



Ontario
Securities
Commission

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**IN THE MATTER OF
LANCE SANDFORD COOK and
CBM CANADA'S BEST MORTGAGE CORP.**

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

Hearing: In Writing

Decision: February 14, 2018

Panel: Philip Anisman Commissioner

**Submissions
by:** Keir D. Wilmut For Staff of the Commission
Kai S. Olson (Student-at-law)

No submission was made by or on
behalf of Lance Sandford Cook or
CBM Canada's Best Mortgage Corp.

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DECISION AND REASONS

I. INTRODUCTION

- [1] Reciprocal orders have become a common means of overcoming the limits inherent in provincial regulation of Canada's capital markets. In light of the fact that these markets extend beyond provincial boundaries, five provinces, including Ontario, and three territories have authorized their securities regulatory authorities to order that sanctions imposed by another Canadian securities regulatory authority on a person's participation in the market apply in their jurisdiction, as well.¹ Such sanctions apply automatically in the remaining five provinces.²
- [2] Subsection 127(10) of the Act authorizes the Commission to make a reciprocal order under subsection 127(1) based on the order of another securities regulatory authority. Although such orders generally mirror the initial orders of securities regulatory authorities in Canada to the extent possible under the Act, the Commission retains a discretion to modify an order to reflect the facts found and sanctions imposed by the other regulatory authority, if it concludes that the public interest so requires.³
- [3] This proceeding raises issues concerning the terms of the reciprocal orders to be made with respect to Lance Sandford Cook ("Cook"), the individual respondent, and CBM Canada's Best Mortgage Corp. ("CBM"), a dissolved corporation that Cook controlled and directed.

II. FACTS

- [4] This application is based on a decision of the British Columbia Securities Commission ("BCSC") in which the BCSC found that Cook and CBM distributed securities without filing a prospectus, contrary to the BCSA, and imposed sanctions on them.⁴ The securities were promissory notes paying interest of fifteen per cent per annum, three of which were issued by Cook himself and three by CBM under his control and direction. Between 2008 and 2010, he and CBM issued, renewed and reissued six promissory notes totalling \$380,000 to four investors, several of whom were retired or close to retirement.⁵ Although each investor received a renewed promissory note annually, the later notes represented the initial investment, which Cook persuaded the investors to roll over as the notes matured. The issuance of each note was a distribution of a

¹ *Securities Act*, RSO 1990, c S.5, s 127(10) (the "Act"); *Securities Act*, RSBC 1996, c. 418, s 161(6) (the "BCSA"); *Securities Act*, RSNL 1990, c S-13, s 127(1.1); *Securities Act*, SNWT 2008, c. 10, s 60(3); *Securities Act*, SNU 2008, c 12, s 60(3); *Securities Act*, RSPEI 1988, c S-3.1, s 60(3); *Securities Act, 1988*, S.S.1988-89, c.S-42.2 s 134(1.1); *Securities Act*, SY 2007, c 16, s 60(3).

² See *Securities Act*, RSA 2000, c S-4, ss 198(3)-(10); *Securities Act*, RSM 1988, c S50, ss 148.4(3)-(4); *Securities Act*, SNB 2004, c S-5.5, s 184.1; *Securities Act*, RSNS 1989, c 418, s 134B; *Securities Act*, Stats Que 1982, c 48; Cons Stats, c V-1.1, ss 308.2.1.2-308.2.1.6. This approach is more efficient and effective; at a minimum, it removes unnecessary delays when orders are made in Canada; see also *Re Dhanani* (2017), 40 OSCB 4457, para 11.

³ *McLean v. British Columbia (Securities Commission)*, [2013] 3 SCR 895, para 54; *Re Dhanani*, para 9.

⁴ BCSA, s 61; *Re Cook*, 2017 BCSECCOM 136 ("Merits Decision"); 2017 BCSECCOM 260 ("Sanctions Decision").

⁵ *Re Cook*, Merits Decision, paras 11-91; Sanctions Decision, para 18.

security, for which a prospectus was required. Cook and CBM paid interest on these promissory notes until approximately May 2011, after which payments ceased. Ultimately, the investors lost their investments.

- [5] At the relevant times, Cook was registered as a mortgage broker in British Columbia and had dealt with the investors in this capacity. In one case, he induced his client to borrow funds to make the investment with him.⁶ In another, he persuaded the investor to invest “equity from her home” with him rather than in the real estate property about which she initially consulted him.⁷ The BCSC concluded that Cook’s conduct constituted a serious risk to the capital markets.⁸
- [6] CBM was also registered as a mortgage broker. It was incorporated under the *Canada Business Corporations Act* (“CBCA”) in 2000,⁹ was dissolved in September 2006 and revived in January 2007.¹⁰ Cook was its president, sole director and controlling mind and used it for three of the six distributions. The BCSC found that it was his *alter ego*, as “there was no real separation of financial affairs between Cook and CBM.”¹¹ CBM appears to have ceased to carry on business around the time that interest on the promissory notes ended; its last annual filing was in 2011. On June 28, 2014, it was again dissolved and so remains to date.¹²
- [7] The BCSC required Cook to disgorge \$218,500, which amount was the \$380,000 he and CBM obtained from the four purchasers less interest of \$161,500 that he and CBM paid them, and required him to pay an administrative penalty of \$25,000. It also ordered him to resign any position he held as a director or officer of an issuer or registrant and prohibited him from trading or purchasing securities or exchange contracts, except for his own account through a registrant, from acting as a director or officer of an issuer or registrant, as a registrant or promoter or in a management or consultative capacity in connection with securities market activities, and from engaging in investor relations activities. These market prohibitions remain in effect until the later of 5 years from the date of the order or the time when the monetary sanctions have been paid.¹³
- [8] Because their misconduct was identical, the BCSC concluded that market prohibitions like those imposed on Cook should apply to CBM. It prohibited CBM from trading and purchasing securities, from acting as a promoter or in a management or consultative capacity in connection with securities market activities and from engaging in investor relations activities for 5 years.¹⁴

⁶ Merits Decision, para 12.

⁷ Merits Decision, para 32.

⁸ Sanctions Decision, para 29.

⁹ RSC 1985, c C-44, as amended.

¹⁰ Federal Corporation Information – 376013-8, Exhibit 1 to Affidavit of Service of Lee Crann, sworn November 2, 2017 (“First Crann Affidavit”).

¹¹ Sanctions Decision, para 53.

¹² Merits Decision, para 8; Sanctions Decision, para 31; Federal Corporation Information – 376013-8, Exhibit 1 to First Crann Affidavit.

¹³ Sanctions Decision, paras 61(a)-(d).

¹⁴ Sanctions Decision, paras 33 and 61(e).

III. RECIPROCAL ORDER

A. Generally

- [9] The BCSC's order satisfies subsection 127(10); it is an order of another securities regulatory authority imposing sanctions, conditions, restrictions and requirements on Cook and CBM. The BCSC's order and findings warrant an order under subsection 127(1) to ensure that Cook cannot engage in similar activities with Ontario investors.¹⁵ As the respondent did not appear in this proceeding,¹⁶ there is no evidence to suggest otherwise.¹⁷ In view of the ease with which individuals may trade in securities in provinces other than their own, conduct relating to Ontario is not required for a reciprocal order.¹⁸ Indeed, one of the purposes of subsection 127(10) is to ensure that a wrongdoer cannot avoid sanctions imposed in one province simply by moving its activities to another province.¹⁹
- [10] Subsection 127(10) thus enhances the deterrent effect of the Commission's enforcement efforts. A reciprocal order will prohibit Cook from pursuing similar activities in Ontario and will also deter others who might be inclined to engage in similar conduct in Ontario and elsewhere. By removing the potential for province-hopping, the availability of national implementation of enforcement orders increases general deterrence throughout Canada.²⁰

B. Cook

- [11] For these reasons, as well as reasons of efficiency, the order reciprocating the BCSC's order against Cook will mirror the terms of the BCSC's order to the extent possible under the Act, but it cannot be identical because of differences between the Act and the BCSA.
- [12] The BCSC order prohibits Cook from trading and purchasing securities and exchange contracts. The BCSA defines an "exchange contract" as a futures contract or an option that is traded on an exchange under standardized terms

¹⁵ It is not necessary to repeat here the general factors that are relevant to reciprocal orders; for a recent summary, see *Re Global 8 Environmental Technologies Inc.* (2017), 40 OSCB 7127, para 12 ("*Re Global 8*"); and see generally *Re Dhanani*, paras 5-10.

¹⁶ The Notice of Hearing, Statement of Allegations and Staff's disclosure were served on Cook and CBM by email pursuant to the Commission's former *Rules of Procedure* on October 25, 2017, see *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168, Rule 1.5.1, and their receipt was acknowledged by Cook in a voicemail message the following day; First Crann Affidavit, paras 2-3 and 12. At a hearing on November 6, 2017, I ordered that this proceeding be conducted in writing; *Re Cook*, Order (2017), 40 OSCB 8977. My order was served by email on November 7, 2017 and Staff's hearing brief, written submissions and authorities were served in the same manner on November 15, 2017 in accordance with the current rules; Affidavit of Lee Crann, sworn November 15, 2017, paras 2-4; *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988, Rule 6 ("*OSC Rules*"). (The *OSC Rules* became effective on November 1, 2017.)

In the voicemail message of October 25, 2017, Cook informed Staff that he would not appear on November 6, First Crann Affidavit, para 12, and he did not file a written submission. As a result, the hearing proceeded without his participation under the authority granted by the *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2) and the *OSC Rules*, Rule 21(3).

¹⁷ The BCSC's order and findings provide the basis for a reciprocal order and have the effect of imposing an evidentiary burden on the respondent; see *Re Dhanani*, para 9. This does not affect the burden of proof, which remains on Staff; see *Re Global 8*, para 13.

¹⁸ All of Cook's conduct occurred in British Columbia. See also *Re Dhanani*, paras 5-6.

¹⁹ *Re Black* (2014), 37 OSCB 5847, para 25, quoting *Re Anderson*, 2007 ABASC 912, para 16.

²⁰ See also *Re Global 8*, para 43.

and conditions set out in the exchange's rules at a price agreed on when the futures contract or option is entered into on the exchange and the performance of which is guaranteed by a clearing agency.²¹ In Ontario, such exchange contracts would be traded as commodity futures contracts or commodity futures options subject to the *Commodity Futures Act*, and are expressly excluded from the definitions of "security" and "derivative" in the Act.²²

- [13] As some futures contracts may be derivatives, the order will prohibit trading in both securities and derivatives, as requested by Staff. It will, however, prohibit only the acquisition of securities, as the Act does not authorize an order prohibiting the acquisition of derivatives, but will expressly include derivatives that are securities.²³
- [14] Subsection 127(1) of the Act does not refer to investor relations activities or acting in a management or consultative capacity. Many, but not all of these activities are covered by prohibitions against acting as a director or officer of an issuer or as a registrant or promoter.²⁴ To mirror the BCSC's order to the extent possible under the Act, the order will contain these prohibitions and will also prohibit Cook from acting as an investment fund manager.²⁵
- [15] The market prohibitions in the BCSC's order run for 5 years from its date or until Cook pays the disgorgement and administrative monetary sanctions, whichever is later. Staff requests that the order mirror these terms, and that the market prohibitions run until August 8, 2022, which is 5 years after the date of the BCSC's order, or until Cook pays the BCSC the amounts owed under this order, whichever is later. The requested order would thus not be identical to the BCSC's order, but would be coextensive in time.²⁶
- [16] Staff relies on two Commission decisions, in which such orders were made.²⁷ In *Re Global 8*, a proceeding to reciprocate an order of the Alberta Securities Commission ("ASC"), one respondent, René Joseph Branconnier, argued that such an order would constitute an indirect monetary penalty and that because he had contravened Alberta, but not Ontario, securities law, the Commission lacked authority to make the order. The Commission concluded that the length of the prohibition did not impose an additional monetary penalty, as the amount owed to the ASC remained the same, and made a reciprocal order that was coextensive with the ASC's.
- [17] On November 16, 2017, the day following Staff's written submission, the BCSC reciprocated the same ASC order, but limited the time of its order to the twenty

²¹ BCSA, s 1(1) "exchange contract" and "futures contract".

²² *Commodity Futures Act*, RSO 1990, c C.20 (the "CFA"), s 1(1) "commodity futures contract" and "commodity futures option"; Act, s 1(1) "derivative" and "security" (p). As the CFA also authorizes reciprocal orders, Staff might consider bringing future applications relating to a BCSC order that addresses exchange contracts under both the Act and the CFA; see CFA, s 60.

²³ Act, s 127(1)2; see *Re McClure* (2017), 40 OSCB 8135, para 6 ("*Re McClure*").

²⁴ See *Re McClure*, paras 8-10.

²⁵ Staff did not request an order denying Cook the exemptions under the Act, presumably because the BCSC's order does not include this prohibition. It is necessary, therefore, to expressly prohibit him from acting as an investment fund manager, even though investment fund managers are required to register under the Act; see *Re Dancho* (2017), 40 OSCB 9167, paras 9 and 10.

²⁶ This is common with reciprocal orders; see, e.g., *Re Elliott* (2009), 32 OSCB 6931, paras 4,13 and 42. An identical order would run for five years from the date of the Commission's order.

²⁷ *Re Zarr* (2015), 38 OSCB 9887; *Re Global 8*.

years imposed in the ASC order. It said it agreed with Branconnier that “in the circumstances, the termination of our orders should not be tied to the payment to the ASC of its monetary orders.”²⁸ This difference of view and the fact that the order being reciprocated in this case was made by the BCSC require a fuller consideration of this issue.

- [18] In pursuing its mandate to protect investors and foster fair and efficient capital markets, the Commission must have regard to the principle that “integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.”²⁹ Subsection 127(10) implements this principle by authorizing reciprocal orders to further “interjurisdictional cooperation and consistency in securities regulation and enforcement across the country.”³⁰ As stated above, this type of consistency enhances deterrence by making the same prohibitions apply to the respondent in multiple jurisdictions and increases general deterrence because prohibitions that follow improper conduct may apply nationwide.³¹ For these reasons, it is in the public interest to reciprocate all temporal aspects of the BCSC’s order in this case.

C. CBM

- [19] Staff requests that an order mirroring the BCSC’s order be made against CBM and that the market prohibitions run to August 8, 2022. The terms of the requested reciprocating order would parallel the market prohibitions against Cook, modified to reflect the fact that CBM was Cook’s corporate *alter ego*. The BCSC’s order, however, prohibits CBM only from trading and purchasing securities; it does not include exchange contracts.³² Although Staff requested an order prohibiting trading in securities and derivatives, there is no reason to so diverge from the BCSC order in this case.
- [20] It is also necessary to address the fact that CBM has been dissolved. At the initial hearing on November 6, 2017, I asked whether service had been made on CBM in view of the fact that it had been dissolved, and requested Staff to address this issue in its written submissions.³³
- [21] Staff’s written submissions refer to three prior Commission proceedings. Only one need be discussed here. In *Re Soleja*, the Commission reciprocated an ASC settlement agreement, but the reasons for granting the reciprocal order did not refer to the fact that the corporate respondent had been dissolved.³⁴ Nor did the settlement agreement that was reciprocated or the ASC’s notice of hearing relating to it.³⁵ The only reference to a dissolution was in the Commission order

²⁸ *Re Branconnier*, 2017 BCSECCOM 347, para 11.

²⁹ Act, ss 1.1 and 2.1.5.

³⁰ *McLean v. British Columbia (Securities Commission)*, [2013] 3 SCR 895, para 77 (*per* Karakatsanis J.).

³¹ *Re Global 8*, para 43; *Re Dhanani*, para 11, n 27.

³² Sanctions Decision, para 61(e).

³³ As a result, the Order of November 7, 2017 converting this proceeding to a written hearing did not mention service; see *Re Cook*, Order (2017), 40 OSCB 8977.

³⁴ *Re Soleja* (2017), 40 OSCB 4869. This was also the case with the reasons in the two other proceedings referenced in Staff’s submissions; see *Re Optam Holdings Inc.* (2017), 40 OSCB 2167; *Re Williams* (2017), 40 OSCB 3077.

³⁵ See *Re Soleja*, 2015 ABASC 988 (notice of hearing); *Re Soleja*, 2016 ABASC 261 (settlement agreement).

that continued the proceeding as a written hearing, which contained recitals stating that a search of Alberta's Corporate Registration System listed the corporation's "legal entity status as struck as of August 2, 2015, though Soleja, as the former sole director of [the corporation] ... continues to represent the company" and that the respondents had been properly served.³⁶ Thus, although prior reciprocal orders of the Commission have applied to dissolved corporations, the basis on which they did so has not been expressly addressed.

- [22] In this matter, the BCSC addressed CMB's status and, relying on a previous decision, concluded that an order should be made against CBM because of the possibility that it might be revived.³⁷
- [23] Because corporations are artificial entities, activities that affect them may occur when they do not exist. For example, corporate legislation specifies circumstances in which contracts made prior to incorporation will be binding on a corporation after it has been created.³⁸ Similarly, a corporation that is dissolved can be revived, as CBM was in 2007,³⁹ and upon revival the corporation will continue and will have all rights and obligations that arose between its dissolution and its revival as if it had not been dissolved.⁴⁰ In addition, the CBCA provides that any legal action respecting the corporation's affairs that is taken during the period following its dissolution is valid and effective, once it is revived.⁴¹ Thus, an order made by the Commission against CBM will apply to it in the event that it is revived.
- [24] Although the market prohibitions against trading in securities and acting as a director or officer of an issuer would preclude Cook from transferring ownership of or using CBM during the prohibited period, in view of the potential for revival, reciprocating the order against CBM may serve a deterrent function with respect to others who may seek to utilize the corporate form in a manner that is unfair to investors or harmful to the capital markets.

³⁶ *Re Soleja*, Order (2017), 40 OSCB 955. Soleja had signed the Alberta settlement agreement on the corporations' behalf. Presumably the information concerning the corporation's dissolution was in a report of a corporate search included in Staff's affidavit of service, as occurred in this proceeding with respect to CBM; see note 10, above.

³⁷ Sanctions Decision, paras 31-33; *Re Williams*, 2016 BCSECCOM 283, para 75. The order in the latter decision was reciprocated by the Commission; see note 34, above.

³⁸ See, e.g., CBCA, s 14 (pre-incorporation contracts); *Business Corporations Act*, RSO 1990, c B.16, s 21, as amended ("OBCA").

³⁹ See, e.g., CBCA, s 209.

⁴⁰ See, e.g., CBCA, s 209(4); OBCA, s 241(9).

⁴¹ CBCA, s 209(5). See also OBCA, s 242(1)(b), which provides that a corporation that has been dissolved may be subject to an administrative proceeding "as if it had not been dissolved".

[25] For these reasons, and in view of Cook's control and direction of CBM, the service on Cook of all materials in this proceeding constituted service on CBM. An order reciprocating the BCSC's order against CBM is in the public interest.

IV. ORDER

[26] I shall therefore sign an order in the form attached to these reasons as Schedule "A".

Dated at Toronto this 14th day of February, 2018.

"Philip Anisman"

Philip Anisman

SCHEDULE "A"



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IN THE MATTER OF LANCE SANDFORD COOK and CBM CANADA'S BEST MORTGAGE CORP.

Philip Anisman, Chair of the Panel

February 14, 2018

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

WHEREAS the Ontario Securities Commission held a hearing in writing on the application of Staff of the Commission ("Staff") for an order imposing sanctions pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "Act");

ON READING the findings of the British Columbia Securities Commission (the "BCSC") dated April 19, 2017 and the decision of the BCSC dated August 8, 2017 (the "BCSC Order") in the matter of *Lance Sandford Cook* ("Cook") and *CBM Canada's Best Mortgage Corp.* ("CBM") and on reading the materials filed by Staff, the respondents Cook and CBM not having appeared and not having filed any materials, although properly served;

IT IS ORDERED pursuant to paragraphs 127(1)2, 2.1, 7, 8, 8.1, 8.2 and 8.5 that:

1. Cook shall resign any position that he holds as an officer or director of an issuer or registrant;
2. until the later of August 8, 2022 and the date on which the payments ordered against Cook in paragraphs 61(c) and 61(d) of the BCSC Order have been paid, Cook:
 - (a) shall not trade in securities or derivatives, except for his own account through a registrant who has been given a copy of the BCSC Order and a copy of this Order;

- (b) shall not acquire securities (including any derivative that is a security), except for his own account through a registrant who has been given a copy of the BCSC Order and a copy of this Order;
 - (c) shall not become or act as a director or officer of any issuer, investment fund manager or registrant; and
 - (d) shall not become or act as a registrant, investment fund manager or promoter;
3. until August 8, 2022, CBM:
- (a) shall not trade in securities;
 - (b) shall not acquire securities; and
 - (c) shall not become or act as a registrant, investment fund manager or promoter.

Philip Anisman