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Securities  
Commission

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

**- AND -**

**IN THE MATTER OF  
NOSHAD DOWLATI**

**REASONS AND DECISION**

**Hearing:** In writing

**Decision:** May 26, 2016

**Panel:** Timothy Moseley      Commissioner

**Submissions by:** Clare Devlin      For Staff of the Commission  
Christophe Shammas

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## REASONS AND DECISION

### I. OVERVIEW

- [1] On June 18, 2015, the British Columbia Securities Commission (the "**BCSC**") issued a decision<sup>1</sup> in which it found that Noshad Dowlati ("**Dowlati**") advised and traded in securities without being registered, and that he perpetrated a fraud on an investor, all contrary to various provisions of British Columbia's *Securities Act*<sup>2</sup> (the "**BC Act**").
- [2] The BCSC ordered (the "**BCSC Order**") various sanctions against Dowlati. The sanctions, more particularly described below, essentially removed Dowlati from British Columbia's capital markets permanently. The BCSC also ordered that Dowlati pay an administrative penalty and disgorge funds that had been illegally obtained.
- [3] Enforcement staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") seeks an order pursuant to subsection 127(1) of the Ontario *Securities Act* (the "**Act**")<sup>3</sup> that mirrors most of the terms of the BCSC Order. Staff relies upon subsection 127(10) of the Act, which provides in paragraph 4 that this Commission may make an order against a person under subsection 127(1) if that person is subject to an order, made by a securities regulatory authority in another jurisdiction, that imposes sanctions on the person.
- [4] For the reasons that follow, I find that it is in the public interest to issue the order requested by Staff.

### II. THE BCSC PROCEEDING

- [5] The BCSC found, among other things, that Dowlati:
- a. operated a blog where he commented on market conditions and his stock picks, which the investor followed and as a result of which the investor believed Dowlati to have "financial savvy";
  - b. signed an agreement with the investor whereby Dowlati would trade on the investor's behalf;
  - c. deposited the \$10,000 received from the investor into his personal banking account but transferred only \$9,000 to his trading account, with the balance being spent on personal expenses such as credit card payments, retail purchases and restaurant meals; and
  - d. failed to inform the investor of the losses incurred and that the balance in the account had fallen to zero, but rather told the investor that the value of the investments had increased, which prompted the investor to invest additional funds.<sup>4</sup>
- [6] The BCSC noted that "Dowlati's misconduct resulted in significant harm to the investor" and that the investor "lost all of the funds he gave to Dowlati which had taken him several years to save."<sup>5</sup>

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<sup>1</sup> *Re Dowlati*, 2015 BCSECCOM 255 ("**BCSC Decision**").

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

<sup>3</sup> RSO 1990, c S.5.

<sup>4</sup> BCSC Decision at paras 7, 8, 9, 12, 14, 40, 43, 49, 59 and 62.

<sup>5</sup> BCSC Decision at para 72.

- [7] The BCSC concluded that by his conduct, Dowlati had perpetrated a fraud on the investor, and had advised and traded in securities without being registered. As a result, the BCSC ordered that Dowlati:
- a. pay an administrative penalty of \$30,000;
  - b. resign any position he held as a director or officer of any issuer or registrant;
  - c. be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;
  - d. be prohibited permanently from becoming or acting as a registrant;
  - e. be prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
  - f. be prohibited permanently from engaging in investor relations activities;
  - g. be prohibited permanently from trading in or purchasing any securities or exchange contracts; and
  - h. disgorge to the BCSC the sum of \$14,050.<sup>6</sup>

### **III. PRELIMINARY MATTERS**

#### **A. Notice to Dowlati**

- [8] The Notice of Hearing commencing this proceeding specified that the hearing would take place on January 19, 2016.
- [9] At the hearing before me on that date, Dowlati did not appear or make submissions. Staff tendered an affidavit of Lee Crann, sworn January 15, 2016,<sup>7</sup> that described steps taken to serve Dowlati with the Notice of Hearing, the Statement of Allegations, and disclosure.
- [10] A subsequent affidavit of Lee Crann sworn February 3, 2016,<sup>8</sup> relating to service on Dowlati of Staff's written materials, included as an exhibit a January 31 email from Dowlati to Staff in which Dowlati insisted that Staff stop sending emails to him.
- [11] Subsection 7(1) of the *Statutory Powers Procedure Act*<sup>9</sup> (the "**SPPA**") and Rule 7.1 of the *Commission's Rules of Procedure*<sup>10</sup> (the "**OSC Rules**") provide that where notice of the hearing has been given to a party, but the party fails to appear, the tribunal may proceed in the absence of the party and the party is not entitled to further notice in the proceeding.
- [12] I find that Dowlati was given proper notice of this proceeding and that I may proceed in his absence.

#### **B. Written Hearing**

- [13] The Notice of Hearing indicated that Staff would apply to continue this proceeding by way of written hearing, as provided for in section 5.1 of the SPPA and Rule 11.5 of the OSC Rules.

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<sup>6</sup> BCSC Decision at para 96.

<sup>7</sup> Marked as Exhibit 1 in this proceeding.

<sup>8</sup> Marked as Exhibit 2 in this proceeding.

<sup>9</sup> RSO 1990, c S.22.

<sup>10</sup> (2014), 37 OSCB 4168.

- [14] At the January 19 hearing, I granted Staff's application to proceed in writing. I ordered that Staff serve and file its materials by January 29, 2016, and that Dowlati serve and file any responding materials by February 26, 2016.
- [15] Staff served and filed a hearing brief containing the BCSC Decision along with written submissions and a brief of authorities. No materials were received from Dowlati.

#### **IV. ISSUES**

- [16] As noted above, subsection 127(10) of the Act provides that the Commission may make an order against a person or company under subsection 127(1) if that person or company is subject to an order, made by a securities regulatory authority in another jurisdiction, that imposes sanctions.
- [17] Staff's application for an order pursuant to subsection 127(1), made in reliance upon subsection 127(10), therefore presents two principal issues:
1. Was Dowlati subject to an order made by a securities regulatory authority in another jurisdiction?
  2. If so, what sanctions, if any, should the Commission order against him?

#### **V. ANALYSIS**

##### **A. Was Dowlati subject to an order made by a securities regulatory authority in another jurisdiction?**

- [18] The BCSC Order is an order of a securities regulatory authority in another jurisdiction. The order imposes sanctions on Dowlati.
- [19] The BCSC Order therefore meets the test prescribed by subsection 127(10) of the Act, and the Commission may make an order under subsection 127(1) if it is in the public interest to do so.<sup>11</sup>

##### **B. If so, what sanctions, if any, should the Commission order against Dowlati?**

###### **1. Introduction**

- [20] 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, in the context of the Ontario capital markets, to make an order under subsection 127(1), and if so, what the order ought to be.<sup>12</sup>

###### **2. Inter-jurisdictional co-operation**

- [21] In determining whether it would be in the public interest to make an order pursuant to section 127 of the Act, I am guided by section 2.1 of the Act, which provides:

In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

[...]

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<sup>11</sup> *Re Euston Capital Corp* (2009), 32 OSCB 6313 at para 46.

<sup>12</sup> *Re Elliott* (2009), 32 OSCB 6931 at para 27.

3. Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of [the] Act by the Commission.

[...]

5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.

- [22] By explicitly referring to orders made by securities regulatory authorities in other jurisdictions, subsection 127(10) of the Act clearly promotes these legislative objectives. This is also well recognized in decisions of the Supreme Court of Canada<sup>13</sup> and of the Commission.<sup>14</sup>
- [23] As the Commission has previously held, “[t]he decision of a foreign jurisdiction stands as a determination of fact for the purpose of the Commission’s considerations under subsection 127(10) of the Act.”<sup>15</sup>
- [24] In this case, the findings of the BCSC with respect to Dowlati’s conduct are compelling reasons to conclude that it is in the public interest to restrict Dowlati’s participation in Ontario’s capital markets. Had Dowlati engaged in the same conduct in Ontario, that conduct would have contravened corresponding provisions of the Act.
- [25] A nexus to Ontario is not a necessary pre-condition to the exercise of the Commission’s jurisdiction under subsection 127(1) in reliance upon subsection 127(10).<sup>16</sup> Staff submits that in this case it is in the public interest to protect Ontario investors from Dowlati by preventing or limiting his participation in Ontario’s capital markets. I accept that submission.
- [26] In addition, as the Supreme Court of Canada has held, it is appropriate to consider general deterrence in making an order under subsection 127(1).<sup>17</sup> An order in this proceeding would have a deterrent effect upon those who might engage in similar conduct in Ontario.
- [27] For all of these reasons, I find that it is in the public interest to make an order against Dowlati pursuant to section 127(1) of the Act.

### 3. Appropriate sanctions

- [28] The purpose of section 127 of the Act, and the principles that “animate” its application, were reviewed by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*.<sup>18</sup> In that decision, the Court held<sup>19</sup> 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
  - b. to foster fair and efficient capital markets and confidence in capital markets.

<sup>13</sup> See, e.g., *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 51.

<sup>14</sup> *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 (“**JV Raleigh**”) at para 21; *New Futures Trading International Corp. (Re)* (2013), 36 OSCB 5713 at para 27.

<sup>15</sup> *JV Raleigh* at para 16.

<sup>16</sup> *Re Sundell* (2014), 37 OSCB 10755.

<sup>17</sup> *Cartaway Resources Corp.*, 2004 SCC 26 at para 60.

<sup>18</sup> 2001 SCC 37 (“**Asbestos**”).

<sup>19</sup> *Asbestos* at para 41.

[29] 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”.<sup>20</sup> 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.<sup>21</sup>

[30] In this case, Staff asks the Commission to order that Dowlati:

- a. resign any positions he holds as director or officer of any issuer or registrant;
- b. be prohibited permanently from becoming or acting as an officer or director of an issuer or registrant;
- c. be prohibited permanently from becoming or acting as a registrant; and
- d. be prohibited permanently from trading in or acquiring any securities or derivatives.

[31] Dowlati’s misconduct was serious. As the BCSC found, Dowlati perpetrated a fraud when he failed to inform the investor that Dowlati had lost or spent all of the investor’s funds. Instead, Dowlati deceived the investor, prompting the investor to give additional funds to Dowlati to invest. Dowlati also perpetrated a fraud by using some of the investor funds for personal expenditures. Further, Dowlati advised and traded in securities without being registered.

[32] The amount that Dowlati received from the investor may appear small. However, as the BCSC noted, the amount was significant for the victim. As this Commission has previously held, even where a relatively small amount of money is involved, it is important to impose significant sanctions to emphasize that conduct intended to defraud investors will not be tolerated.<sup>22</sup>

[33] Had Dowlati’s misconduct occurred in Ontario, it would likely have attracted consequences similar to those ordered by the BCSC.

[34] Appropriately, Staff does not seek an order in Ontario that would require the payment of an additional administrative penalty or the further disgorgement of funds. The order sought would restrict Dowlati’s access to and participation in Ontario’s capital markets.

[35] In my view, the order requested by Staff is proportionate to the misconduct as found by the BCSC, would serve to protect Ontario’s investors and capital markets, would further the objective of inter-jurisdictional co-operation, and would have an appropriate general deterrence effect in Ontario.

## **VI. CONCLUSION**

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

[37] I will therefore issue an order which provides that:

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<sup>20</sup> *Asbestos* at para 42, adopting the words of Laskin J.A. from the court below.

<sup>21</sup> *Asbestos* at para 43, citing with approval *Re Mithras Management Ltd.* (1990), 13 OSCB 1600.

<sup>22</sup> *Re Blackwood & Rose Inc.* (2014), 37 OSCB 4699 at paras. 46 and 50;

- (a) pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities or derivatives by Dowlati shall cease permanently;
- (b) pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Dowlati resign any positions that he holds as director or officer of any issuer or registrant;
- (c) pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Dowlati be prohibited permanently from becoming or acting as an officer or director of any issuer or registrant; and
- (d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dowlati be prohibited permanently from becoming or acting as a registrant.

Dated at Toronto this 26<sup>th</sup> day of May, 2016.

*"Timothy Moseley"*

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Timothy Moseley