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Securities
Commission

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de l'Ontario

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**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- AND -

**IN THE MATTER OF
HONG LIANG ZHONG**

REASONS AND DECISION

Hearing: In writing

Decision: July 26, 2016

Panel: Timothy Moseley Commissioner

Submissions by: Clare Devlin For Staff of the Commission
Christophe Shammas

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REASONS AND DECISION

I. OVERVIEW

- [1] On May 5, 2015, the British Columbia Securities Commission (the "**BCSC**") issued a decision¹ in which it found that Hong Liang Zhong ("**Zhong**") traded in securities without being registered, made prohibited representations, and that he perpetrated a fraud on investors, all contrary to various provisions of British Columbia's *Securities Act*² (the "**BC Act**").
- [2] On December 8, 2015, the BCSC issued a second decision³ imposing various sanctions against Zhong. The sanctions, more particularly described below, essentially removed Zhong from British Columbia's capital markets permanently. The BCSC also ordered that Zhong pay an administrative penalty and disgorge funds that had been illegally obtained.
- [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 BCSC Order. Staff relies upon subsection 127(10) of the Act, which provides in paragraph 4 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, that imposes sanctions on the person.
- [4] 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

- [5] The BCSC found, among other things, that Zhong:
- a. solicited investors by posting ads on a Chinese-language classifieds website, hosting parties at home and through word-of-mouth;
 - b. represented to investors that he was a successful forex trader and never lost money trading forex;
 - c. recruited and was the designated referring broker for 11 forex investors who opened trading accounts in electronic trading platforms and was paid commission fees for these referrals;
 - d. guaranteed the return of principal to at least 10 investors and promised that there would be no risk to investors' principal;
 - e. lost the majority of investors' funds; and
 - f. earned US \$108,405 in commissions based on the volume of trading some of his referred clients' accounts.⁵
- [6] The BCSC noted that "...Zhong deliberately misled investors into thinking that forex trading through him was a safe way to conduct forex trading..."⁶ and that "Zhong

¹ *Re Zhong*, 2015 BCSECCOM 165 ("**BCSC Merits Decision**").

² RSBC 1996, c 418.

³ *Re Zhong*, 2015 BCSECCOM 383 ("**BCSC Sanctions Decision**").

⁴ RSO 1990, c S.5.

⁵ BCSC Merits Decision at paras 11, 12, 16, 39, 42 and 43.

⁶ BCSC Sanctions Decision at para 10.

carried out a deliberate scheme to make money at his investors' expense. He showed callous disregard for the investors and the safeguards the forex firms put in place to protect investors".⁷

- [7] The BCSC concluded that by his conduct, Zhong had perpetrated fraud on investors, traded in securities without being registered and made prohibited representations. As a result, the BCSC ordered that Zhong:
- a. pay an administrative penalty of \$250,000;
 - b. resign any position he held as a director or officer of any issuer or registrant;
 - c. be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;
 - d. be prohibited permanently from becoming or acting as a registrant or promoter;
 - e. be prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
 - f. be prohibited permanently from engaging in investor relations activities;
 - g. be prohibited permanently from trading in or purchasing any securities or exchange contracts;
 - h. be prohibited permanently from any exemptions set out in the BC Act, in the regulations or a decision as defined in the BC Act; and
 - i. disgorge to the BCSC the sum of \$401,883.44.⁸

III. PRELIMINARY MATTERS

A. Notice to Zhong

- [8] The Notice of Hearing commencing this proceeding specified that the hearing would take place on February 25, 2016.
- [9] At the hearing before me on that date, Zhong did not appear. Staff tendered an affidavit of Lee Crann, sworn February 23, 2016,⁹ that described steps taken to serve Zhong with the Notice of Hearing, the Statement of Allegations, and disclosure.
- [10] 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.
- [11] I find that Zhong was given proper notice of this proceeding and that I may proceed in his absence.

⁷ BCSC Sanctions Decision at para. 22.

⁸ BCSC Sanctions Decision at para 59.

⁹ Marked as Exhibit 1 in this proceeding.

¹⁰ RSO 1990, c S.22.

¹¹ (2014), 37 OSCB 4168.

B. Written Hearing

- [12] The Notice of Hearing indicated that Staff would apply to continue this proceeding by way of written hearing, as provided for in section 5.1 of the SPPA and Rule 11.5 of the OSC Rules.
- [13] At the February 25 hearing, I granted Staff's application to proceed in writing. I ordered that Staff serve and file its materials by March 7, 2016, and that Zhong serve and file any responding materials by April 4, 2016.
- [14] Staff served and filed a hearing brief containing the BCSC Decision along with written submissions and a brief of authorities. No materials were received from Zhong.

IV. ISSUES

- [15] As noted above, subsection 127(10) of the Act provides that the Commission may make an order against a person or company under subsection 127(1) if that person or company is subject to an order, made by a securities regulatory authority in another jurisdiction, that imposes sanctions.
- [16] Staff's application for an order pursuant to subsection 127(1), made in reliance upon subsection 127(10), therefore presents two principal issues:
1. Was Zhong subject to an order made by a securities regulatory authority in another jurisdiction?
 2. If so, what sanctions, if any, should the Commission order against him?

V. ANALYSIS

A. Was Zhong subject to an order made by a securities regulatory authority in another jurisdiction?

- [17] The BCSC Order is an order of a securities regulatory authority in another jurisdiction. The order imposes sanctions on Zhong.
- [18] The BCSC 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.¹²

B. If so, what sanctions, if any, should the Commission order against Zhong?

1. Introduction

- [19] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). The Commission must still consider whether it is in the public interest, in the context of the Ontario capital markets, to make an order under subsection 127(1), and if so, what the order ought to be.¹³

2. Inter-jurisdictional co-operation

- [20] In determining whether it would be in the public interest to make an order pursuant to section 127 of the Act, I am guided by section 2.1 of the Act, which provides:

¹² *Re Euston Capital Corp* (2009), 32 OSCB 6313 at para 46.

¹³ *Re Elliott* (2009), 32 OSCB 6931 at para 27.

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

[...]

3. Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of [the] Act by the Commission.

[...]

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

- [21] By explicitly referring to orders made by securities regulatory authorities in other jurisdictions, subsection 127(10) of the Act clearly promotes these legislative objectives. This is also well recognized in decisions of the Supreme Court of Canada¹⁴ and of the Commission.¹⁵
- [22] As the 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.”¹⁶
- [23] In this case, the findings of the BCSC with respect to Zhong’s conduct are compelling reasons to conclude that it is in the public interest to restrict Zhong’s participation in Ontario’s capital markets. The misconduct for which Zhong was sanctioned would likely have constituted similar contraventions of Ontario securities law.
- [24] There is no evidence to suggest that Zhong was soliciting investors in Ontario. However, as this Commission has previously found, a nexus to Ontario is not required when considering the imposition of an inter-jurisdictional order.¹⁷ Staff submits that it is in the public interest to protect Ontario investors from Zhong by preventing or limiting his participation in Ontario’s capital markets. I accept that submission.
- [25] In addition, as the Supreme Court of Canada has held, it is appropriate to consider general deterrence in making an order under subsection 127(1).¹⁸ An order in this proceeding would have a deterrent effect upon those who might engage in similar conduct in Ontario.
- [26] For all of these reasons, I find that it is in the public interest to make an order against Zhong pursuant to section 127(1) of the Act.

3. Appropriate sanctions

- [27] The purpose of section 127 of the Act, and the principles that “animate” its application, were reviewed by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*.¹⁹ In that decision, the Court held²⁰ that “in considering an order in the public interest”,

¹⁴ See, e.g., *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 51.

¹⁵ *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 (“**JV Raleigh**”) at para 21; *New Futures Trading International Corp. (Re)* (2013), 36 OSCB 5713 at para 27.

¹⁶ *JV Raleigh* at para 16.

¹⁷ *Re Dhala* (2016), 39 OSCB 1289 at para. 20; *Re Zeiben* (2016), 39 OSCB 1299 at para. 24; *Re Sebastian* (2016), 39 OSCB 1305 at para. 19.

¹⁸ *Cartaway Resources Corp.*, 2004 SCC 26 at para 60.

¹⁹ 2001 SCC 37 (“**Asbestos**”).

²⁰ *Asbestos* at para 41.

the Commission shall have regard to both of the two purposes of the Act, as set out in section 1.1 of the Act:

- a. to provide protection to investors from unfair, improper or fraudulent practices; and
- b. to foster fair and efficient capital markets and confidence in capital markets.

[28] The Court then described the purpose of the section 127 public interest jurisdiction as being “neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario’s capital markets”.²¹ Further, the Court held that section 127 orders are not punitive. Rather, their purpose is to:

...restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.²²

[29] In this case, Staff asks the Commission to order sanctions substantially similar to those imposed by the BCSC. Specifically, Staff requests that the Commission order that Zhong:

- a. resign any positions he holds as director or officer of any issuer or registrant;
- b. be prohibited permanently from becoming or acting as a director or officer of an issuer or registrant;
- c. be prohibited permanently from becoming or acting as a registrant or promoter;
- d. be prohibited permanently from trading in any securities or derivatives and of acquiring any securities; and
- e. be prohibited permanently from any exemptions contained in Ontario securities law.

[30] Zhong’s misconduct was serious. As the BCSC found, Zhong traded in securities without being registered, made prohibited representations to investors by guaranteeing the return of the principal of their investments and perpetrated a fraud on the investors.²³

[31] In particular, Zhong solicited investors to buy and sell foreign currencies on their behalf, held himself out as an expert forex trader and received significant compensation for these activities.²⁴ Through this conduct, Zhong showed disregard for the registration regime which ensures that only properly qualified and suitable individuals are permitted to be registrants and to trade on behalf of the public.

[32] As the BCSC found, Zhong’s promise to return the principal of an investment “disguises the real risks associated with [the] investment and prevents investors from fully understanding and making informed investment decisions”.²⁵ Further, he failed to disclose the risks involved in forex trading and how he would be compensated.

²¹ *Asbestos* at para 42, adopting the words of Laskin J.A. from the court below.

²² *Asbestos* at para 43, citing with approval *Re Mithras Management Ltd.* (1990), 13 OSCB 1600.

²³ BCSC Merits Decision at paras 70, 74, 92 and 99.

²⁴ BCSC Merits Decision at para 69.

²⁵ BCSC Sanctions Decision at para 8.

- [33] Zhong's misconduct resulted in significant harm to 14 investors, who lost more than \$400,000. As the BCSC noted, Zhong was personally enriched as a result of his misconduct, at the investors' expense, through trading agent fees and referring broker commissions.²⁶
- [34] Had Zhong's misconduct occurred in Ontario, it would likely have attracted consequences similar to those ordered by the BCSC.
- [35] Appropriately, Staff does not seek an order in Ontario that would require the payment of an additional administrative penalty or the further disgorgement of funds. The order sought would restrict Zhong's access to and participation in Ontario's capital markets.
- [36] In my view, the order requested by Staff is proportionate to the misconduct 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

- [37] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff.
- [38] I will therefore issue an order which provides that:
- (a) pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in any securities or derivatives, or acquisition of any securities by Zhong shall cease permanently;
 - (b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Zhong permanently;
 - (c) pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Zhong resign any positions that he holds as director or officer of any issuer or registrant;
 - (d) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Zhong be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - (e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Zhong be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 26th day of July, 2016.

"Timothy Moseley"

Timothy Moseley

²⁶ BCSC Sanctions Decision at paras 16-17 and 42.