



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Dancho (Re), 2017 ONSEC 40
Date: 2017-11-09

**IN THE MATTER OF
VICKY DANCHO (also known as JU HUANG)**

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

Hearing: November 6, 2017

Reasons: November 9, 2017

Panel: Philip Anisman Commissioner

**Appearances
by:** Keir Wilmut For Staff of the Commission
Peter Kott (Student-at-law)

Vicky Dancho not appearing

REASONS FOR DECISION

- [1] On February 16, 2017, the Executive Director of the British Columbia Securities Commission (the **BCSC**) signed a settlement agreement (the **Settlement Agreement**) with the respondent, Vicky Dancho, and made an order (the **BC Order**) imposing the agreed sanctions.¹ Ms. Dancho admitted in the Settlement Agreement that she had performed a limited role as a director of Careseng Cancer Institute Inc. (**Careseng Cancer**). She did not control Careseng Cancer and took no active role in its business or affairs; her sole directorial activity was to sign, as a director of the guarantor, approximately 800 promissory notes issued by Pegasus Pharmaceuticals Group Inc. (**Pegasus**) between April 2008 and August 2012, which notes said that Careseng Cancer guaranteed repayment at maturity. Approximately \$22.9 million of these notes were part of distributions of Pegasus bonds to investors in Taiwan that contravened the prospectus requirements of the *BC Securities Act* (the **BC Act**).² Ms. Dancho admitted that in signing the promissory notes she acted in furtherance of trades in Pegasus bonds, constituting trading in securities contrary to the BC Act's prospectus requirements, and she undertook to pay the BCSC \$70,000.³
- [2] The BC Order prohibits Ms. Dancho from trading in securities permanently, except in a single account in her own name through a registrant to whom she has provided a copy of the BC Order, from becoming or acting as a director or officer of any issuer or registrant, from becoming or acting as a registrant or promoter, and from "acting in a management or consultative capacity in connection with activities in the securities market."⁴
- [3] On October 23, 2017, Commission enforcement staff (**Staff**) filed a Statement of Allegations and the Commission issued a Notice of Hearing based on the BC Order and Settlement Agreement and paragraphs 127(10)4 and 5 of the *Ontario Securities Act* (the **Act**),⁵ seeking a reciprocating order under subsection 127(1) of the Act.⁶ The Statement of Allegations expressly relies on a provision in the Settlement Agreement in which Ms. Dancho consented to a regulatory order being made by any other provincial securities regulatory authority in Canada "containing any or all of the Orders set out in" the BC Order.⁷
- [4] Staff served Ms. Dancho by courier with the Notice of Hearing, Statement of Allegations and other materials on October 25, 2017.⁸ Staff's materials included a covering letter which informed Ms. Dancho that at the hearing on November 6,

¹ *Re Dancho*, 2017 BCSECCOM 40 (Settlement Agreement); 2017 BCSECCOM 51 (Order). The Settlement Agreement and BC Order were marked as Exhibit 2.

² See *Securities Act*, RSBC 1996, c 418, s 61.

³ Settlement Agreement, para 1; BC Act, ss 1(1) "trade" (f) and 61.

⁴ BC Order, para 2.

⁵ *Securities Act*, RSO 1990, c S.5, ss 127(1) and 127(10)4-5.

⁶ Notice of Hearing (2017), 40 OSCB 8811; Statement of Allegations (2017), 40 OSCB 8812.

⁷ Settlement Agreement, para 3; Statement of Allegations, para 16.

⁸ Exhibit 1, Affidavit of Service of Lee Crann, sworn November 2, 2017, paras 2-5 (**Crann Affidavit**); see *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168, rr 1.5.1(1)(g) and (2)(d) (**Former Rules of Procedure**).

2017, Staff would request the Commission to make an order, a copy of which was attached.⁹

- [5] The order sought by Staff is broader than the BC Order. It would prohibit Ms. Dancho from trading in securities and derivatives and from acquiring securities, except as provided in the carveout in the BC Order. Despite their reliance on the consent in the Settlement Agreement, which is limited to the terms of the BC Order, Staff argued that this extension is necessary to protect investors in Ontario and that an order in Ontario based on conduct like Ms. Dancho's would invariably prohibit trading in both securities and derivatives and acquisitions of securities.
- [6] In a proceeding under subsection 127(10) of the Act, the Commission retains a discretion to fashion an appropriate order under subsection 127(1). Orders based on regulatory action in another province generally mirror the order being reciprocated, except to the extent required to address differences between the Act and the legislation under which the order being reciprocated was made and except as necessary to ensure protection of investors in Ontario.¹⁰
- [7] In this case, no such extension is required in view of the fact that Ms. Dancho's conduct was limited to assisting an improper distribution by signing, on behalf of the guarantor, guarantees of payment of the promissory notes issued by Pegasus. She did not actually sell or purchase securities or derivatives.¹¹ On these facts, it is far from clear that the order sought by Staff would be granted if her conduct had occurred in Ontario.¹² In view of Staff's reliance on the consent in the Settlement Agreement, the statement to this effect in its covering letter to Ms. Dancho and the fact that Ms. Dancho was not represented at the hearing, such an extension would not be appropriate.
- [8] Although the Settlement Agreement does not contain a full picture of the facts relating to Pegasus' sales of its bonds, or of Careseng Cancer's and Ms. Dancho's participation, the crux of the Settlement Agreement appears to be Ms. Dancho's conduct as a director of Careseng Cancer in furtherance of Pegasus' trading. Staff's proposed order would prohibit Ms. Dancho from acting as a director or officer of an issuer or registrant and from acting as a registrant, an investment fund manager or a promoter. Staff's explanation for the failure to include investment fund managers in both prohibitions was that the prohibition of her acting as a director or officer tracked the BC Order. As subsection 127(1) of the Act does not refer to "acting in a management or consultative capacity",¹³ the prohibition against her acting as a registrant, investment fund manager or promoter was intended to reciprocate the prohibition of these activities in the BC Order to the extent and in the manner authorized by the Act.

⁹ Crann Affidavit, Exhibit 2.

¹⁰ *Re Dhanani* (2017), 40 OSCB 4457, paras 8-9; *Re Jawhari* (2017), 40 OSCB 8551, para 7. See also *Re Pierce*, 2016 BCSECCOM 188; 2016 BCSECCOM 264; *Re Rada*, 2017 BCSECCOM 299; *Re Bochinski*, 2017 BCSECCOM 300 (more onerous orders made).

¹¹ *Re Jawhari* (2017), 40 OSCB 8551, para 6.

¹² Conduct in Ontario is not a prerequisite for an order under section 127; *Re Dhanani* (2017), 40 OSCB 4457, paras 5, 6 and 8 and note 17.

¹³ See BC Act, s 161(1)(d)(iv).

- [9] As noted in *McClure*,¹⁴ managerial and consultative activities in the securities market can be engaged in by a director or officer of an issuer, a registrant, an investment fund manager, a promoter or a third party. An “investment fund manager”, as defined in the Act, is “a person or company that directs the business, operations or affairs of an investment fund.”¹⁵ In view of Ms. Dancho’s conduct as a director of Careseng Cancer, she should not be allowed to act as a director or officer of an investment fund manager. Moreover, if the Commission’s order is to mirror the BC Order, it must prohibit her from doing so.
- [10] As investment fund managers are required to register, they are also registrants; a prohibition against acting as a registrant or a director or officer of a registrant would usually include acting as or for an investment fund manager.¹⁶ As a result of a potential ambiguity in the Act, this overlap has been reflected in some orders by adding “including an investment fund manager” after each prohibition relating to registrants.¹⁷ A prohibition against acting as a registrant, however, would not cover activities that are exempt from registration.¹⁸ As the BC Order does not address the use of exemptions, and as Staff did not address this question, it would not be appropriate to deny the exemptions in this case. To reciprocate the BC Order, an order must therefore deal directly with investment fund management activities.
- [11] Accordingly, it is in the public interest to make an order prohibiting Ms. Dancho from trading in securities, except in a single account in her own name with a registrant who has been provided with a copy of the BC Order and the Commission’s order, from acting as a director or officer of an issuer, registrant, or investment fund manager and from becoming or acting as a registrant, investment fund manager or promoter.

Dated at Toronto this 9th day of November, 2017.

“Philip Anisman”

Philip Anisman

¹⁴ *Re McClure* (2017), 40 OSCB 8135, paras 8-9.

¹⁵ Act, s 1(1).

¹⁶ See *Re Dhanani* (2017), 40 OSCB 4457, para 14.

¹⁷ See *ibid*; *Re Dhanani* (2017), 40 OSCB 4444, paras 5 and 6 (Order); *Re McClure* (2017), 40 OSCB 8101, paras 6-7 (Order).

¹⁸ The orders referred to in the preceding note also denied the respondent the use of the exemptions in the Act.