



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
FRED LOUIS SEBASTIAN**

**REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)**

Hearing: In writing

Decision: February 5, 2016

Panel: Janet Leiper, C.S. - Commissioner

Appearances: Clare Devlin - For Staff of the Commission

No one appeared on behalf of Fred Louis Sebastian

REASONS AND DECISION

I. INTRODUCTION

- [1] This was an uncontested written hearing before the Ontario Securities Commission (the "Commission") to determine whether it is in the public interest to make an order imposing sanctions against Fred Louis Sebastian, pursuant to the authority found in subsections 127(1) and (10) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Securities Act*").
- [2] Mr. Sebastian was served with a Notice of Hearing issued on November 17, 2015 and a Statement of Allegations dated November 16, 2015. Mr. Sebastian communicated with Staff of the Commission by e-mail on December 15, 2015, acknowledging that he was aware of the December 16, 2016 appearance and he requested that he be provided with adequate time to prepare his written submissions for mid to late January 2016. Mr. Sebastian did not appear on the return date for the hearing, December 16, 2015.
- [3] On December 16, 2015, Staff of the Commission brought an application to convert the matter to a written hearing, as permitted by Rule 11 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168. The application was granted and a timeline was set for the exchange of materials between Staff and Mr. Sebastian. Mr. Sebastian was permitted to serve and file his materials by January 26, 2016.
- [4] Mr. Sebastian did not file evidence or make submissions in accordance with the timelines set on December 16, 2015. As set out in the Affidavit of Service of Lee Crann dated January 4, 2016, Mr. Sebastian was served by courier and email with: (1) the Commission's Order dated December 16, 2015 which set out the timeline for the exchange of materials, and (2) Staff's written materials. Staff have requested that the matter proceed.
- [5] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Subsection 7(2), *Statutory Powers Procedure Act*) R.S.O. 1990, c. S.22 (the "*SPPA*"). The evidence of service and Mr. Sebastian's acknowledgement of the proceedings to Staff, as well as the posting of the Notice of Hearing and Statement of Allegations on the Commission's website, satisfy me that the matter may proceed in the absence of Mr. Sebastian in accordance with the *SPPA*.

II. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

- [6] Subsection 127(10)4 of the *Securities Act* provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed "sanctions, conditions, restrictions or requirements on a person or a company." On making a finding of fact that an order of this type has been made in relation to a respondent, the Commission must determine whether an order under subsection 127(1) of the *Securities Act* should be made.
- [7] Subsection 127(1) empowers the Commission to make orders where in its opinion, it is in the public interest to make such orders. In making this determination, the Commission has regard to the purposes of the *Securities Act*, which are to provide protection to investors from unfair, improper and fraudulent

practices, and to foster fair and efficient capital markets and confidence in capital markets.

- [8] The purpose of orders under subsection 127(1) of the *Securities Act* is “protective and prospective” and are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets. (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43 cited in *Re JV Raleigh Superior Holdings Inc.* (2013), 36 O.S.C.B. 4639 para. 17).

III. ANALYSIS

A. The FCAA Findings and Order

- [9] On July 23, 2015, the Financial and Consumer Affairs Authority of Saskatchewan (the “FCAA”) found that Mr. Sebastian acted as a dealer and adviser without being registered to do so and made an undertaking to an investor as to the future value of a security. The FCAA also found that Mr. Sebastian had perpetrated a fraud. This conduct was contrary to the Saskatchewan *Securities Act*, 1988 (S.S. 1988-89 c. S-42.2), as amended (the “*Saskatchewan Act*”).
- [10] By order dated August 27, 2015, the FCAA imposed sanctions and costs upon Mr. Sebastian, including the following:
- a. pursuant to clause 134(1)(a) of the *Saskatchewan Act*, all of the exemptions in Saskatchewan securities laws do not apply to Sebastian, permanently;
 - b. pursuant to clause 134(1)(d) of the *Saskatchewan Act*, Sebastian shall cease trading in any securities or exchange contracts in Saskatchewan, permanently;
 - c. pursuant to clause 134(1)(d.1) of the *Saskatchewan Act*, Sebastian shall cease acquiring securities for or on behalf of residents of Saskatchewan, permanently;
 - d. pursuant to clause 134(1)(e) of the *Saskatchewan Act*, Sebastian shall cease giving advice respecting securities, trades or exchange contracts in Saskatchewan;
 - e. pursuant to clause 134(1)(h)(i) of the *Saskatchewan Act*, Sebastian shall resign any position that he holds as a director or officer of any issuer, registrant or investment fund manager;
 - f. pursuant to clause 134(1)(h)(ii) of the *Saskatchewan Act*, Sebastian is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, permanently;
 - g. pursuant to clause 134(1)(h)(iii) of the *Saskatchewan Act*, Sebastian shall not be employed by any issuer, registrant or investment fund manager in any capacity that would entitle him to trade or advise in securities;
 - h. pursuant to clause 134(1)(h.1) of the *Saskatchewan Act*, Sebastian is

prohibited from becoming or acting as a registrant, an investment fund manager, or a promoter, permanently;

- i. pursuant to section 135.1 of the *Saskatchewan Act*, Sebastian shall pay an administrative penalty to the FCAA in the amount of \$75,000; and
 - j. pursuant to section 161 of the *Saskatchewan Act*, Sebastian shall pay to the FCAA costs of and related to the FCAA hearing in the amount of \$4513.48.
- [11] The facts found by the FCAA in the reasons underlying this order, reveal that Mr. Sebastian met with an investor resident in Saskatchewan and advised the investor to invest money in a company known as E-Debit Global Corporation. He advised the investor that he would "double or triple" the investment in a very short time. Mr. Sebastian told the investor not to reveal the investment to family members so they could be surprised later with the money earned.
- [12] Mr. Sebastian had been introduced to this investor through his mother, who lived in the same retirement residence as the investor. Mr. Sebastian befriended the investor, and played cards with her. Over time, Mr. Sebastian received a number of small loans from the investor and then eventually went on to present the E-Debit investment opportunity to her.
- [13] The investor wrote five cheques to Mr. Sebastian for investment purposes, totalling \$47,000.00. Mr. Sebastian used the funds for personal loans and purchases and when he was confronted by the family of the investor, he provided four promissory notes, due December 12, 2012. On January 7, 2013, Mr. Sebastian wrote to the investor and said "we will have your funds (\$49,400.00) back to you shortly."
- [14] The investor's funds were not recovered as of the date of the findings by the FCAA. This caused the investor significant economic hardship. The FCAA found no mitigating factors and concluded that this was a "deliberate attempt to gain the confidence of a trusting, elderly individual with limited investment experience for the purpose of personal enrichment."
- [15] The FCAA found that Mr. Sebastian
- a. acted as a dealer and adviser without being registered contrary to clauses 27(2)(a) and 27(2)(b), respectively, of the *Saskatchewan Act*;
 - b. gave an oral undertaking relating to the future value of a security, with the intention of effecting a trade in that security, contrary to subsection 44(2) of the *Saskatchewan Act*; and
 - c. perpetrated a fraud, contrary to clause 55.1(b) of the *Saskatchewan Act*.
- [16] The FCAA findings and its sanctions, establish that Mr. Sebastian was subject to an order made by a securities regulatory authority that imposed sanctions upon him. This means that the threshold criteria set out in paragraph 4 of subsection 127(10) of the *Securities Act* has been satisfied, such that it is appropriate to consider whether an order should be made in the public interest under subsection 127(1) of the *Securities Act*.

B. The Order Requested in the Public Interest

- [17] Staff have requested that a public interest order be made to meet the purposes of the *Securities Act* as described in section 1.1, that is, to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.
- [18] The *Securities Act* recognizes the importance of inter-jurisdictional co-operation. Section 2.1 provides that “the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.”
- [19] Staff seeks an order to prevent or limit Mr. Sebastian’s participation in Ontario’s capital markets. The Commission need not find that there is a nexus to Ontario when imposing an order of this nature. (See *Re Sundell* (2014), 37 O.S.C.B. 10755 at para. 37; *Re Bigfoot Recreation & Ski Area Ltd.* (2015), 38 O.S.C.B. 7370 at paras. 13 and 21; *Re Ferguson* (2015), 38 O.S.C.B. 8849 at paras. 21 and 30.)
- [20] Although an order that is based upon a hearing and sanctions in another jurisdiction is not made automatically, it is important to consider the need to be responsive to the interconnected cross-border securities industry and the mobility of funds, people and information.
- [21] The conduct for which Mr. Sebastian was sanctioned in Saskatchewan would have constituted a contravention of the *Securities Act* (subsections 25(a), 25(3), 38(2) and 126.1(1)(b)) had it taken place in Ontario. The conduct is serious: it harmed an investor, enriched Mr. Sebastian and involved deceit of a vulnerable person through an opportunistic personal relationship. The order requested can function to protect Ontario investors, should Mr. Sebastian attempt to participate in the capital markets in Ontario.
- [22] I conclude that the terms of the order proposed by Staff align with the sanctions imposed in the FCAA order. It is appropriate to make an order in the public interest to prevent such conduct taking place in the capital markets in Ontario.

IV. ORDER

- [23] Having found that it is in the public interest to do so, I order that:
- a. Mr. Sebastian permanently cease trading in securities and derivatives, pursuant to subsection 127(1), paragraph 2 of the *Securities Act*;
 - b. Mr. Sebastian is permanently prohibited from acquiring any securities pursuant to subsection 127(1), paragraph 2.1 of the *Securities Act*;
 - c. any exemptions contained in Ontario securities laws shall not apply to Mr. Sebastian permanently pursuant to subsection 127(1), paragraph 3 of the *Securities Act*;
 - d. Mr. Sebastian shall resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager pursuant to subsection 127(1), paragraphs 7, 8.1 and 8.3 of the *Securities Act*;

- e. Mr. Sebastian shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager pursuant to subsection 127(1), paragraphs 8, 8.2 and 8.4 of the *Securities Act*;
- f. Mr. Sebastian shall be permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to subsection 127(1), paragraph 8.5 of the *Securities Act*.

Dated at Toronto this 5th day of February 2016.

"Janet Leiper"

Janet Leiper, C.S.