



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen Ouest
Toronto ON M5H 3S8

Citation: Lee (Re), 2018 ONSEC 57
Date: 2018-12-04
File No. 2018-58

**IN THE MATTER OF
LARRY LEE**

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

Hearing: In Writing

Decision: December 4, 2018

Panel: Timothy Moseley Vice-Chair and Chair of the Panel

Appearances: Kai Olson For Staff of the Commission

Larry Lee For himself

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

- [1] Larry Lee entered into a settlement agreement with the Executive Director of the British Columbia Securities Commission (**BCSC**) on July 31, 2018 (the **Settlement Agreement**).¹ In the Settlement Agreement, Mr. Lee agreed that he had perpetrated a fraud on investors, contrary to section 57(b) of the British Columbia *Securities Act* (the **BC Act**).²
- [2] In the Settlement Agreement, Mr. Lee undertook to pay \$50,000 to the BCSC, and to disgorge an additional \$190,000. Pursuant to the agreement, the BCSC ordered³ that Mr. Lee:
- a. resign any positions he holds as a director or officer of an issuer or registrant;
 - b. be permanently prohibited from trading in or purchasing any securities or exchange contracts, subject to a limited exception;
 - c. be permanently prohibited from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
 - d. be permanently prohibited from becoming or acting as a director or officer of any issuer or registrant, or as a registrant or promoter;
 - e. be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 - f. be permanently prohibited from engaging in investor relations activities.
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) relies on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**).⁴ Staff requests that the Commission issue an order that replicates the sanctions described in subparagraphs [2](a) through (d) above, with necessary modifications to conform to the Act.
- [4] For the reasons that follow, I find that it is in the public interest to issue an order substantially in the form requested by Staff.

II. BACKGROUND FACTS

- [5] The Settlement Agreement sets out the following agreed facts.
- [6] Between 2010 and 2013, Mr. Lee was engaged in the business of developing real estate websites.
- [7] On May 11, 2012, Mr. Lee raised \$200,000 from two joint investors under a promissory note. The terms of the promissory note provided a 24% annual return for two years and an option to buy a 15% stake of Mr. Lee's business.

¹ *Lee (Re)*, 2018 BCSECCOM 221

² RSBC 1996, c 418

³ *Lee (Re)*, 2018 BCSECCOM 222 (**BC Order**)

⁴ RSO 1990 c S.5

- [8] Mr. Lee told the investors that:
- a. he would use their funds to develop his business;
 - b. the investment was low-risk, with guaranteed repayment of the principal and 24% annual return over two years;
 - c. he was confident he could sell his business for at least \$10 million by December 31, 2014;
 - d. he owned his house and, if necessary, would sell it in order to repay the investors; and
 - e. if he passed away during the term of the promissory note, his estate would repay the investors.

- [9] Mr. Lee omitted to tell the investors that:
- a. his business had no revenue and minimal assets;
 - b. he had no basis to guarantee a 24% rate of return;
 - c. he was approximately \$800,000 in debt; and
 - d. he owned only a 20% interest in the house, which was significantly encumbered.

[10] Mr. Lee deposited the investors' money into his personal bank account and immediately used the funds to pay friends, family, credit card debt and bank loans.

[11] Mr. Lee's business never generated any revenue and he abandoned it at the end of 2013.

[12] Mr. Lee admitted that by engaging in the conduct set out above, he perpetrated a fraud on the investors contrary to section 57(b) of the BC Act.

[13] Prior to BCSC Staff's involvement, Mr. Lee voluntarily repaid \$10,000 to the investors. He also cooperated with the BCSC's Executive Director.

III. SERVICE AND PARTICIPATION

[14] Staff elected to use the expedited procedure for an inter-jurisdictional enforcement proceeding set out in Rule 11(3) of the *Ontario Securities Commission Rules of Procedures and Forms*⁵ (**Rules of Procedure**), which permits the hearing to be conducted in writing.

[15] As appears from an affidavit of service filed by Staff,⁶ on October 11, 2018, Staff served Mr. Lee with the Notice of Hearing issued on October 10, 2018, the Statement of Allegations dated October 9, 2018, and Staff's written hearing materials, consisting of Staff's hearing brief,⁷ written submissions, and brief of authorities.

[16] By email sent November 7, 2018,⁸ Mr. Lee acknowledged receipt of the above materials. I find that he was properly served.

⁵ (2017) 40 OSCB 8988

⁶ Exhibit 1, Affidavit of Lee Crann sworn October 15, 2018

⁷ Exhibit 2, Hearing Brief of Staff

⁸ Exhibit 3, Email from Larry Lee to Lee Crann sent November 7, 2018

[17] Mr. Lee's email also contained brief submissions, described in more detail below.

IV. ANALYSIS

A. Introduction

[18] Paragraph 4 of subsection 127(10) of the Act provides that the Commission may make an order under subsection 127(1) of the Act where a person is subject to an order made by a securities regulatory authority in any jurisdiction that imposes sanctions, conditions, restrictions or requirements on the person.

[19] The BCSC is a securities regulatory authority. The BC Order imposed sanctions on Mr. Lee. The test under paragraph 4 of subsection 127(10) of the Act is satisfied.

[20] I must therefore consider whether it is in the public interest for the Commission to make an order against Mr. Lee, and if so, what that order should be.

B. Statutory authority to make public interest orders

[21] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders imposed following breaches of securities law. The subsection does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1).

[22] Orders made under subsection 127(1) of the Act are "protective and preventative" and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.⁹

[23] In exercising its jurisdiction to make an order in reliance on subsection 127(10) of the Act, the Commission does not require that the underlying conduct have a connection to Ontario.¹⁰

C. Appropriate sanctions

[24] In the Settlement Agreement, Mr. Lee consented to "a regulatory Order made by any provincial... securities regulatory authority in Canada containing any or all of the Orders" set out in subparagraphs [2](a) through (d) above. Despite having given that consent, Mr. Lee asked in his November 7 email that the Commission not reciprocate the non-monetary sanctions against him and "give [him] a chance to redeem [himself]." He stated: "[e]ven though I have no plans to raise funds in Ontario, having the ability to do so in the future will help my career in case I work for a company that needs me to interact with investors or shareholders."

[25] Mr. Lee's request that the Commission not reciprocate various sanctions is inconsistent with his earlier consent, by which he explicitly agreed to such an order. In my view, in the absence of compelling circumstances (and there are no such circumstances in this case), it would be contrary to the public interest to permit a respondent to avoid the consequences of a commitment previously given to a securities regulatory authority in another jurisdiction.

⁹ *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

¹⁰ *Hable (Re)*, 2018 ONSEC 11, (2018) 41 OSCB 2351 at para 8

- [26] Staff of that regulatory authority, and the regulatory authority itself, were entitled to rely on that commitment in choosing to accept or approve the agreed-upon sanctions. This Commission should uphold Mr. Lee's commitment. Doing so would honour one of the principles to which the Commission is required, by the Act, to have regard: "The integration of capital markets is supported by the sound and responsible harmonization and co-ordination of securities regulation regimes."¹¹
- [27] Having said that, I must still find that it would be in the public interest to order the sanctions requested by Staff.
- [28] In determining appropriate sanctions, the Commission may consider a number of factors, including the seriousness of the misconduct, specific and general deterrence and any aggravating or mitigating factors.¹²
- [29] In this case, the misconduct was very serious. As this Commission has repeatedly held, fraud is one of the most egregious violations of securities law. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.¹³
- [30] The Settlement Agreement records as mitigating factors that Mr. Lee voluntarily repaid \$10,000 to the investors prior to BC Staff's involvement in the matter, and that Mr. Lee cooperated with BC's Executive Director.
- [31] Staff submits that Mr. Lee's conduct warrants an order designed to protect Ontario investors, by limiting Mr. Lee's participation in Ontario's capital markets. Staff submits that the sanctions it requests are proportionate to Mr. Lee's conduct and appropriate in the circumstances.
- [32] I agree. It is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring Mr. Lee from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons. I accept Staff's submission that it would be in the public interest to order sanctions that are substantially similar to those set out in paragraphs [2](a) through (d) above.
- [33] The BC Order's prohibition against Mr. Lee trading in or purchasing securities or exchange contracts provided for an exception, pursuant to which Mr. Lee may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of the Settlement Agreement. Staff's requested order in this proceeding contemplates a similar exception. I shall so order.

D. Differences between BC and Ontario sanctions

- [34] Due to differences between Ontario's Act and the BC Act, some of the sanctions I impose cannot be identical to those imposed in the BCSC Order.
- [35] The BCSC prohibited Mr. Lee from trading in or purchasing "exchange contracts". Subsection 127(1) of the Act does not expressly refer to exchange contracts. The

¹¹ Paragraph 5 of section 2.1 of the Act

¹² *Belteco Holdings Inc. (Re)*, (1998) 21 OSCB 7743 at 7746-7747; *MCJC Holdings (Re)*, (2002) 25 OSCB 1133 at 1136.

¹³ *Black Panther (Re)*, 2017 ONSEC 8, (2017) 40 OSCB 3727 at para 48

BC Act defines “exchange contract” to mean a futures contract or option that meets certain specified requirements. As a result, Staff seeks an order permanently prohibiting Mr. Lee from trading in derivatives. In my view, when considering the factors described above that support the making of orders prohibiting trading, there is no reason to distinguish between securities and derivatives. In the circumstances of this case, it is equally in the public interest to protect Ontario investors and the capital markets by prohibiting Mr. Lee from trading in derivatives. I will therefore make the order requested by Staff.

- [36] Before concluding, I note Staff’s submissions that its requested order would refer explicitly to “registrant, including an investment fund manager” to avoid any potential ambiguity, notwithstanding that the Act requires investment fund managers to be registered unless they are exempted from registration. Staff bases that request on the Commission’s reasons in *Lim (Re)*.¹⁴ I prefer and adopt the Commission’s reasons in *Inverlake Property Investment Group Inc (Re)*¹⁵ and *Vantooren (Re)*,¹⁶ in which the Commission found such a distinction unnecessary, given that the definition of “registrant” in subsection 1(1) of the Act includes an investment fund manager, by virtue of subsection 25(4) of the Act. As a result, the order I shall issue refers to a registrant, which term include an investment fund manager.

V. CONCLUSION

- [37] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff. I will therefore order that:
- a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, Mr. Lee be permanently prohibited from trading in any securities or derivatives, and from acquiring any securities, except that he may trade securities or derivatives, and may acquire securities, for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer who has been provided with a copy of the order in this proceeding;
 - b. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Mr. Lee permanently;
 - c. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Mr. Lee resign any positions he holds as a director or officer of any issuer or registrant;
 - d. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mr. Lee be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

¹⁴ 2018 ONSEC 39, (2018) 41 OSCB 6045 at para 23

¹⁵ 2018 ONSEC 35, (2018) 41 OSCB 5309 at para 39

¹⁶ 2018 ONSEC 36, (2018) 41 OSCB 5603 at para 30

- e. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Lee be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 4th day of December, 2018.

"Timothy Moseley"

Timothy Moseley