



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
HUSSAIN DHALA**

**REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)**

Hearing: In writing

Decision: February 2, 2016

Panel: Janet Leiper, C.S. - Commissioner

Appearances: Clare Devlin - For Staff of the Commission

No one appeared on behalf of Hussain Dhala

REASONS AND DECISION

I. INTRODUCTION

- [1] This was an uncontested written hearing before the Ontario Securities Commission (the "Commission") to determine whether it is in the public interest to make an order imposing sanctions against Hussain Dhala, pursuant to the authority found in sections 127(1) and (10) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Securities Act*").
- [2] Mr. Dhala was served with a Notice of Hearing issued on November 17, 2015 and a Statement of Allegations dated November 16, 2015. Mr. Dhala did not appear on the return date for the hearing, December 16, 2015.
- [3] On December 16, 2015, Staff of the Commission brought an application to convert the matter to a written hearing, as permitted by Rule 11 the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168. The application was granted and a timeline was set for service and filing of Staff and Mr. Dhala's written materials.
- [4] Mr. Dhala was served with the Commission's Order of December 16, 2015 and the written materials from Staff on December 21, 2015. Mr. Dhala did not file evidence or make submissions. Staff have requested that the matter proceed.
- [5] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Section 7(2), *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "*SPPA*"). The affidavits of service filed in these proceedings, as well as the evidence that the Notice of Hearing and Statement of Allegations were posted on the Commission's website since November 26, 2015, satisfy me that the matter may proceed in the absence of Mr. Dhala in accordance with the *SPPA*.

II. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

- [6] The *Securities Act* provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed "sanctions, conditions, restrictions or requirements on a person or a company" (s. 127(10) 4). On receiving evidence of the fact of such orders, the Commission must determine whether, based on this finding, an order under s. 127(1) of the *Securities Act* should be made.
- [7] Section 127(1) empowers the Commission to make orders where in its opinion, it is in the public interest to make such orders. In making this determination, the Commission has regard to the purposes of the *Securities Act*, which are to provide protection to investors from unfair, improper and fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.
- [8] The purpose of orders under s. 127(1) of the *Securities Act* is "protective and prospective" and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets. (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43 cited in *Re JV Raleigh Superior Holdings Inc.* (2013), 36 O.S.C.B. 4639 para. 17).

III. ANALYSIS

A. The BCSC Order

- [9] On August 31, 2015, the British Columbia Securities Commission (the "BCSC") found that Mr. Dhala contravened sections 57(d) and 168.1(1)(a) of the *Securities Act*, RSC 1996, c. 418 (the "Act"). The decision is reported at *Re Dhala*, 2015 BCSECCOM 336.
- [10] The reasons reveal that Mr. Dhala, as the sole proprietor of HMD Capital, and as a self-employed day trader, convinced four members of his social circle to give him funds to invest. HMD Capital has never been registered under the *Act*. A total of \$38,250 was provided from four individuals for investment. Mr. Dhala did not invest the funds. He used the money for personal expenses.
- [11] One investor recovered \$1,000.00 from Mr. Dhala and a second investor brought a successful civil claim for \$10,350.00. The rest of the funds collected by Mr. Dhala were not recovered at the time of the reasons for decision.
- [12] Section 57(b) provides that
- A person must not, directly or indirectly, engage in or participate in conduct relating to securities...if the person knows, or reasonably should know, that the conduct
- ...
- (b) perpetrates a fraud on any person.
- [13] The BCSC found on a balance of probabilities that Mr. Dhala engaged in fraud by promising to invest funds in securities and currency trading, but instead using the funds for personal expenditures. He controlled the funds, he made the deposits and he was the source of the representations that led to the investors providing him with the funds.
- [14] Section 168.1(1)(a) of the Act states that a person must not
- Make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act, that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.
- [15] The BCSC found that Mr. Dhala, during an interview with Commission investigators, falsely reported that he had taken money on the basis that he would invest it from one investor, the investor who had sued Mr. Dhala for a return of the funds. The Commission found this to be a false statement in a material respect because money had been taken from four different investors, not one.
- [16] The BCSC considered the nature of the conduct, the harm to investors, the personal enrichment of Mr. Dhala, the principles of specific and general

deterrence and with reference to similar orders in analogous situations, made the following order in the public interest:

- a. Under section 161(1)(b), that Dhala permanently cease trading in securities and exchange contracts;
- b. Under section 161(1)(d)(i) and (ii), that Dhala resign any position as, and is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
- c. Under section 161(1)(d)(iii), that Dhala be permanently prohibited from becoming or acting as a registrant investment fund manager or promoter;
- d. Under section 161(1)(d)(iv), that Dhala be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- e. Under section 161(1)(d)(v), that Dhala is permanently prohibited from engaging in investor relations activities;
- f. Under section 161(1)(g), that Dhala disgorge to the Commission \$26,900; and
- g. Under section 162, that Dhala pay an administrative penalty of at least \$125,000, where \$100,000 of such fine is in respect of Dhala's fraudulent misconduct and \$25,000 of such fine is in respect of Dhala's contravention of section 168.1(1)(a).

[17] Staff have established that Mr. Dhala was subject to an order made by a securities regulatory authority that imposed sanctions upon him, and thereby have established the threshold criteria set out in paragraph 4 of subsection 127(10) of the *Securities Act*.

B. The Order Requested in the Public Interest

[18] Staff have requested that public interest order be made to meet the purposes of the *Securities Act* as described in section 1.1, that is, to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

[19] In addition, the *Securities Act* recognizes the importance of inter-jurisdictional co-operation. Paragraph 5 of section 2.1 provides that "the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[20] Although there was no evidence tendered to show that Mr. Dhala solicited Ontario investors, Staff seeks an order to prevent or limit Mr. Dhala's participation in Ontario's capital markets. In a number of other decisions, the Commission has not required a nexus to Ontario when imposing an order of this nature. (See *Re Sundell* (2014), 37 O.S.C.B. 10755 at para. 37; *Re Bigfoot Recreation & Ski Area Ltd.* (2015), 38 O.S.C.B. 7370 at paras. 13 and 21; *Re Ferguson* (2015), 38 O.S.C.B. 8849 at paras. 21 and 30.)

[21] Although an order that is based upon a hearing and sanctions in another jurisdiction is not made automatically, it is important to consider the need to be responsive to the interconnected cross-border securities industry and the realities of the mobility of funds, people and information.

[22] The conduct for which Mr. Dhala was sanctioned in British Columbia would have constituted a contravention of the *Securities Act* in Ontario, had it taken place here. The conduct is serious: it harmed investors, enriched Mr. Dhala and involved deceit. It is appropriate to make an order in the public interest to prevent such conduct in the capital markets in Ontario.

IV. ORDER

[23] Having found that it is in the public interest to do so, I make the following order against Mr. Dhala that:

- i. Mr. Dhala permanently cease trading in any securities and derivatives pursuant to section 127(1), paragraph 2 of the *Securities Act*;
- ii. Mr. Dhala is permanently prohibited from acquiring any securities pursuant to section 127(1), paragraph 2.1 of the *Securities Act*;
- iii. Mr. Dhala shall resign any positions he holds as a director or officer of any issuer or registrant pursuant to section 127(1), paragraphs 7 and 8.1 of the *Securities Act*;
- iv. Mr. Dhala is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant pursuant to section 127(1), paragraphs 8 and 8.2 of the *Securities Act*; and
- v. Mr. Dhala is permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to section 127(1), paragraph 8.5 of the *Securities Act*.

Dated at Toronto this 2nd day of February 2016.

"Janet Leiper"

Janet Leiper, C.S.