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Commission

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Citation: Wong (Re), 2018 ONSEC 54

Date: 2018-11-06

File No. 2018-50

**IN THE MATTER OF  
SIU MUI "DEBBIE" WONG, SIU KON "BONNIE" SOO,  
1300302 ALBERTA INC. and  
D&E ARCTIC INVESTMENTS INC.**

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

**Hearing:** In Writing

**Decision:** November 6, 2018

**Panel:** Timothy Moseley Vice-Chair and Chair of the Panel

**Appearances:** Kai Olson For Staff of the Commission

No submissions made by or on behalf of Siu Mui "Debbie" Wong, Siu Kon "Bonnie" Soo, 1300302 Alberta Inc. and D&E Arctic Investments Inc.

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## REASONS AND DECISION

### I. INTRODUCTION AND BACKGROUND

- [1] In a decision issued by the British Columbia Securities Commission (the **BCSC**) on June 16, 2016,<sup>1</sup> the BCSC Hearing Panel (the **BCSC Panel**) found that Siu Mui “Debbie” Wong (**Wong**), Siu Kon “Bonnie” Soo (**Soo**), 1300302 Alberta Inc. (**1300302**) and D&E Arctic Investments Inc. (**D&E Arctic**) (collectively, the **Respondents**) engaged in an illegal distribution of securities, contrary to section 61 of the British Columbia *Securities Act* (the **BC Act**).<sup>2</sup> The BCSC Panel also found that Wong and Soo perpetrated multiple acts of fraud, contrary to section 57(b) of the BC Act.
- [2] In a second decision, dated February 20, 2017 (the **BCSC Sanctions Decision**),<sup>3</sup> the BCSC Panel imposed various sanctions on the Respondents. The BCSC Panel ordered that, among other things:
- a. Wong and Soo be permanently prohibited from trading in securities, subject to a limited exception;
  - b. Wong and Soo be permanently prohibited from becoming or acting as a director or officer of any issuer or registrant, subject to a limited exception;
  - c. Wong and Soo disgorge funds and pay administrative penalties; and
  - d. 1300302 and D&E Arctic disgorge funds and be permanently prohibited from trading in securities.
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) relies on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)<sup>4</sup> and requests that the Commission issue an order that, for the most part, replicates the non-monetary sanctions imposed by the BCSC Panel.
- [4] 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. BRITISH COLUMBIA PROCEEDINGS AND FINDINGS

#### A. BCSC Proceeding and Findings

##### 1. Findings – Breach of sections 57(b) and 61 of the BC Act

###### (a) *The Respondents*

- [5] Between 2007 and 2008 (the **Material Time**) Wong and Soo, who are sisters, facilitated investments in two parcels of undeveloped land in Alberta: the Wheatland lands and the Rocky View lands.<sup>5</sup>

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<sup>1</sup> *Re Wong*, 2016 BCSECCOM 208 (**BC Merits Decision**)

<sup>2</sup> RSBC 1996, c 418

<sup>3</sup> *Re Wong*, 2017 BCSECCOM 57 (**BC Sanctions Decision**)

<sup>4</sup> RSO 1990 c S.5

<sup>5</sup> BC Merits Decision at paras 55 and 115

- [6] Wheatland Industrial Park Inc. (**Wheatland**) is an Alberta corporation and the registered owner of the Wheatland lands.<sup>6</sup> Both Wong and Soo were the directors of Wheatland during the Material Time.<sup>7</sup>
- [7] 1300302 and D&E Arctic were the registered owners of the Rocky View lands.<sup>8</sup> During the Material Time, Soo and one of Wong's sons were the directors of 1300302, and Wong and one of Soo's daughters were the directors of D&E Arctic.<sup>9</sup>
- [8] None of Wheatland, 1300302, or D&E Arctic ever filed a prospectus under the BC Act.<sup>10</sup>

**(b) Wheatland Joint Venture**

- [9] Beginning in May 2007, Wong and Soo promoted and sold Wheatland joint venture units to at least 78 investors, who paid approximately \$85,000 per unit.<sup>11</sup> Wong and Soo planned to develop the Wheatland lands into saleable, subdivided lots that could be sold at a profit.<sup>12</sup>
- [10] The BCSC Panel found that Wong, Soo and Wheatland (which was under the control and direction of Wong and Soo) raised \$2,000,000 through an illegal distribution of securities to 25 investors.<sup>13</sup>
- [11] The BCSC Panel also found that Wong and Soo defrauded investors by:
- a. transferring 33.5 Wheatland joint venture units to the benefit of their family members, without consideration and without the knowledge and permission of investors;<sup>14</sup> and
  - b. misappropriating \$1,208,000 from the Wheatland investors' subscription proceeds to fund two loans to related companies, all of which was done without obtaining approval from investors.<sup>15</sup>

**(c) Rocky View Joint Venture**

- [12] Between June 2007 and January 2008, Wong and Soo promoted and sold joint venture units in 1300302 and D&E Arctic (the registered owners of the Rocky View lands) to 63 investors at approximately \$65,000 per unit.<sup>16</sup> Like the Wheatland joint venture, Wong and Soo planned to develop the Rocky View lands. Wong and Soo were retained under the Rocky View joint venture agreement to manage the Rocky View project.<sup>17</sup>
- [13] The BCSC Panel found that Wong, Soo and 1300302 raised \$2,785,000 through an illegal distribution of securities to 44 of the 63 investors. The BCSC Panel also

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<sup>6</sup> BC Merits Decision at para 54

<sup>7</sup> BC Merits Decision at para 14

<sup>8</sup> BC Merits Decision at para 114

<sup>9</sup> BC Merits Decision at para 16

<sup>10</sup> BC Merits Decision at paras 13, 15

<sup>11</sup> BC Merits Decision at paras 9, 55-56

<sup>12</sup> BC Merits Decision at para 54

<sup>13</sup> BC Merits Decision at paras 195, 378

<sup>14</sup> BC Merits Decision at paras 317, 378

<sup>15</sup> BC Merits Decision at paras 339, 378

<sup>16</sup> BC Merits Decision at paras 115-116, 248

<sup>17</sup> BC Merits Decision at para 129

found that Wong, Soo and D&E Arctic raised \$1,105,000 through an illegal distribution of securities to the other 19 investors.<sup>18</sup>

- [14] The BCSC Panel found that Wong and Soo perpetrated fraud through 1300302 and D&E Arctic by:
- a. inflating the purchase price of the Rocky View lands by completing an artificial transaction through a related company and then selling joint venture units to investors based on the inflated price, not the initial purchase price;<sup>19</sup> and
  - b. withholding information about potential delays in the development of the Rocky View lands from an investor.<sup>20</sup>

## **2. BCSC Sanctions Decision**

[15] In the BCSC Sanctions Decision, the BCSC Panel imposed monetary sanctions against the Respondents. Staff does not seek an order replicating those sanctions.

[16] The BCSC Panel also imposed the following non-monetary sanctions:<sup>21</sup>

### 1. Wong

- (a) subject to the exception in subparagraph (b)(ii) below, Wong resign any position she holds as a director or officer of an issuer or registrant;
- (b) Wong be permanently prohibited:
  - i. from trading in or purchasing any securities or exchange contracts, except that she may trade and purchase them for her own account through one registered dealer or advisor if she gives that dealer or advisor a copy of the BCSC Sanctions Decision;
  - ii. from becoming or acting as a director or officer of any issuer or registrant, except that she may act as a director or officer of an issuer whose securities are solely owned by her or by her and her immediate family members (being: Wong's spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law);
  - iii. from becoming or acting as a promoter;
  - iv. from acting in a management or consultative capacity in connection with activities in the securities market; and
  - v. from engaging in investor relations activities; and
- (c) except for those exemptions necessary to allow Wong to trade or purchase securities and exchange contracts for her own account, none of the

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<sup>18</sup> BC Merits Decision at para 244

<sup>19</sup> BC Merits Decision at paras 345, 351

<sup>20</sup> BC Merits Decision at para 377

<sup>21</sup> BC Sanctions Decision at para 133

exemptions set out in the BC Act, the regulations or decisions (as those terms are defined by the BC Act), will apply to Wong, on a permanent basis;

## 2. Soo

- (a) subject to the exception in subparagraph (b)(ii) below, Soo resign any position she holds as a director or officer of an issuer or registrant;
- (b) Soo be permanently prohibited:
  - i. from trading in or purchasing any securities or exchange contracts, except that she may trade and purchase them for her own account through one registered dealer or advisor if she gives that dealer or advisor a copy of the BCSC Sanctions Decision;
  - ii. from becoming or acting as a director or officer of any issuer or registrant, except that she may act as a director or officer of an issuer whose securities are solely owned by her or by her and her immediate family members (being: Soo's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, or brother or sister-in-law);
  - iii. from becoming or acting as a promoter;
  - iv. from acting in a management or consultative capacity in connection with activities in the securities market; and
  - v. from engaging in investor relations activities; and
- (c) except for those exemptions necessary to allow Soo to trade or purchase securities and exchange contracts for her own account, none of the exemptions set out in the BC Act, the regulations or decisions (as those terms are defined by the BC Act), will apply to Soo, on a permanent basis;

## 3. 1300302

- (a) 1300302 permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;
- (b) on a permanent basis, none of the exemptions set out in the BC Act, the regulations or decisions (as those terms are defined by the BC Act), will apply to 1300302; and
- (c) 1300302 is permanently prohibited from engaging in investor relations activities;

## 4. D&E Arctic

- (a) D&E Arctic permanently cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;

- (b) on a permanent basis, none of the exemptions set out in the BC Act, the regulations or decisions (as those terms are defined by the BC Act), will apply to D&E Arctic; and
- (c) D&E Arctic is permanently prohibited from engaging in investor relations activities.

[17] The BCSC Panel made no orders against Wheatland.<sup>22</sup>

### **B. Leave to Appeal to British Columbia Court of Appeal**

[18] Wong and Soo applied to the British Columbia Court of Appeal (**BCCA**) for leave to appeal both the BCSC Merits Decision and the BCSC Sanctions Decision. On April 19, 2018, the BCCA dismissed the application for leave.<sup>23</sup>

### **III. SERVICE AND PARTICIPATION**

[19] In this proceeding, the Respondents were served via courier on September 10, 2018, with the Notice of Hearing, Statement of Allegations, Staff's written submissions, and hearing brief.<sup>24</sup> Wong and Soo were served at their home address, and the corporate respondents were served at their registered offices.<sup>25</sup> I find that service was properly effected on all Respondents.

[20] Pursuant to Rule 11(3) of the *Ontario Securities Commission Rules of Procedure and Forms* (**OSC Rules of Procedure**)<sup>26</sup> the deadline for the Respondents to serve and file written submissions was October 9, 2018. No materials were filed on behalf of the Respondents.

[21] I am satisfied that the Respondents were provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers Procedure Act* and the *OSC Rules of Procedure*, the Commission may proceed in the absence of a party where that party has been given notice of the hearing.<sup>27</sup>

### **IV. ANALYSIS**

#### **1. Introduction**

[22] The BCSC is a securities regulatory authority. In the BCSC Sanctions Decision, the BCSC made the orders set out in paragraph [16] above, imposing sanctions on the Respondents. The test under paragraph 4 of subsection 127(10) of the Act is therefore satisfied.

[23] I must therefore consider whether it is in the public interest for the Commission to make an order against the Respondents, and if so, what that order should be.

#### **2. Statutory authority to make public interest orders**

[24] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders imposed following breaches of securities law. The subsection does not

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<sup>22</sup> BC Sanctions Decision at para 134

<sup>23</sup> *Wong v British Columbia Securities Commission*, 2018 BCCA 192

<sup>24</sup> Hearing Brief marked as Exhibit 1

<sup>25</sup> Affidavit of Service of Lee Crann, sworn September 13, 2018, marked as Exhibit 2

<sup>26</sup> *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988, r 11(3)(g)

<sup>27</sup> *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2); *OSC Rules of Procedure*, r 21(3)

itself empower the Commission to make an order; rather it provides a basis for an order under subsection 127(1).

- [25] Orders made under subsection 127(1) of the Act are “protective and preventative” and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.<sup>28</sup>
- [26] 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.<sup>29</sup>

### **3. Appropriate sanctions**

- [27] Staff submits that the Respondents’ conduct warrants an order designed to protect Ontario investors from the Respondents, by limiting the Respondents’ participation in Ontario’s capital markets. I agree that such an order would be in the public interest.
- [28] In determining specific sanctions, the Commission may consider the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.<sup>30</sup>
- [29] In this case, the misconduct was very serious. As this Commission has repeatedly held, fraud is one of the most egregious violations of securities law. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.<sup>31</sup>
- [30] The BCSC Panel came to the same conclusion, noting that “fraud is the most serious misconduct prohibited by the [BC] Act.”<sup>32</sup> The BCSC Panel went on to find that Wong and Soo:
- committed multiple acts of fraud totalling around \$12 million against a large number of investors. Their misconduct is very serious. We view as most significant, their inflating the purchase price of the Rocky View lands, through the use of a nominee company, and lying about it to investors.<sup>33</sup>
- [31] The illegal distributions of Wheatland and Rocky View joint venture units totalling \$5.9 million to 88 investors also constituted serious misconduct.<sup>34</sup> As the BCSC Panel stated:

Contraventions of section 61 of the [BC] Act are also inherently serious. It is one of the [BC] Act’s foundational requirements for protecting investors and preserving the integrity of the capital markets.<sup>35</sup>

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<sup>28</sup> *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

<sup>29</sup> *Wong Sang Shen Cho (Craig Cho)*, 2014 ONSEC 20, (2014) 37 OSCB 7285 at para 48

<sup>30</sup> *Belteco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136

<sup>31</sup> *Black Panther (Re)*, 2017 ONSEC 8, (2017) 40 OSCB 3727 at para 48

<sup>32</sup> BCSC Sanctions Decision at para 38

<sup>33</sup> BCSC Sanctions Decision at para 39

<sup>34</sup> BCSC Sanctions Decision at para 42

<sup>35</sup> BCSC Sanctions Decision at para 40

- [32] The harm suffered by investors was significant. Investors testified at the BCSC hearing that they have suffered financially and emotionally due to their investments in the joint ventures. The BCSC Panel noted that as of the time of the hearing, investors had not yet received any returns on their investments.<sup>36</sup>
- [33] In contrast, Wong and Soo were personally enriched when they inflated the purchase price of the Rocky View lands and lied about it to investors. The BCSC Panel found that the amount of the enrichment was \$2,317,850.<sup>37</sup>
- [34] The BCSC Panel found no mitigating factors, and no aggravating factors beyond the seriousness of the misconduct as described above.<sup>38</sup> I agree.
- [35] It is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring the Respondents 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 imposed by the BCSC Panel are proportionate to the Respondents' misconduct and that it would be appropriate for me to issue a substantially similar order.

#### **4. Differences between BC and Ontario sanctions**

- [36] However, due to differences between the Act and the BC statute, some of the sanctions I impose cannot be identical to those imposed by the BCSC Panel. This is true with respect to two aspects of the sanctions.
- [37] First, the BCSC Panel prohibited the Respondents 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 permanently prohibiting the Respondents from trading in derivatives. In my view, when considering the factors described above that support the making of orders 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 Respondents from trading in derivatives. I will therefore make the order requested by Staff.
- [38] Second, the BCSC Sanctions Decision prohibits all of the Respondents from engaging in "investor relations activities" and the individual respondents 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. I find 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 Sanctions Decision.
- [39] Before concluding, I note Staff's submissions that its requested order would refer explicitly to both "registrants" and to "investment fund managers". Staff bases that request on the Commission's reasons in *Lim (Re)*.<sup>39</sup> I prefer and adopt the

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<sup>36</sup> BCSC Sanctions Decision at paras 43-44 and 49

<sup>37</sup> BCSC Sanctions Decision at paras 50, 54 and 57

<sup>38</sup> BCSC Sanctions Decision at paras 60-61

<sup>39</sup> 2018 ONSEC 39, (2018) 41 OSCB 6045 at para 23

Commission's reasons in *Inverlake Property Investment Group Inc (Re)*<sup>40</sup> and *Vantooen (Re)*,<sup>41</sup> in which the Commission found such a distinction unnecessary, given that the definition of "registrant" in subsection 1(1) of the Act includes an investment fund manager, by virtue of subsection 25(4) of the Act. As a result, the order I shall issue refers to registrants, which term includes investment fund managers.

## **V. CONCLUSION**

[40] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff. I will therefore order:

- a. against Wong that:
  - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Wong shall cease permanently, except trades that are made for her own account through a registered dealer or advisor in Ontario if she gives that dealer or advisor a copy of the BCSC Sanctions Decision, and a copy of the order in this proceeding;
  - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Wong shall cease permanently, except purchases that are made for her own account through a registered dealer or advisor in Ontario if she gives that dealer or advisor a copy of the BCSC Sanctions Decision, and a copy of the order in this proceeding;
  - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Wong permanently, except for those exemptions necessary to allow Wong to trade securities or derivatives or purchase securities for her own account;
  - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Wong shall resign any positions that she holds as a director or officer of any issuer or registrant;
  - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Wong is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, except that she may act as a director or officer of an issuer whose securities are solely owned by her or by her and her immediate family members (being: Wong's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, or brother or sister-in-law); and
  - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Wong is prohibited permanently from becoming or acting as a registrant or promoter;
- b. against Soo that:

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<sup>40</sup> 2018 ONSEC 35, (2018) 41 OSCB 5309 at para 39

<sup>41</sup> 2018 ONSEC 36, (2018) 41 OSCB 5603 at para 30

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Soo shall cease permanently, except trades that are made for her own account through a registered dealer or advisor in Ontario if she gives that dealer or advisor a copy of the BCSC Sanctions Decision, and a copy of the order in this proceeding;
  - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Soo shall cease permanently, except purchases that are made for her own account through a registered dealer or advisor in Ontario if she gives that dealer or advisor a copy of the BCSC Sanctions Decision, and a copy of the order in this proceeding;
  - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Soo permanently, except for those exemptions necessary to allow Soo to trade securities or derivatives or purchase securities for her own account;
  - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Soo shall resign any positions that she holds as a director or officer of any issuer or registrant;
  - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Soo is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, except that she may act as a director or officer of an issuer whose securities are solely owned by her or by her and her immediate family members (being: Soo's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law, or brother or sister-in-law); and
  - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Soo is prohibited permanently from becoming or acting as a registrant or promoter;
- c. against 1300302 that:
- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by 1300302 shall cease permanently;
  - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by 1300302 shall cease permanently;
  - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to 1300302 permanently; and
  - iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, 1300302 is prohibited permanently from becoming or acting as a registrant or promoter; and
- d. against D&E Arctic that:
- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by D&E Arctic shall cease permanently;

- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by D&E Arctic shall cease permanently;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to D&E Arctic permanently; and
- iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, D&E Arctic is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 6th day of November, 2018.

"Timothy Moseley"  
Timothy Moseley