



Ontario
Securities
Commission

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de l'Ontario

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Citation: Davidson (Re), 2019 ONSEC 1
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File No. 2018-71

**IN THE MATTER OF
DARREN SCOTT DAVIDSON**

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

Hearing: In Writing

Decision: January 4, 2019

Panel: Lawrence P. Haber Commissioner

Submissions: Kai Olson For Staff of the Commission

No hearing brief or written
submissions were filed by or on
behalf of Darren Scott Davidson

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REASONS AND DECISION

I. INTRODUCTION

- [1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) requests that an order be issued against Darren Scott Davidson (the **Respondent** or **Davidson**) pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Act.¹ Paragraph 5 of subsection 127(10) authorizes the Commission to make orders in the public interest under subsection 127(1) where a person or company has agreed with another securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements.²
- [2] The agreed facts in a settlement agreement with another securities regulatory authority stand as a determination of fact for the purposes of the Commission's considerations under subsection 127(1) of the Act. The Commission is not required to make an order that mirrors the sanctions provided for in a settlement agreement. Rather, the Commission's task is to determine whether, based on the agreed facts, the sanctions proposed by Staff would be in the public interest in Ontario.³
- [3] On July 24, 2018, the Respondent and staff of the British Columbia Securities Commission (the **BCSC**) entered into a Settlement Agreement (the **Settlement Agreement**). In the Settlement Agreement, the Respondent admitted that he breached sections of the British Columbia *Securities Act*,⁴ and agreed to be subject to various sanctions. The agreed sanctions included market-access bans and a \$48,000 payment to the BCSC.⁵

II. SERVICE AND PARTICIPATION

- [4] Staff brought this proceeding under the expedited procedure provided in Rule 11(3) of the Commission's *Rules of Procedure*.⁶
- [5] The Respondent was served with the Notice of Hearing issued on November 28, 2018, the Statement of Allegations dated November 27, 2018 and Staff's written submissions, hearing brief⁷ and brief of authorities.
- [6] Although served, the Respondent did not file a hearing brief or make any written submissions in this proceeding. The Commission may proceed in the absence of a party where that party has been given notice of the hearing.⁸

¹ Ontario *Securities Act*, RSO 1990, s S.5 (the **Act**).

² Act, s 127(10)5.

³ *JV Raleigh Superior Holdings Inc (Re)*, 2013 ONSEC 18, (2013) 36 OSCB 4639 at para 16; *Elliott (Re)*, 2009 ONSEC 26, (2009) 32 OSCB 6931 at paras 27 and 31.

⁴ RSBC 1996, c 418 (the **BC Act**).

⁵ *Davidson (Re)*, 2018 BCSECCOM 171 at para 2.

⁶ Ontario *Securities Commission Rules of Procedure and Forms*, (2017) 40 OSCB 8988 (the **Rules of Procedure**).

⁷ Staff's Hearing Brief is marked as Exhibit 1.

⁸ *Statutory Powers Procedure Act*, RSO 1990 c S.22, s 7(2); *Rules of Procedure*, r 21(3).

III. SETTLEMENT AGREEMENT

A. Background

- [7] The Respondent is a resident of British Columbia. Between July 2011 and April 2014, the Respondent was a director and officer or *de facto* director and officer of Titan-West Explorations Inc. (**Titan-West**).⁹
- [8] In 2012, Titan-West and the Respondent attempted to mine for gold in the Yukon. The Respondent relocated his family to the Yukon for this purpose. Based on information provided to him from the people who sold the claims, he understood there was a substantial amount of gold on the property. Titan-West's 2012 financial statements showed gold revenue of \$41,307 and an operating loss of \$566,050.¹⁰
- [9] Titan-West is now dissolved.¹¹

B. Misconduct

- [10] Titan-West did not mine for gold in 2013. However, between October 2013 and February 2014, Titan-West and the Respondent raised capital for Titan-West.¹²
- [11] Representatives of Titan-West provided some of the prospective investors with promotional material, including a business plan and executive summary that the Respondent provided to the representatives.¹³
- [12] The business plan provided to prospective investors did not disclose the 2012 operating loss of \$566,050 on gold revenue of \$41,307. Instead, the business plan disclosed an outdated 2012 "pro forma" financial statement with gross revenue of \$12 million and net operating income of \$6,959,418 which the Respondent ought to have known would be relied on by the investors.¹⁴
- [13] Four prospective investors who received the business plan invested a total of \$172,000.¹⁵
- [14] On February 13, 2014, the Executive Director of the BCSC issued an Order under section 164(1) of the BC Act ordering that all trading in the securities of Titan-West cease (**Cease Trade Order**).¹⁶

C. Misrepresentations

- [15] Titan-West made misrepresentations to investors by failing to disclose the 2012 operating loss, and by disclosing the 2012 "pro forma" financial statements, contrary to section 50(1)(d) of the BC Act. As a *de facto* director and officer of Titan-West, the Respondent authorized, permitted or acquiesced in Titan-West's misrepresentations.¹⁷

⁹ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(1).

¹⁰ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(2).

¹¹ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(3).

¹² *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(4).

¹³ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(5).

¹⁴ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(6).

¹⁵ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(7).

¹⁶ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(8).

¹⁷ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(9).

D. Breach of Cease Trade Order

[16] After the Cease Trade Order was issued:

- (a) Titan-West representatives emailed and telephoned prospective investors, soliciting investment in Titan-West; and
- (b) Titan-West issued two promissory notes for \$27,000 each to two previous Titan-West investors. The \$27,000 comprises part of the \$172,000 mentioned above.¹⁸

[17] The foregoing conduct contravened the Cease Trade Order. As a *de facto* director and officer of Titan-West, the Respondent authorized, permitted or acquiesced in Titan-West's contraventions of the Cease Trade Order.¹⁹

[18] The Respondent had advised the BCSC's Executive Director that he received legal advice that Titan-West could borrow money despite the Cease Trade Order. As a result, the Respondent did not think Titan-West was contravening the Cease Trade Order by issuing promissory notes.²⁰

E. Undertaking

[19] The Respondent undertook to not directly or indirectly make an application for restoration of Titan-West.²¹

F. BCSC Order

[20] The BCSC Order imposed the following terms on the Respondent:

- (a) under section 161(1)(d)(i) of the BC Act, Davidson resign any positions he holds as a director of an issuer or registrant;
- (b) Davidson is prohibited for the later of 12 years from the date of the Settlement Agreement and the date that the amount set out in paragraph (c) below is paid:
 - i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade securities through a registrant in one non-registered account, one RRSP account and one TFSA account held in his own name if he first provides a copy of the BCSC Order to the registrant. Davidson may also participate in an employee share investment plan through his employer;
 - 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 except that Davidson may become or act as an officer or director of a company of which he owns all the shares;
 - iv. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

¹⁸ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(10).

¹⁹ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(11).

²⁰ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(12).

²¹ *Davidson (Re)*, 2018 BCSECCOM 171 at para 1(15).

- 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; and
- (c) Davidson pay to the BCSC \$48,000 pursuant to section 161(1)(g) of the BC Act.²²

IV. ANALYSIS AND DECISION

[21] Staff seeks an order pursuant to subsections 127(10) and (1) of the Act imposing trading and market-access bans that substantially mirror those in the Settlement Agreement.

[22] The issues for this Panel to consider are:

- (a) whether one or more of the circumstances under subsection 127(10) of the Act apply to the Respondent; and
- (b) if so, whether the Commission should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the Act.

A. Subsection 127(10) of the Act

[23] 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). This provision facilitates cross-jurisdictional enforcement by allowing the Commission to issue protective, preventive and prospective orders to ensure that misconduct that has taken place in another jurisdiction will not be repeated in Ontario's capital markets.

[24] Paragraph 5 of subsection 127(10) provides for inter-jurisdictional enforcement where a person or company has agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements.

[25] In the Settlement Agreement, the Respondent agreed to be made subject to "sanctions, conditions, restrictions or requirements." In addition, the Respondent consented to regulatory orders made by any provincial or territorial securities regulatory authority in Canada containing any or all of the orders set out in paragraph 2 of the Settlement Agreement.²³

B. Subsection 127(1) of the Act

[26] The threshold having been met under paragraph 5 of subsection 127(10), the Panel must determine what sanctions, if any, should be ordered against the Respondents pursuant to subsection 127(1).

[27] Subsection 127(1) empowers the Commission to make orders where it is in the public interest to do so. The Commission is not required to make an order similar to that made by the originating jurisdiction. Rather, the Panel must first satisfy itself that an order for sanctions is necessary to protect the public interest in Ontario and then consider what the appropriate sanctions should be.

²² *Davidson (Re)*, 2018 BCSECCOM 171 at para 2.

²³ *Davidson (Re)*, 2018 BCSECCOM 171 at para 3.

- [28] Orders made under subsection 127(1) of the Act are “protective and preventive” and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.²⁴
- [29] The Commission must make its own determination of what is in the public interest. It is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. The threshold for reciprocity is low.²⁵ A low threshold is supported by the principle found in section 2.1 of the Act, which provides that “[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.”
- [30] In determining the nature and scope of sanctions to be ordered, the Commission can consider a number of factors, including the seriousness of the conduct, specific and general deterrence, and any mitigating factors.²⁶

C. Differences between the Agreed Sanctions and the Proposed Order

- [31] Due to the differences between the Act and the BC Act, some of the sanctions this Panel imposes cannot be identical to those agreed to in the Settlement Agreement. This is true with respect to two aspects of the sanctions.
- [32] First, the Settlement Agreement prohibits the Respondent from trading in or purchasing “exchange contracts” in addition to securities. The BC Act defines “exchange contract” to mean a futures contract or option that meets certain specified requirements. As a result, Staff seeks an order prohibiting the Respondent from trading in derivatives, as defined in the Act. In my view, when considering the factors described above that support the making of an order 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 the Respondent from trading in derivatives. This Panel will therefore make the order requested by Staff.
- [33] Second, the Settlement Agreement prohibits the Respondent from engaging in “investor relations activities” and from “acting in a management or consultative capacity in connection with activities in the securities market.” In Ontario, the Act does not use those terms. Instead, as Staff submits, such activities would largely be covered by the prohibitions already requested, against individuals acting as a director or officer of an issuer, or against any respondent acting as a registrant or promoter.
- [34] This Panel finds that it is in the public interest to make the order as requested by Staff, and that such an order effectively mirrors the relevant provisions of the Settlement Agreement.

²⁴ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 SCR 132 at paras 42-43.

²⁵ *JV Raleigh Superior Holdings Inc (Re)*, 2013 ONSEC 18, (2013) 36 OSCB 4639 at para 21.

²⁶ *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1136.

V. CONCLUSION

[35] For the reasons provided above, the facts agreed to in the Settlement Agreement support the making of an inter-jurisdictional order with the following terms:

- a. until the later of July 24, 2030, or the date on which the amount in paragraph 2(3) of BCSC Order has been paid:
 - i. 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 Davidson cease, except that:
 - (a) he may trade in securities or derivatives through a registrant in one non-registered account, one RRSP account and one TFSA account held in his own name, if he first provides copies of the BCSC Order and this Order to the registrant; and
 - (b) Davidson may also participate in an employee share investment plan through his employer;
 - ii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Davidson;
 - iii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Davidson resign any positions that he holds as a director or officer of any issuer or registrant;
 - iv. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Davidson be prohibited from becoming or acting as a director or officer of any issuer or registrant, except that Davidson may become or act as an officer or director of a company of which he owns all the shares; and
 - v. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Davidson be prohibited from becoming or acting as a registrant or promoter.

Dated at Toronto this 4th day of January, 2019.

"Lawrence P. Haber"

Lawrence P. Haber