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Securities
Commission

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**IN THE MATTER OF
LARRY KEITH DAVIS**

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

Hearing: In Writing

Decision: January 15, 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 Larry Keith Davis

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REASONS AND DECISION

I. INTRODUCTION

- [1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) requests that an order under section 127(1) of the *Securities Act*¹ be made against Larry Keith Davis (the **Respondent** or **Davis**) pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Act.
- [2] In a decision issued by the British Columbia Securities Commission (the **BCSC**) on June 22, 2016² the BCSC found that the Respondent perpetrated a fraud, contrary to section 57(b) of the British Columbia *Securities Act*.³
- [3] Following a sanctions hearing, on November 7, 2016, the BCSC ordered the Respondent to pay a \$15,000 administrative penalty and permanently prohibited him from participating in the securities market, with the exception that he was granted a carve-out for trading and purchasing securities for his own account through a person registered under the BC Act.⁴
- [4] The Respondent appealed the BCSC Findings and the permanent market prohibition bans in the BCSC Original Sanctions Order to the British Columbia Court of Appeal (**BCCA**).
- [5] On April 20, 2018, the BCCA issued its Reasons for Judgement, dismissing the Respondents' appeal of the BCSC's Findings but allowing the appeal of the BCSC Original Sanctions Order, and set aside the permanent market prohibition bans in the BCSC Original Sanctions Order, and remitted that specific issue back to the BCSC for reconsideration.⁵
- [6] On July 6, 2018, the BCSC held a sanctions hearing with respect to the imposition of market prohibition bans on the Respondent.
- [7] On September 19, 2018, the BCSC Order was issued⁶, ordering the same permanent market prohibition bans against the Respondent as was ordered in the BCSC Original Sanctions Order.⁷
- [8] The Respondent is subject to the BCSC Order, which imposes sanctions, conditions, restrictions or requirements upon him.

II. SERVICE AND PARTICIPATION

- [9] On December 12, 2018 the Commission ordered that this proceeding follow the expedited procedure provided in Rule 11(3) of the Commission's *Rules of Procedure and Forms*⁸.

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

² *Re Davis*, 2016 BCSECCOM 214 (the **BCSC Findings**).

³ RSBC 1996, c 418 (the **BC Act**).

⁴ *Re Davis*, 2016 BCSECCOM 375 (the **BCSC Original Sanctions Order**). The Respondent did not appeal the administrative penalty ordered by the BCSC and that administrative penalty still remains in effect.

⁵ *Davis v British Columbia (Securities Commission)*, 2018 BCCA 149 at paras 90-91.

⁶ *Re Davis*, 2018 BCSECCOM 284 (the **BCSC Order**).

⁷ BCSC Order at para 57.

⁸ Ontario *Securities Commission Rules of Procedure and Forms*, (2017) 40 OSCB 8988 (the **Rules of Procedure**).

- [10] The Respondent was served with the Commission's Order, the Amended Statement of Allegations dated December 12, 2018 and Staff's written submissions, hearing brief⁹ and brief of authorities.
- [11] 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.¹⁰

III. THE BCSC FINDINGS

A. Background

- [12] The conduct for which the Respondent was sanctioned took place between June 2011 and May 2013 (the **Material Time**).¹¹ During this time, the Respondent was a resident of British Columbia. The Respondent has never been registered under the BC Act.¹²
- [13] During the Material Time, the Respondent was working in investor relations using the name Bravo International Services (**Bravo**).¹³
- [14] In 2009, the Respondent began doing investor relations work for various companies, including FormCap Corp. (**FormCap**), a Nevada company trading on the US over-the-counter market. His involvement with the companies was through an individual (**Mr. B**).¹⁴
- [15] The Respondent had no agreement with FormCap to provide investor relations services and received no remuneration from the company. He obtained information relating to FormCap from Mr. B and public sources.¹⁵
- [16] For a brief period of time in early 2011, the Respondent was remunerated for his work relating to FormCap through the transfer of FormCap shares to him from existing shareholders, but he had sold his shares by April 2011.¹⁶
- [17] The BCSC found that the Respondent never received FormCap shares after January 2011.¹⁷
- [18] WM was a neighbour and family friend of the Respondent, who had little investment knowledge or experience.¹⁸

1. First Investment

- [19] In June 2011, the Respondent led WM to believe that there was an investment opportunity for her in FormCap, and that she could purchase shares through him. WM provided the Respondent \$4,000 towards her investment, which was to turn into 40,000 FormCap shares in August or September 2011. WM received a receipt for her investment on Bravo letterhead, with an attached Stock Purchase Agreement (**SPA**) which had been authored by the Respondent. The SPA set out

⁹ Staff's Hearing Brief is marked as Exhibit 1.

¹⁰ *Statutory Powers Procedure Act*, RSO 1990 c S.22, s 7(2); *Rules of Procedure*, r 21(3).

¹¹ BCSC Findings at paras 16 and 74.

¹² BCSC Findings at para 6.

¹³ BCSC Findings at para 6.

¹⁴ BCSC Findings at paras 2 and 8.

¹⁵ BCSC Findings at para 9.

¹⁶ BCSC Findings at para 10.

¹⁷ BCSC Findings at para 14.

¹⁸ BCSC Findings at para 7.

the terms of the investment, including identifying the Respondent as the seller of the FormCap shares to WM.¹⁹

- [20] The BCSC found that the Respondent deposited the investor's initial investment funds into his personal bank account. Rather than investing the funds as promised, the Respondent used them instead on personal expenses and cash withdrawals.²⁰
- [21] In July 2011, FormCap announced that it had approved a consolidation of its shares on a 1-for-10 share basis by which shareholders would receive one share for every ten shares tendered.²¹
- [22] By October 17, 2011, however, FormCap abandoned the proposed 1-for-10 share consolidations and disclosed this publicly. The Respondent did not convey that information to WM.²²

2. Second Investment

- [23] In April 2012, the Respondent convinced WM to make a second investment of \$3,000 in exchange for 30,000 FormCap shares. Although WM had yet to receive FormCap shares relating to her first investment, she proceeded with the additional investment. WM believed she was buying FormCap shares from the Respondent, through Bravo, and opened a brokerage account on the Respondents' suggestion, into which her FormCap shares were to be deposited. WM received no purchase agreement or receipt in respect of her second investment.²³
- [24] Following WM's second investment, FormCap restructured and commenced a 1-for-50 share consolidation on August 10, 2012.²⁴

3. SPA Amendment and Request for Return of Investment Funds

- [25] Throughout April and May 2013, WM asked the Respondent for the return of the funds she had invested. The Respondent repeatedly refused her requests, explaining, among other things, that WM's investments were in shares tied to the stock market. At the insistence of WM, the SPA was eventually amended in May 2013 to reflect her second investment.²⁵
- [26] The BCSC found that as late as May 2013, the Respondent continued to represent to WM that he owned FormCap shares, despite the 1-for-10 share consolidation having been abandoned in October 2011, and the fact that the Respondent had never received any FormCap shares following the 1-for-50 share consolidation which commenced in August 2012.²⁶
- [27] WM never received any FormCap shares from the Respondent, but eventually succeeded in getting the return of her funds from him through a Small Claims Court process.²⁷

¹⁹ BCSC Findings at paras 16-17, 20-23 and 25.

²⁰ BCSC Findings at paras 18-19.

²¹ BCSC Findings at para 15.

²² BCSC Findings at paras 26-27.

²³ BCSC Findings at paras 28-32.

²⁴ BCSC Findings at para 33.

²⁵ BCSC Findings at paras 35-42 and 46.

²⁶ BCSC Findings at para 74.

²⁷ BCSC Findings at para 76.

B. BCSC Findings - Conclusions

[28] The BCSC found that the Respondent perpetrated a fraud on WM in the aggregate amount of \$7,000 contrary to section 57(b) of the BC Act.²⁸

C. The BCSC Order

[29] The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondent pursuant to the BC Act:

- (a) under section 161(1)(b)(ii), Davis cease trading in, and is permanently prohibited from purchasing, any securities or exchange contracts, except Davis may trade or purchase securities for his own account through a registrant if he gives the registrant a copy of the BCSC Order;
- (b) under section 161(1)(c), any or all of the exemptions set out in the BC Act, regulations or a decision do not apply to Davis;
- (c) under section 161(1)(d)(i) and (ii), Davis resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;
- (d) under section 161(1)(d)(iii), Davis is permanently prohibited from becoming or acting as a registrant or promoter;
- (e) under section 161(1)(d)(iv), Davis is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- (f) under section 161(1)(d)(v), Davis is permanently prohibited from engaging in investor relations activities.²⁹

IV. ANALYSIS AND DECISION

[30] Staff seeks an order imposing trading and market-access bans that substantially mirror those in the BCSC Order.

[31] 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

[32] 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.

²⁸ BCSC Findings at para 80.

²⁹ BCSC Order at para 57.

[33] 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.³⁰

B. Subsection 127(1) of the Act

[34] 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.

[35] 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.³¹

[36] 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.³² 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.”

[37] 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.³³

[38] In this case, investor harm is an important consideration. As emphasized by the BCSC:

[w]hile the amount of the fraud in this case and Davis’ enrichment were not substantial, the harm suffered by the investor was significant. She was deprived of her funds for several years and eventually forced to seek recourse to the courts for their recovery. ...³⁴

[39] The investor was also negatively impacted emotionally and testified at the liability hearing before the BCSC that she had not invested since this experience, has lost trust in people and has had to seek counselling.³⁵

[40] While the investor was successful in eventually recovering her \$7,000 investment, it took considerable time and effort to do so. I agree with the statement of the BCSC that eventual repayment pursuant to civil proceedings does not negate the deprivation caused by the fraud perpetrated by the Respondent.³⁶

³⁰ *Wong Sang Shen Cho (Craig Cho)*, 2014 ONSEC 20, (2014) 37 OSCB 7285 at para 48.

³¹ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 SCR 132 at paras 42-43.

³² *JV Raleigh Superior Holdings Inc (Re)*, 2013 ONSEC 18, (2013) 36 OSCB 4639 at para 21.

³³ *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1136.

³⁴ BCSC Order at para 49.

³⁵ BCSC Original Sanctions Order at para 18; BCSC Order at para 49.

³⁶ BCSC Original Sanctions Order at para 17; BCSC Order at para 10.

- [41] The BCSC did consider whether it would be appropriate to issue market prohibition bans of a lesser duration. However, given the seriousness of the misconduct, and the continuing risk the Respondent poses to investors, the BCSC did not find it appropriate or in the public interest to order market bans of a lesser duration.³⁷
- [42] There were no mitigating factors present that would affect the imposition of permanent market prohibition bans. I was not presented with any evidence or submissions in this proceeding to support the reduction of the bans. While the Respondent had no prior regulatory history, this factor is not in itself determinative and other factors such as investor harm and future risk weigh in favor of imposing permanent market prohibition bans.
- [43] I agree with the BCSC that the Respondent poses a risk to the capital markets. Davis displayed a significant lack of honesty and an evident lack of integrity, with no indication that this will improve over time.³⁸ Given this risk and the investor harm, it is appropriate to impose permanent market prohibitions in Ontario as well. The permanent market prohibition bans serve as a deterrent to Davis and others and send a message that fraudulent conduct of any amount and investor harm will not be tolerated.

C. Differences between the Sanctions in the BCSC Order and the Proposed Order

- [44] Due to the differences between the Act and the BC Act, some of the sanctions this Panel imposes cannot be identical to those imposed by the BCSC. This is true with respect to two aspects of the sanctions.
- [45] First, the BCSC prohibited 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.
- [46] Second, the BCSC prohibited 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.
- [47] 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 BCSC Order.

³⁷ BCSC Order at para 52.

³⁸ BCSC Order at para 52.

V. CONCLUSION

[48] For the reasons provided above, I make the following order:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Davis cease permanently, except that he may trade securities or derivatives for his own account through a registrant, if he provides a copy of the BCSC Order and this Order to the registrant;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Davis cease permanently, except that he may purchase securities for his own account through a registrant, if he provides a copy of the BCSC Order and this Order to the registrant;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Davis permanently;
- d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Davis resign any positions that he holds as a director or officer of any issuer or registrant;
- e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Davis be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Davis be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 15th day of January, 2019.

"Lawrence P. Haber"

Lawrence P. Haber