcement staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") seeks an order pursuant to subsection 127(1) of the Ontario *Securities Act* (the "**Act**")⁴ that mirrors most of the terms of the BC Order. Staff relies upon subsection 127(10) of the Act, which provides that this Commission may make an order against a person under subsection 127(1) if that person is subject to an order made by a securities regulatory authority in another jurisdiction.
- [4] Specifically, Staff asks the Commission to order that Zarr resign any positions he holds as director or officer of any issuer or registrant, and that until the later of October 31, 2018, or the date upon which he pays the administrative penalty ordered by the BCSC:
- a. trading in, or acquisition of, any securities by Zarr cease, except that he may trade or acquire securities for his own account through a registrant if, prior to any such trade or acquisition, he gives the registrant a copy of the BC Order and a copy of the Ontario order, if granted;
 - b. none of the exemptions contained in Ontario securities law shall apply to Zarr; and
 - c. Zarr be prohibited from becoming or acting as a registrant or promoter, or an officer or director of any issuer or registrant.
- [5] For the reasons that follow, I find that it is in the public interest to issue the order requested by Staff.

II. THE BCSC PROCEEDING

- [6] In its decision, the BCSC found the following facts:
- a. at all relevant times, Zarr was a resident of British Columbia;

¹ *Re Daveed Zarr (formerly known as Asi Lalky) and Zarr Energy Corporation*, 2014 BCSECCOM 317 ("**BC Merits Decision**").

² RSBC 1996, c 418.

³ *Re Daveed Zarr (formerly known as Asi Lalky) and Zarr Energy Corporation*, 2014 BCSECCOM 454 ("**BC Sanctions Decision**").

⁴ RSO 1990, c S.5.

- b. Zarr had never been registered under the BC Act;
- c. Zarr was the sole director and officer of Zarr Energy Corporation ("**Zarr Energy**");
- d. Zarr Energy had never filed a prospectus under the BC Act;
- e. Zarr sought investors to purchase shares in Zarr Energy by, among other methods, creating a website for Zarr Energy, and publishing online advertisements through Craigslist and Alibaba.com;
- f. Zarr published an advertisement through Craigslist, offering foreign exchange trading investments, which advertisement contained false or misleading representations; and
- g. Zarr corresponded with a BCSC investigator posing as an investor, to whom Zarr made false or misleading representations regarding his qualifications and regarding the expected return on the investments being offered.⁵

[7] Those factual findings led the BCSC to conclude that:

- a. by offering shares in Zarr Energy, Zarr engaged in an illegal distribution and thereby contravened subsection 61(1) of the BC Act;
- b. by soliciting investment in foreign exchange trading, Zarr engaged in unregistered trading and thereby contravened paragraph 34(a) of the BC Act; and
- c. by making false or misleading statements, Zarr contravened paragraph 50(1)(d) of the BC Act.⁶

[8] The BCSC ordered that:

- a. Zarr pay to the BCSC an administrative penalty of \$20,000;
- b. Zarr resign any position he held as a director or officer of an issuer or registrant; and
- c. until the later of the date upon which Zarr pays that administrative penalty, and October 31, 2018:
 - i. Zarr be prohibited from trading in, or purchasing, any securities or exchange contracts, except that he would be permitted to trade and purchase securities for his own account through a registrant if, prior to such trade or purchase, he gives the registrant a copy of the BC Order;
 - ii. none of the exemptions set out in the BC Act or regulations made under that Act applies to Zarr;
 - iii. Zarr be prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - iv. Zarr be prohibited from becoming or acting as a registrant or promoter;
 - v. Zarr be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 - vi. Zarr be prohibited from engaging in investor relations activities.⁷

⁵ BC Merits Decision at paras 6-18, 48, 53 and 58.

⁶ BC Merits Decision at para 59.

⁷ BC Sanctions Decision at para 35.

III. PRELIMINARY MATTERS

A. Notice to Zarr

- [9] The Notice of Hearing commencing this proceeding specified that the initial hearing would take place on July 22, 2015.
- [10] At the hearing on that date, Zarr did not appear, and no one appeared on his behalf. Staff tendered an affidavit of Lee Crann, sworn July 20, 2015, which described steps taken by Staff to serve Zarr with the Notice of Hearing, the Statement of Allegations, and disclosure.⁸
- [11] I requested additional information regarding service upon Zarr and adjourned the proceeding to a hearing on July 24, 2015, to allow Staff an opportunity to prepare a supplementary affidavit.
- [12] At the hearing on July 24, Zarr did not appear, and no one appeared on his behalf. Staff tendered an affidavit of Lee Crann, sworn July 23, 2015, which provided additional information regarding the steps previously taken by Staff to serve Zarr.⁹ Based upon that affidavit, I was satisfied that Zarr had been properly served with the Notice of Hearing and other materials.
- [13] Subsection 7(1) of the *Statutory Powers Procedure Act*¹⁰ (the "**SPPA**") and Rule 7.1 of the *Commission's Rules of Procedure*¹¹ (the "**OSC Rules**") provide that where notice of the hearing has been given to a party, but the party fails to appear, the tribunal may proceed in the absence of the party and the party is not entitled to further notice in the proceeding.

B. Written Hearing

- [14] The Notice of Hearing includes a notification that at the initial oral hearing, Staff would bring an application to continue the proceeding by way of written hearing, as provided for in section 5.1 of the SPPA and Rule 11.5 of the OSC Rules.
- [15] As noted above, on July 22, I adjourned the proceeding to an oral hearing on July 24. At the July 22 hearing, I deferred consideration of Staff's application to proceed in writing until the July 24 hearing.
- [16] At the July 24 hearing, I granted Staff's application to proceed in writing. I ordered that Staff serve and file its materials by July 31, and that Zarr serve and file any responding materials by August 28.
- [17] Staff served on Zarr¹² and filed a hearing brief¹³ containing the BC Merits Decision and the BC Sanctions Decision, along with written submissions and a brief of authorities. No materials were received from Zarr.

⁸ Marked as Exhibit 1 at the oral hearing on July 22.

⁹ Marked as Exhibit 2 at the oral hearing on July 24.

¹⁰ RSO 1990, c S.22.

¹¹ (2014), 37 OSCB 4168.

¹² Affidavit of service of Naila Ruba sworn August 14, 2015, marked as Exhibit 4 in this proceeding.

¹³ Marked as Exhibit 5 in this proceeding.

IV. ISSUES

[18] This proceeding presents three principal issues:

1. Is the test prescribed by subsection 127(10) of the Act met?
2. If so, is it in the public interest to make an order in Ontario?
3. If so, what is the appropriate order?

V. ANALYSIS

A. Is the test prescribed by subsection 127(10) of the Act met?

[19] In seeking an order under subsection 127(1) of the Act, Staff relies upon subsection 127(10), which provides, in part:

... an order may be made under subsection (1) ... in respect of a person ... if any of the following circumstances exist:

...

4. The person or company is subject to an order made by a securities regulatory authority ... in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

[20] The BC Order is an order of the BCSC, which is a securities regulatory authority in another jurisdiction.

[21] The BC Order imposes sanctions, restrictions and requirements upon Zarr.

[22] The BC Order therefore meets the test prescribed by subsection 127(10) of the Act, and the Commission may make an order under subsection 127(1) if it is in the public interest to do so.¹⁴

B. Is it in the public interest to make an order in Ontario?

1. Introduction

[23] The conclusion that the BC Order meets the test in subsection 127(10) of the Act does not necessarily lead to the conclusion that an order of this Commission should be made under subsection 127(1) of the Act. Any such order must still be “in the public interest” in the context of the Ontario capital markets.¹⁵

2. Inter-jurisdictional co-operation

[24] In determining what order would be in the public interest, I must be guided by the objective of co-operation among securities regulators, as set out in section 2.1 of the Act:

In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

[...]

¹⁴ *Re Euston Capital Corp* (2009), 32 OSCB 6313 at para 46.

¹⁵ *Re Elliott* (2009), 32 OSCB 6931 at para 27.

5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.

- [25] By explicitly referring to orders made by securities regulatory authorities in other jurisdictions, subsection 127(10) of the Act clearly promotes this legislative objective. This goal is also well recognized in decisions of the Supreme Court of Canada¹⁶ and of this Commission.¹⁷
- [26] As this Commission has previously held, “[t]he decision of a foreign jurisdiction stands as a determination of fact for the purpose of the Commission’s considerations under subsection 127(10) of the Act.”¹⁸
- [27] In this case, the findings of the BCSC with respect to Zarr’s conduct are compelling reasons to conclude that it is in the public interest to restrict his participation in Ontario’s capital markets. Had Zarr engaged in the same conduct in Ontario, it is almost certain that he would have contravened corresponding provisions of Ontario securities law.

3. Nexus to Ontario

- [28] A factual nexus to Ontario is not a necessary pre-condition to an order under subsection 127(1) of the Act. However, any such nexus may be considered.¹⁹
- [29] In this case, there is such a nexus. Zarr placed an advertisement on Craigslist in Ottawa, which the BCSC described as follows:

The Ottawa ad was headed: **“250,000\$ High return investment”** and the body of the ad read in part: “Do you want to make 30-50% on your money this year? I can grow your account by 30-50% a year... I also invite people to bet against me; If I don’t make you 30-50% on your money in a clander [*sic*] year I will give you 10,000\$... Yes, I’m that sure...”²⁰

- [30] Zarr’s solicitation of potential Ontario investors in this way reinforces the conclusion that it would be in the public interest to make an order against him under subsection 127(1) of the Act.

C. What is the appropriate order?

- [31] As noted above in paragraph [27], Zarr’s conduct, had it occurred in Ontario, would likely have attracted consequences similar to those ordered by the BCSC. Zarr’s misconduct was serious.
- [32] The BCSC found that he engaged in an illegal distribution and in unregistered trading, and that he “repeatedly published significant misrepresentations that were blatant and egregious lies”.²¹ The BCSC also found that Zarr “displayed wanton

¹⁶ *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 51; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21 at para 27.

¹⁷ *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at para 21; *New Futures Trading International Corp. (Re)* (2013), 36 OSCB 5713 at para 27.

¹⁸ *Re JV Raleigh Superior Holdings Inc.*, *supra* note 17 at para 16.

¹⁹ *Re Marlatt* (2014), 37 OSCB 5428 at para 25; *Re Biller* (2005), 28 OSCB 10131 at para 35.

²⁰ BC Merits Decision at para 14.

²¹ BC Sanctions Decision at para 14.

disregard for the need for securities regulatory compliance” and that he was unwilling to take responsibility for the potential harm to investors.²²

- [33] The BCSC concluded that Zarr “poses an ongoing and substantial risk to investors and to the capital markets” and found no mitigating factors.²³
- [34] In determining what order would be in the public interest in Ontario, I must consider the purposes of the Act set out in section 1.1, including the protection of investors from unfair, improper or fraudulent practices, and the promotion of confidence in the capital markets.²⁴
- [35] As the Supreme Court of Canada has held, it is also appropriate to consider general deterrence in making an order under subsection 127(1) of the Act.²⁵
- [36] The BCSC ordered Zarr to pay an administrative penalty of \$20,000, ordered him to resign any positions as director or officer of a registrant, and restricted Zarr’s access to and participation in the capital markets of British Columbia for a period of four years, or longer if he fails to pay the administrative penalty.
- [37] Appropriately, Staff does not seek an order in Ontario that would require Zarr to pay an additional administrative penalty. The order that Staff seeks would restrict Zarr’s access to and participation in Ontario’s capital markets in the same way that was done in British Columbia.
- [38] In my view, the order requested by Staff is proportionate to the conduct as found by the BCSC, would serve to protect Ontario’s investors and capital markets, would further the objective of inter-jurisdictional co-operation, and would have an appropriate general deterrence effect in Ontario.

VI. CONCLUSION

- [39] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff.
- [40] I will therefore issue an order, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, that Zarr resign any positions that he holds as director or officer of any issuer or registrant.
- [41] The order will contain the following additional provisions, each of which is effective until the later of October 31, 2018, and the date upon which Zarr makes the payment required by the BC Order:
- a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in or acquisition of any securities by Zarr shall cease, except that he may trade or acquire securities for his own account through a registrant if, prior to such trade or acquisition, he gives the registrant a copy of the BC Order and a copy of the order resulting from this decision;
 - b. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities law shall apply to Zarr;

²² Ibid at para 13.

²³ Ibid at paras 19-20.

²⁴ *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37 at para 45.

²⁵ *Cartaway Resources Corp.*, 2004 SCC 26 at para 60.

- c. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Zarr is prohibited from becoming or acting as an officer or director of any issuer or registrant; and
- d. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Zarr is prohibited from becoming or acting as a registrant or promoter.

Dated at Toronto this 8th day of October, 2015.

"Timothy Moseley"

Timothy Moseley