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IN THE MATTER OF THE
***SECURITIES ACT*, RSO 1990, c S.5**

- AND -

IN THE MATTER OF
TERRENCE BEDFORD

REASONS AND DECISION

Hearing:	In writing	
Decision:	May 5, 2016	
Panel:	Timothy Moseley	Commissioner and Chair of the Panel
Submissions by:	Brooke A. Shulman	For Staff of the Commission
	Derek D. Ricci Dina Milivojevic	For Terrence Bedford

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REASONS AND DECISION

I. OVERVIEW

[1] On March 8, 2013, Terrence Bedford ("**Bedford**") was convicted in the Ontario Court of Justice of having committed fraud contrary to section 126.1(1)(b) of the *Securities Act*[1] (the "**Act**"), thereby committing an offence contrary to section 122(1)(c) of the Act.

[2] Bedford's conviction was based upon his guilty plea and an Agreed Statement of Fact in which he admitted that through his involvement with the Greyhawk Equity Partners Limited Partnership (Millenium) ("**Greyhawk Millenium**"):

a. he misled investors into believing that the Greyhawk Millenium investment fund was highly profitable;

b. he created and disseminated false documents, fraudulent audited financial statements, false audit opinion letters and fraudulent assurance letters;

c. he misrepresented to investors the value, security and performance of the assets managed by Greyhawk Millenium; and

d. he concealed the true value of the fund and investment losses; and

e. the scheme caused investors to lose almost $5 million.

[3] On September 18, 2013, Bedford was sentenced to two years' imprisonment.

[4] Enforcement Staff of the Ontario Securities Commission ("**Staff**" of the "**Commission**") asks the Commission to order, pursuant to subsection 127(1) of the Act, that:

a. trading in any securities or derivatives by Bedford cease permanently;

b. Bedford be prohibited permanently from acquiring any securities;

c. any exemptions contained in Ontario securities law not apply to Bedford permanently;

d. Bedford be reprimanded;

e. Bedford resign any positions he holds as director or officer of any issuer, registrant or investment fund manager, and that he be prohibited permanently from becoming or acting in any such position; and

f. Bedford be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[5] In seeking the order, Staff relies upon subsection 127(10) of the Act, which provides that an order in the public interest under subsection 127(1) may be made in respect of a person who has been convicted in any jurisdiction of an offence arising from a course of conduct related to securities.

[6] While Bedford accepts that certain sanctions would be appropriate in this case, he submits that the order requested by Staff is punitive. He submits that the

[1] RSO 1990, c S.5.

bans requested by Staff should be limited to ten years and made subject to limited exceptions so that he can earn a living and support his family.

[7] For the reasons set out below, I find that Bedford was convicted of an offence arising from a course of conduct related to securities, and that it is in the public interest to make an order:

a. prohibiting Bedford permanently from acting as a registrant, investment fund manager or promoter; and

b. for a period of ten years, limiting Bedford's participation in the capital markets to that necessary to allow him to provide for his family.

II. PRELIMINARY MATTERS

[8] On July 2, 2015, the Commission issued a Notice of Hearing in relation to a Statement of Allegations filed by Staff against Bedford on June 30, 2015. The Notice of Hearing fixed July 22, 2015 as the date of a hearing at which the Commission would consider whether it was in the public interest to make the order referred to in paragraph [4] above.

[9] The Notice of Hearing indicated that at the July 22 hearing Staff would seek to have this proceeding continue in writing.

[10] At the hearing on July 22, Bedford appeared and advised that he had not retained counsel and that he wished to seek legal advice in respect of Staff's application to continue the proceeding in writing. The proceeding was adjourned.

[11] At a hearing on October 1, 2015, Bedford, through his counsel, indicated that he consented to Staff's application to continue this proceeding in writing. I granted the application.[2]

[12] Staff and Bedford filed various materials, including written submissions, briefs of authorities, an affidavit sworn by Bedford on November 5, 2015, and a hearing brief comprising a number of documents. I have marked the following documents as exhibits in this proceeding:

a. the transcript of Bedford's appearance in the Ontario Court of Justice on March 8, 2013, at which time he pled guilty (Exhibit 1);

b. the Agreed Statement of Fact submitted at that appearance (Exhibit 2);

c. the transcript of the sentencing submissions on June 21, 2013 (Exhibit 3);

d. the transcript of the reasons for sentence of Takach J. on September 18, 2013 (Exhibit 4); and

e. the affidavit of Terrence Bedford sworn November 5, 2015 (Exhibit 5).

[2] *Terrence Bedford (Re)* (2015), 38 OSCB 8688.

III. FACTUAL BACKGROUND

A. Introduction

[13] The facts relevant to this proceeding and described below are found in the documents referred to above. They are not disputed by Staff or by Bedford.

B. Facts supporting Bedford's conviction and sentence

[14] Bedford formed the Greyhawk Millenium fund in 2000 and continued to be its directing mind. The fund's primary business was investing in securities in Canada and the United States.

[15] Initially, very few individuals invested money in the fund. The amounts invested were substantial. Over time, as Bedford reported excellent returns, other investors contributed to the fund.

[16] The fund consistently lost money. As the fund's performance deteriorated, Bedford was ashamed to admit the truth. Instead, Bedford misled the investors as to the performance of the fund.

[17] Bedford created and disseminated false documents, including:

a. financial statements that falsely purported to have been audited by a major accounting firm;

b. fraudulent audit opinion letters; and

c. fraudulent assurance letters.

[18] In early 2011, an investor noticed an erroneous date in the fund's financial statements. The investor contacted the accounting firm whose name appeared on the statements. The firm advised that it had not been involved in the preparation of the statements and that it had never been retained to audit Greyhawk Millenium.

[19] On February 8, 2011, by application to the Ontario Superior Court of Justice, investors in the fund obtained an order appointing a receiver of the assets of Greyhawk Millenium and its associated companies.

[20] The receiver determined that between July 2000 and February 2011, 24 investors from Canada and the United States invested a total of approximately $9 million in the fund, net of redemptions.

[21] The total loss to investors was almost $5 million.

C. Mitigating factors

[22] Bedford's initial intentions were good. He did not set out to defraud investors.

[23] There is no evidence that Bedford actively solicited new investors. As noted above, most new investors were attracted to the fund by word of mouth. In the words of the sentencing judge, "he really didn't want their money, but it appeared that they were insistent on investing."

[24] Bedford was not motivated by greed or profit. He did not use the invested funds to enrich himself or his family, or to improve his lifestyle.

[25] From the time the fraud was discovered, Bedford has acknowledged his misconduct and has cooperated fully with the receiver, the court and the

Commission and its staff. Indeed, when making submissions to the sentencing judge, counsel appearing on behalf of the Crown said that Bedford had been "extremely cooperative" throughout.

[26] Bedford has been genuinely remorseful.

IV. ISSUES

[27] Paragraph 1 of subsection 127(10) of the Act provides that an order may be made under subsection 127(1) in respect of a person if the person "has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives."

[28] Staff's application for an order pursuant to subsection 127(1), made in reliance upon subsection 127(10), therefore presents two issues:

a. Did Bedford's conviction arise from transactions or a course of conduct related to securities?

b. If so, what sanctions, if any, should the Commission order against Bedford?

V. ANALYSIS

A. Did Bedford's conviction arise from transactions or a course of conduct related to securities?

[29] Bedford's conduct related to securities in two ways.

[30] First, as noted above, the Greyhawk Millenium fund's primary business was investing in securities in Canada and the United States.

[31] Second, for the reasons set out in the following paragraphs, each investment in the fund itself was a security. The term "security" is defined in subsection 1(1) of the Act to include an "investment contract". That term is not defined in the Act, but as the Supreme Court of Canada has held, an investment contract will be found where: (i) there is an investment of funds with a view to profit, (ii) in a common enterprise, and (iii) the profits are to be derived solely from the efforts of others.[3]

[32] I now apply that three-pronged test to the facts of this case to determine whether the course of conduct related to securities.

[33] There can be no dispute that investors invested with a view to profit. Investors were promised high rates of return.

[34] In describing the second and third prongs of the test to determine the existence of an investment contract, the Supreme Court of Canada held that:

> …such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship,

[3] *Pacific Coast Coin Exchange v Ontario (Securities Commission)*, [1978] 2 SCR 112 at 128.

> the investor's role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words the "commonality" necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves.[4]

[35] Investors advanced the funds and relied upon Bedford's false representations that those investments were generating returns. The investors understood that Bedford had managerial control over their investments.

[36] These facts establish commonality between the investors and Bedford, in circumstances where the anticipated profits were to be derived solely from the efforts of others.

[37] The course of conduct underlying Bedford's conviction of fraud was, therefore:

a. related to investments made with a view to profit,

b. in a common enterprise between Bedford and the investors,

c. where the profits were to be derived solely from the efforts of someone other than the investors.

[38] As a result, all three prongs of the test referred to above are satisfied. It follows that Bedford's convictions arose from transactions, and a course of conduct, relating to securities. The test prescribed by subsection 127(10) of the Act is satisfied.

B. If so, what sanctions, if any, should the Commission order against Bedford?

[39] Having found that the test in subsection 127(10) of the Act has been met, I must now determine what sanctions, if any, should be ordered against Bedford.

1. Legislative framework

[40] 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). The Commission must still consider whether it is in the public interest to make an order under subsection 127(1), and if so, what the order ought to be.

[41] The purpose of section 127 of the Act, and the principles that should "animate" its application, were reviewed by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*.[5] In that decision, the Court held[6] that "in considering an order in the public interest", the Commission shall have regard to both of the two purposes of the Act, as set out in section 1.1 of the Act:

a. to provide protection to investors from unfair, improper or fraudulent practices; and

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[4] *Ibid* at 129-30.
[5] 2001 SCC 37 ("***Asbestos***").
[6] *Ibid* at para 41.

b. to foster fair and efficient capital markets and confidence in capital markets.

[42] The Court then described the purpose of the section 127 public interest jurisdiction as being "neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets".[7] Further, the Court held that section 127 orders are not punitive. Rather, their purpose is to:

> …restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets. [8]

2. Positions of the parties

(a) *Staff*

[43] In submitting that Bedford ought to be subject to the permanent bans described in paragraph [4] above, Staff emphasizes the following:

a. Bedford's misconduct was serious and was described by the sentencing judge as "a breach of trust… in every sense of the word";

b. the losses were substantial;

c. there was significant premeditation by Bedford;

d. to further the fraud, Bedford falsified documents, even to the extent of making it appear that the financial statements had been produced by a major accounting firm;

e. the fraud extended over a period of time; and

f. had one investor not identified an issue in the financial statements, the fraud may well have continued for some time and caused further substantial losses.

(b) *Bedford*

[44] Bedford submits that the sanctions sought by Staff are excessive and therefore punitive. While Bedford concedes that some sanctions would be appropriate, he says that the sanctions sought by Staff would deprive him of his only source of income and of the only means he has of providing for his family.

[45] Bedford emphasizes the mitigating factors referred to in paragraphs [22] to [26] above.

3. Previous Commission decisions

[46] Staff and Bedford cited a number of previous Commission decisions in support of their submissions as to what sanctions would be appropriate in this case. I now consider each of the decisions that in my view are relevant to this matter.

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[7] *Ibid* at para 42, adopting the words of Laskin J.A. from the court below.
[8] *Ibid* at para 43, citing with approval *Mithras Management Ltd. (Re)* (1990), 13 OSCB 1600.

(a) *Re Lewis*

[47] Staff referred to the 2015 decision in *Re Lewis*,[9] in which the Commission ordered a permanent ban against the respondent, who had defrauded 33 investors through a Ponzi scheme that caused approximately $7.5 million in losses. Bedford submits that the decision is distinguishable in that the respondent in that case actively solicited investors and used the funds to greatly enhance his lifestyle.

[48] Neither of those aggravating factors is present in this case. I note also that in that case the respondent consented to the permanent ban sought by Staff and offered no mitigating circumstances.

(b) *Re Yoannou*

[49] Staff also cited *Re Yoannou*,[10] a 2014 decision of the Commission imposing a permanent ban. In that case, the respondent, who did not appear in the proceeding, had been sentenced to six years' imprisonment for frauds causing approximately $6.6 million in losses. The case involved a number of aggravating factors that made the conduct more egregious than that of Bedford. It also involved some (but not all) of the mitigating factors present in this matter.

(c) *Re Bunting & Waddington Inc.*

[50] Finally, Staff cited *Re Bunting & Waddington Inc.*,[11] another 2014 decision in which the Commission imposed a permanent ban. In that case, the individual respondent had been sentenced to five years' imprisonment as a result of convictions on three charges of fraud. The sentencing judge noted numerous aggravating factors and described the fraud as "particularly calculated and callous".

[51] Unlike Bedford, the respondent in that case actively solicited the investors in the scheme, targeted investors who were vulnerable and unsophisticated, was motivated by greed, and did not participate in the Commission proceeding.

(d) *Re Conforzi*

[52] Bedford submits that his conduct "most closely resembles" the conduct of the respondent in *Re Conforzi*,[12] a 1996 matter in which the Commission approved a settlement agreement entered into between the respondent and Staff.

[53] The respondent in that case was the president and director of a reporting issuer who deceived the issuer's auditors, leading to material misstatements in the issuer's financial statements. The Commission ordered that the exemptions contained in Ontario securities law would not apply to the respondent for ten years, but it allowed the respondent to continue to trade mutual funds and certain debt securities.

[54] As Bedford notes, the Commission also prohibited the respondent from acting as a director or officer of a reporting issuer for ten years, but this ban did not extend to all issuers.

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[9] *Andre Lewis (Re)* (2015), 38 OSCB 7541.
[10] *Paul Yoannou (Re)* (2014), 37 OSCB 10762.
[11] *Bunting & Waddington Inc. (Re)* (2014), 37 OSCB 3414.
[12] *Conforzi (Re)* (1996), 19 OSCB 5108.

[55] Staff distinguishes *Re Conforzi*, noting that:

a. it did not involve allegations of fraudulent conduct;

b. the misconduct of the respondent in that case was largely at the direction of someone else; and

c. the amount of money involved was considerably less than the losses in this matter.

(e) *Re Prydz*

[56] Bedford also cites the Commission's 2000 decision in *Re Prydz*.[13] In that case, the respondent had previously entered into a settlement agreement relating to misrepresentations made by him in selling certain securities. The agreement and resulting order called for a five-year ban on the respondent trading in securities, and required the respondent to take certain steps with respect to communication with investors and the public.

[57] The respondent failed to comply with the order. As a result, the Commission extended the five-year ban for a further ten years and prohibited the respondent from acting as a director or officer for fifteen years.

[58] Staff notes that this case did not involve allegations of fraudulent conduct.

4. Analysis

(a) *Introduction*

[59] The distinctions cited by Staff and by Bedford regarding these cases are fair and reinforce the important principle that particularly when it comes to sanctions, each case is unique and any sanctions ordered must depend upon the particular circumstances of the case.

[60] In my view, the factors cited in the five cases referred to above, and the circumstances present in this matter, raise three questions of particular importance in determining the appropriate sanctions:

a. Of what significance is Bedford's conduct following discovery of the fraud?

b. Should any trading ban against Bedford be subject to an exception to allow him and his family to save for their future?

c. If so, should any prohibition against Bedford acting as a director or officer of an issuer be subject to an exception to allow him to use a corporation for that purpose?

(a) *Bedford's conduct following discovery of the fraud*

[61] As the sentencing judge found, it is clear that while Bedford made serious errors of judgment, Bedford's conduct was rooted in his own perceived inability to "stop this runaway train". Once the train was stopped by an investor, Bedford did all he could to cooperate and to mitigate the harm caused by his misconduct.

[13] *Prydz (Re)* (2000), 23 OSCB 3399.

[62] While Bedford's cooperation does not excuse the conduct that required that cooperation in the first place, it is significant that Bedford has done everything that could be expected of him following the discovery of the fraud.

(b) *Trading ban*

[63] Despite Bedford's apparently genuine remorse, the seriousness of his misconduct warrants an order protecting investors from him, both for general and specific deterrent purposes.

[64] Staff correctly submits that participation in the capital markets is a privilege, not a right, but this important principle does not necessarily require that Bedford be denied the access he seeks to the capital markets so that he can provide for his family.

[65] In my view, a proper balance between these two competing considerations dictates that Bedford be allowed to participate in the capital markets in a limited manner that protects investors from misconduct.

(c) *Director or officer*

[66] Similarly, an outright prohibition against Bedford acting as a director or officer of an issuer may well be unnecessarily broad and therefore punitive. Bedford asks that any prohibition against him acting as a director or officer be subject to an exception that allows him to hold one or both of those positions in a corporation of which he and his family are the only shareholders.

[67] I consider this to be a reasonable and appropriate request that balances the factors described above.

5. Conclusion

[68] Bedford's misconduct must be condemned. It caused significant harm to a number of innocent investors and it was always open to Bedford to bring the fraud to an end and thereby to limit that harm. Bedford chose not to, until he had no choice. While his reasons for failing to do so are in some sense understandable, they are not excusable.

[69] Having said that, nothing more could have been expected from Bedford once the fraud was discovered. In my view, Bedford deserves credit for his conduct since that time and deserves the opportunity to prove that he has learned his lesson and to work to improve his family's financial security.

[70] I therefore find it to be in the public interest to prohibit Bedford permanently from acting as a registrant, investment fund manager or promoter, and to prohibit him from trading or acquiring securities or derivatives and from acting as a director or officer for ten years, subject to limited exceptions that would allow him to provide for his family.

VI. ORDER

[71] I will therefore issue an order that provides that:

a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, Bedford is prohibited from trading or acquiring any securities or derivatives for ten

years, except that during that period he may trade or acquire securities or derivatives:

i. in any account at a registered dealer in his own name and of which he has the sole beneficial interest; or

ii. in registered retirement savings plans, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act (Canada)* in which only he and/or his spouse have a beneficial interest;

b. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Bedford for ten years;

c. pursuant to paragraphs 7, 8, 8.1, 8.2, 8.3 and 8.4 of subsection 127(1) of the Act, Bedford shall resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager, and he shall be prohibited for a period of ten years from holding any such position, except that he may be a director or officer of any issuer:

i. of which the shareholders are limited to Bedford, his spouse, and any of their children; and

ii. that does not engage in the business of trading in securities; and

d. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Bedford is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

Dated at Toronto this 5th day of May, 2016.

"Timothy Moseley"

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Timothy Moseley