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Securities
Commission

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Date: 2018-09-21
File No. 2018-46

**IN THE MATTER OF
ROY PING BAI (AKA PING BAI) AND RBP CONSULTING**

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In Writing

Decision: September 21, 2018

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel

Appearances: Christina Galbraith For Staff of the Commission
Roy Ping Bai For himself and RBP Consulting

TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND.....	1
II.	BRITISH COLUMBIA PROCEEDING AND FINDINGS.....	1
	A. The Findings – Breach of section 57(b) of the BC Act.....	1
	B. The BCSC Order.....	2
III.	THE RESPONDENTS’ PARTICIPATION.....	3
IV.	STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS.....	3
V.	ANALYSIS AND DECISION	4
VI.	ORDER.....	6

REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

- [1] On February 6, 2018, a hearing panel of the British Columbia Securities Commission (the **BCSC**) found that Roy Ping Bai (also known as Ping Bai) (**Bai**) and RBP Consulting (**RBP**) (collectively, the **Respondents**) perpetrated a fraud in the aggregate amount of \$1.4 million on nine investors, contrary to section 57(b) of the British Columbia *Securities Act* (the **BC Act**).¹
- [2] On May 11, 2018 the BCSC issued its decision with respect to its order (the **BCSC Order**)² and imposed sanctions, conditions, restrictions and requirements on the Respondents, which are set out in Part II of these Reasons.
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) rely on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)³ to request that a protective order be issued in the public interest under subsection 127(1) of the Act.
- [4] The issues for me to consider are:
- a. whether one of the circumstances under subsection 127(10) of the Act applies to the Respondents, namely, are the Respondents subject to an order made by a securities regulatory authority imposing sanctions, conditions, restrictions or requirements (s. 127(10)(4)); and if so
 - b. whether the Commission should exercise its jurisdiction to make a protective order in the public interest in respect of the Respondents pursuant to subsection 127(1) of the Act.

II. BRITISH COLUMBIA PROCEEDING AND FINDINGS

A. The Findings – Breach of section 57(b) of the BC Act

- [5] The misconduct occurred between February 2012 and July 2014 (the **Material Time**) when Bai was a resident of Vancouver and West Vancouver, British Columbia.⁴
- [6] RBP is a general partnership registered in British Columbia. Bai and his wife were RBP's only partners and Bai confirmed under oath that he was the sole operating and controlling mind of RBP.⁵ The BCSC did not make any finding of misconduct against Bai's wife personally.⁶
- [7] During the Material Time, Bai, or RBP, received a total of \$1,530,000 from nine investors for the purpose of investing in foreign exchange trading. Investors were promised high rates of return, generally 5% per month or 30-60% per annum.⁷

¹ RSBC 1996, c 418

² Exhibit 1, Tab 2, BCSC Order dated May 11, 2018 (**BCSC Order**)

³ RSO 1990 c S.5

⁴ Exhibit 1, Tab 1, BCSC Findings dated February 6, 2018 at paras 8 and 4 (**BCSC Findings**)

⁵ BCSC Findings at para 5

⁶ BCSC Findings at para 50

⁷ BCSC Findings at paras 8 and 15

- [8] Throughout the Material Time the Respondents corresponded with investors, advising them that, among other things, RBP would be obtaining a public listing of its securities, that the listing was being delayed due to problems with its securities regulatory filings, and that returns on their investments were delayed due to a tax audit.⁸ Bai subsequently acknowledged that the substance of these statements was untrue, and admitted that the communications were made to give the Respondents more time to try and pay back the investors and to delay investors from learning of the Respondents' misappropriation of their investments.⁹
- [9] The BCSC found that during the Material Time the Respondents deposited approximately \$129,000 into foreign exchange trading accounts, and the remainder of the investors' funds were used for other purposes, including payments to other investors and Bai's personal expenditures.¹⁰
- [10] The BCSC concluded that the Respondents contravened section 57(b) of the BC Act by fraudulently misappropriating \$1,401,000 from nine investors.¹¹

B. The BCSC Order

- [11] The BCSC ordered that:
- a. under section 161(1)(d)(i) of the BC Act, Bai resign any position he holds as a director or officer of an issuer or registrant;
 - b. Bai is permanently prohibited:
 - i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
 - ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
 - iii. under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;
 - iv. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
 - v. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
 - vi. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;
 - c. Bai pay to the Commission \$1,291,000 pursuant to section 161(1)(g) of the BC Act;
 - d. Bai pay to the Commission an administrative penalty of \$1,000,000 under section 162 of the BC Act; and
 - e. RBP is permanently prohibited:

⁸ BCSC Findings at para 16

⁹ BCSC Findings at para 18

¹⁰ BCSC Findings at paras 13 and 11

¹¹ BCSC Findings at para 50

- i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
- ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
- iii. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
- iv. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
- v. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities.¹²

III. THE RESPONDENTS' PARTICIPATION

- [12] Staff elected to use the expedited procedure for a written hearing set out in Rule 11(3) of the Commissions Rules of Procedure and Forms.¹³
- [13] The Respondents were served with a Notice of Hearing issued on August 15, 2018, a Statement of Allegations dated August 13, 2018 and Staff's factum, hearing brief¹⁴ and book of authorities on August 15, 2018. They were subsequently also served with Staff's Reply submissions on September 17, 2018.
- [14] On September 4, 2018 Bai filed written submissions with the Commission. These written submissions appear to be identical to the submissions Bai made on behalf of himself and RBP at the BCSC hearing.
- [15] I have reviewed the Respondents' submissions and find that they do not contain any new information that was not before the BCSC Panel in the original proceeding.

IV. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

- [16] Subsection 127(10) of the Act facilitates the cross-jurisdictional enforcement of judgements for breaches of securities law by providing the Commission with a mechanism to issue protective and preventative orders to ensure that conduct which took place in other jurisdictions will not be repeated in Ontario's capital markets.¹⁵
- [17] 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). On receiving evidence that a respondent 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,¹⁶ the Commission must determine whether an order under subsection 127(1) of the Act should be made.
- [18] Orders made under subsection 127(1) of the Act are "protective and preventative" and are made to restrain potential conduct which could be

¹² BCSC Order at para 51

¹³ (2017), 40 OSCB 8988

¹⁴ Marked as Exhibit 1

¹⁵ *Black (Re)*, 2014 ONSEC 16, (2014), 37 OSCB 5847 at para 7 (**Black**)

¹⁶ *Securities Act*, s. 127(1)4

detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.¹⁷

- [19] In exercising its jurisdiction to make an order under subsection 127(10) of the Act, the Commission does not require a pre-existing connection to Ontario. However, it is a factor that can be considered by the Commission in exercising its discretion.¹⁸

V. ANALYSIS AND DECISION

- [20] A hearing pursuant to subsection 127(10) of the Act is meant to be an efficient tool for issuing protective orders and is not a mechanism for re-litigating findings made by another jurisdiction.¹⁹
- [21] As mentioned above, the Respondents' written submissions in this proceeding are not new. These submissions were made at the BCSC hearing, and the BCSC Panel made findings after considering the evidence before it. The Respondents' written submissions deny perpetuating a fraud of approximately \$1.4 million on nine investors, deny using investor funds for purposes other than foreign exchange investing, and deny making misrepresentations to investors in correspondence. The BCSC made findings to the contrary on all these issues.²⁰
- [22] I therefore decline to reconsider the issues raised in the Respondents' submissions, as these issues were considered by the BCSC in the original proceeding and are the subject of findings made by the BCSC Panel.
- [23] The Commission's approach to subsection 127(10) hearings is well-established and to deviate from this approach would be inappropriate. The decision of another jurisdiction stands as a determination of fact for the purpose of the Commission's consideration of a matter under subsection 127(10) of the Act. My task is to determine whether, based on those findings of fact, the sanctions proposed by Staff would be in the public interest in Ontario.²¹
- [24] The threshold has been met under paragraph 4 of subsection 127(10) of the Act, as the Respondents are subject to the BCSC Order, which imposes sanctions, conditions, restrictions or requirements upon them. Since the threshold in subsection 127(10) has been met, it is now open to me to make one or more orders under subsections 127(1) if it is my opinion that it is in the public interest to do so.
- [25] The Commission may consider a number of factors in determining the nature and scope of sanctions, including:
- a. the seriousness of the allegations proved;
 - b. the respondent's experience in the marketplace;
 - c. the level of a respondent's activity in the marketplace;

¹⁷ *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

¹⁸ *Biller (Re)* (2005), 28 OSCB 10131 at paras 32-35

¹⁹ *Black* at paras 14, 24-25

²⁰ BCSC Findings at paras 8, 10-13, 16-18, 29, 41-42, 50

²¹ *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at para 16; *Black* at para 24

- d. whether or not there has been a recognition of the seriousness of the improprieties;
- e. the need to deter a respondent, and other like-minded persons, from engaging in similar abuses of the capital markets in the future;
- f. whether the violations are isolated or recurrent;
- g. the size of any profit gained or loss avoided from the illegal conduct;
- h. any mitigating factors, including the remorse of the respondent;
- i. the effect any sanction might have on the ability of the respondent to participate without check in the capital markets;
- j. in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective; and
- k. the size of any financial sanctions or voluntary payment when considering other factors.²²

[26] In this case, the harm suffered by investors and the enrichment of the Respondents are important factors to consider. The BCSC Panel noted that "fraud is the most serious misconduct found in the Act."²³ They went on to state, "This case is at the upper end of the scale of fraudulent misconduct that the Commission oversees in terms of the deceit perpetrated on investors."²⁴

[27] The harm suffered by investors was significant. Although the BCSC Panel found that some amounts were returned to investors, their losses totalled \$1,291,000.²⁵

[28] Conversely, the Respondents received all of the funds from investors, in the amount of \$1,401,000, and were therefore unjustly enriched by that amount.²⁶

[29] Bai has not recognized the seriousness of the misconduct in which he and RBP engaged, nor has he shown remorse for his actions. The BCSC Panel found that Bai, "lacks any appreciation of the deceitful nature of his misconduct."²⁷

[30] The sanctions imposed by the Commission in this case must deter Bai and other like-minded persons from engaging in similar misconduct in Ontario.

[31] The fraudulent activity continued throughout the Material Time, a period of almost two and a half years. Therefore, it involved persistent wrongdoing.

[32] No aggravating or mitigating factors were considered by the BCSC Panel²⁸ or brought to my attention in this matter.

[33] Therefore, in considering the factors set out above, I find it appropriate to grant an order in the public interest pursuant to the authority provided in subsection

²² *Beltco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136

²³ BCSC Order at para 9

²⁴ BCSC Order at para 10

²⁵ BCSC Order at para 13

²⁶ BCSC Order at paras 16, 18

²⁷ BCSC Order at para 21

²⁸ BCSC Order at para 19

127(1) of the Act, and as requested by Staff. This order will protect the Ontario capital markets from the Respondents, as well as deter other persons who may wish to conduct similar fraudulent activities in Ontario.

VI. ORDER

[34] For the reasons provided above, I make the following Order:

1. against Bai that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Bai shall cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Bai shall cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Bai permanently;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bai shall resign any positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;
- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Bai is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Bai is prohibited permanently from becoming or acting as a registrant, investment fund manager, or promoter.

2. against RBP that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by RBP shall cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RBP shall cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to RBP permanently; and
- (d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, RBP is prohibited permanently from becoming or acting as a registrant, investment fund manager, or promoter.

Dated at Toronto this 21st day of September, 2018.

"D. Grant Vingoe"

D. Grant Vingoe