



Ontario
Securities
Commission

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de l'Ontario

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Citation: Hamilton (Re), 2020 ONSEC 11

Date: 2020-03-27

File No. 2020-2

**IN THE MATTER OF
MATTHEW JOHN HAMILTON**

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

Hearing: In Writing

Decision: March 27, 2020

Panel: Raymond Kindiak Commissioner

Submissions: Ryan Lapensee For Staff of the Commission

No submissions made by or on behalf of Matthew John Hamilton

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REASONS AND DECISION

I. INTRODUCTION

- [1] On October 9, 2018, a hearing panel of the British Columbia Securities Commission (the **BCSC**) found that Matthew John Hamilton (**Hamilton**):
- a. created and operated a corporation in a way that concealed his involvement and presented a misleading impression as to ownership of the corporation; and
 - b. provided misleading information to US securities regulators.
- [2] The BCSC found that this conduct was abusive to the capital markets.¹
- [3] Following the findings of misconduct, the BCSC held a sanctions hearing and on April 3, 2019, issued a decision² imposing sanctions on Hamilton.
- [4] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) relies on the inter-jurisdictional enforcement provisions found in s. 127(10) of the Ontario *Securities Act* (the **Act**)³ and requests that a protective order be issued in the public interest under s. 127(1) of the Act that imposes terms similar to the non-monetary sanctions imposed by the BCSC to the extent possible under the Act.
- [5] 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. SERVICE AND PARTICIPATION

- [6] Staff provided an Affidavit of Service of Michelle Spain, sworn February 5, 2020 (the **Affidavit**),⁴ which sets out that Staff attempted to serve the Notice of Hearing, Statement of Allegations, Staff's written submissions and brief of authorities (**Staff's Materials**) by sending copies to Hamilton by courier at two different addresses (one in Courtenay and one in Vancouver), both of which were confirmed by BCSC Staff to both be the last known physical addresses of Hamilton.
- [7] The Affidavit confirmed that the documents were delivered at the Courtenay address which is supported by a FedEx delivery receipt. In addition, the Affidavit also sets out that Staff also emailed Staff's Materials to Hamilton's last known email address, which was provided by Staff at the BCSC.
- [8] The Ontario Securities Commission *Rules of Procedure and Forms* (the **Rules**)⁵, set out the different methods of service. Rule 6(2)(d) of the Rules provides that service can be effected by serving a respondent by courier to a respondent's last known address.
- [9] I find that Staff complied with Rule 6(2)(d) by relying on the two last known addresses of Hamilton confirmed by BCSC Staff, that service was effected on February 3, 2020, and that Hamilton was provided with adequate notice of this

¹ *Re Hamilton*, 2018 BCSECCOM 290 (**BCSC Findings**) at para 170

² *Re Hamilton*, 2019 BCSECCOM 115 (**BCSC Sanctions Decision**)

³ RSO 1990, c S.5

⁴ Marked as Exhibit 1 in this proceeding

⁵ (2019) 42 OSCB 9714

proceeding. The Commission may proceed in the absence of a party where that party has been given notice of the hearing.⁶

- [10] Pursuant to Rule 11(3) of the Rules, the deadline for Hamilton to serve and file written submissions was March 2, 2020. Hamilton did not file any materials.

III. THE BCSC FINDINGS AND BCSC SANCTIONS DECISION

A. BCSC Findings

- [11] Hamilton's misconduct took place from early 2010 to early 2012 (the **Material Time**). During the Material Time, Hamilton was a resident of Vancouver, British Columbia⁷ and had never been registered⁸ under the British Columbia *Securities Act* (**BC Act**).⁹

- [12] In early 2010, Hamilton incorporated Guru Health Inc. (**Guru Health**) through a Nevada agent in a manner that concealed his involvement in the company from the agent.¹⁰ The BCSC found that Hamilton was acting as the undisclosed *de facto* director and officer of the company. He was the signing officer for the Guru Health bank account, was responsible for all of Guru Health's banking transactions,¹¹ retained and dealt with Guru Health's US counsel,¹² and was responsible for the preparation and filing of a registration statement with the SEC.¹³

- [13] Although subscription agreements for Guru Health were signed by 27 individuals from Alberta, Hamilton admitted that none of the 27 purported shareholders paid any money for their Guru Health shares. Hamilton confirmed that he used his own money and made deposits into the Guru Health bank account in amounts equal to some of the purported subscription amounts in order to create the appearance that the purported shareholders had paid for their shares.¹⁴

- [14] In September 2011, Guru Health obtained sponsorship from a FINRA-registered firm to obtain a ticker symbol to have its shares quoted for trading on the OTC Bulletin Board (**OTCBB**).¹⁵ In October 2011, the sponsoring firm applied to FINRA to have Guru Health's shares quoted for trading. In support of that application, Hamilton provided the sponsoring firm with copies of the Guru Health share certificates and documents which purported to show payments by the 27 shareholders for their Guru Health shares.¹⁶ On October 21, 2011, Guru Health shares obtained a ticker symbol to become eligible for quotation on the OTCBB.¹⁷

⁶ *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2); Rules, r 21(3)

⁷ BCSC Findings at para 7

⁸ BCSC Findings at para 9

⁹ RSBC 1996, c 418

¹⁰ BCSC Findings at paras 17 and 106

¹¹ BCSC Findings at paras 31 and 106

¹² BCSC Findings at para 36

¹³ BCSC Findings at para 34

¹⁴ BCSC Findings at para 54

¹⁵ BCSC Findings at para 50

¹⁶ BCSC Findings at para 51

¹⁷ BCSC Findings at para 55

- [15] In early 2012, Hamilton asked another individual to find a buyer for Guru Health.¹⁸ US\$190,000 was subsequently wired to Hamilton as the purchase price for the company and US\$30,000 was wired to the other individual as a finder's fee.¹⁹
- [16] To summarize, the BCSC found that Hamilton:²⁰
- a. incorporated Guru Health in a manner that concealed his involvement;
 - b. installed nominee directors and officers of Guru Health, and until the sale of the company, acted as an undisclosed *de facto* director and officer of the company;
 - c. became a signing officer for the Guru Health bank account and was responsible for Guru Health banking transactions;
 - d. maintained undisclosed control of all of the issued and outstanding shares of Guru Health that none of the 27 Alberta shareholders ever paid for;
 - e. prepared and filed a registration statement with the SEC that:
 - i. failed to disclose his role as the *de facto* director and officer of the company;
 - ii. failed to disclose his control of all of the issued and outstanding shares of the company; and
 - iii. misrepresented the nature of the prior share subscriptions in the company;
 - f. provided false records, such as altered bank drafts and money orders, and other misleading information to be filed with FINRA in order to obtain a ticker symbol;
 - g. dealt with various gatekeepers in the capital markets through the Guru Health email in a manner that concealed his involvement with Guru Health;
 - h. sold control of a public company without public disclosure; and
 - i. received US\$190,000 for the sale of Guru Health.
- [17] The BCSC found that in its totality, the evidence demonstrated that a shell company, Guru Health, was created and a ticker symbol was obtained to have its shares quoted on the OTCBB in a manner which concealed the true identity of those who controlled and directed the company from securities regulators, gatekeepers and the public.²¹ The BCSC concluded that Hamilton's conduct was egregious²² and abusive to the capital markets and that it was in the public interest to make orders against him under the BC Act.²³

¹⁸ BCSC Findings at para 56

¹⁹ BCSC Findings at paras 59 and 60

²⁰ BCSC Findings at para 106

²¹ BCSC Findings at para 156

²² BCSC Findings at para 165

²³ BCSC Findings at para 170

B. BCSC Order

- [18] The BCSC Sanctions Decision imposed the following sanctions on Hamilton pursuant to the BC Act:
- a. under s. 161(1)(d)(i) of the BC Act, Hamilton resign any position he holds as a director or officer of an issuer or registrant;
 - b. Hamilton is prohibited for seven years:
 - i. under s. 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he 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 BCSC Sanctions Decision;
 - ii. under s. 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 s. 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;
 - iv. under s. 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
 - v. under s. 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 s. 161(1)(d)(v) of the BC Act, from engaging in investor relations activities.

IV. ANALYSIS

- [19] The issues for me to consider are:
- a. whether one of the circumstances under s. 127(10) of the Act applies to Hamilton; namely, is Hamilton 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 Hamilton pursuant to s. 127(1) of the Act.

A. Subsection 127(10) of the Act

- [20] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, if the threshold criterion in s. 127(10) is met, then it provides a basis for an order under s. 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.
- [21] The BCSC is a securities regulatory authority. The BCSC Sanctions Decision imposes sanctions on Hamilton. The threshold test under s. 127(10)4 of the Act is therefore satisfied. I must now consider whether it is in the public interest to issue an order under s. 127(1) of the Act.

B. Subsection 127(1) of the Act

- [22] Orders made under s. 127(1) of the Act are “protective and preventative” and are made to restrain potential conduct which could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.²⁴
- [23] In exercising its jurisdiction to make an order in reliance on s. 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.²⁵
- [24] The Commission may consider a number of factors in determining the nature and scope of sanctions to be ordered under s. 127(1) of the Act, including the seriousness of the misconduct, harm to the capital markets, specific and general deterrence and any aggravating and mitigating factors.²⁶

C. Appropriate Sanctions

- [25] Staff submits that to adequately protect the capital markets in Ontario Hamilton’s participation in Ontario’s capital markets should be limited. I agree that such an order would be in the public interest, based upon the following factors.

1. Seriousness of the Misconduct

- [26] In this case, the BCSC determined that Hamilton carried out numerous examples of abusive misconduct to the capital markets. Hamilton deceived the capital markets as to the true ownership and control of Guru Health and his role in connection with that entity. He engaged in this premeditated scheme over an extended period of time, being from early 2010 to early 2012. His conduct demonstrated an intention to obfuscate and deceive investors, gatekeepers and securities regulatory authorities and bore the hallmarks of serious fraudulent schemes.²⁷

2. Harm to the Capital Markets

- [27] The BCSC acknowledged that this is not a case where there was specific harm to individual investors. I note that none of the 27 purported shareholders ever paid for their shares in the company. I agree with the BCSC’s conclusion that even though there was no evidence of specific harm to individual investors, the deceptive manufacturing of shell companies causes significant harm to the capital markets.

3. Enrichment of the Respondent

- [28] Hamilton received US\$190,000 from his secret sale of control of Guru Health. Hamilton was enriched by US\$190,000 from his misconduct.

²⁴ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

²⁵ *Biller (Re)*, 2005 ONSEC 15, (2005) 28 OSCB 10131 at paras 32-35

²⁶ *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746-7747; *MCJC Holdings (Re)*, (2002) 25 OSCB 1133 at 1136

²⁷ BCSC Sanctions Decision at paras 14 and 16

4. Aggravating and Mitigating Factors

[29] The BCSC found that Hamilton had no history of regulatory misconduct and determined that there were no aggravating or mitigating factors.

5. Conclusion on Appropriate Sanctions

[30] Given the above factors and above highlighted examples, I find that it is in the public interest to make an order against Hamilton in Ontario. It is important that this Commission impose sanctions that will protect Ontario investors and capital markets by specifically deterring Hamilton 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 the sanctions requested are proportionate to Hamilton's misconduct and it would be appropriate for me to issue a substantially similar order to that of the BCSC to the extent possible under the Act, but also to include a prohibition against trading derivatives, for the reasons elaborated below in paragraph 31.

D. Differences between British Columbia and Ontario Statutes

[31] Due to differences between the Act and the BC Act, some of the sanctions I impose in Ontario differ from those imposed in British Columbia, as outlined below.

[32] First, the BCSC prohibited Hamilton from trading in or purchasing "exchange contracts". Subsection 127(1) of the Act does not expressly refer to exchange contracts. 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 Hamilton from trading in derivatives. 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 Hamilton from trading in derivatives. I will therefore make the order requested by Staff.

[33] Second, the BCSC Sanctions Decision prohibits Hamilton 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, such activities would largely be covered by the prohibitions already requested, against individuals acting as a director or officer of an issuer or as a registrant or promoter.

V. ORDER

[34] For the reasons set out above, I find that it is in the public interest to grant an order under s. 127(1) of the Act, and as requested by Staff. This will protect the Ontario capital markets from Hamilton, as well as deter other persons who may wish to conduct similar misconduct in Ontario. I therefore order that:

1. Hamilton resign any positions that he holds as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of s. 127(1) of the Act;
2. trading in any securities or derivatives, and acquiring any securities by Hamilton cease until April 3, 2026, except that he may trade securities or derivatives or acquire securities 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 BCSC Sanctions Decision and the Commission order and reasons, pursuant to paragraphs 2 and 2.1 of s. 127(1) of the Act;

3. all exemptions contained in Ontario securities law do not apply to Hamilton until April 3, 2026, pursuant to paragraph 3 of s. 127(1) of the Act;
4. Hamilton is prohibited from becoming or acting as a director or officer of any issuer or registrant until April 3, 2026, pursuant to paragraphs 8 and 8.2 of s. 127(1) of the Act; and
5. Hamilton is prohibited from becoming or acting as a registrant or promoter until April 3, 2026, pursuant to paragraph 8.5 of s. 127(1) of the Act.

Dated at Toronto this 27th day of March, 2020.

"Raymond Kindiak"

Raymond Kindiak