



Ontario
Securities
Commission

Commission des
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de l'Ontario

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**IN THE MATTER OF
AYAZ DHANANI (also known as AZIM VIRANI, MICHAEL LEE,
ALEX NEBRIS, PAUL DHANANI, SAMUEL RAMOS, and RAHIM JIWA)**

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

Hearing: In Writing

Decision: May 12, 2017

Panel: Philip Anisman Commissioner

**Submissions
by:** Malinda N. Alvaro For Staff of the Commission
Evan Rankin (Student-at-law)

No submission was made by or on
behalf of Ayaz Dhanani

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DECISION AND REASONS

I. BACKGROUND

- [1] In 2013 and 2014, Ayaz Dhanani ("Dhanani"), an unregistered resident of British Columbia, induced three individuals whom he had befriended to invest in unidentified natural resource companies which he said were about to go public and the shares of which would increase significantly in a short time. In one instance, he used an alias, "Azim Virani". He received from the three individuals a total of \$188,800.00, but he did not invest their funds in a company. Although he subsequently informed two of these investors that their investment was doing well, their funds were used by him and his father for personal purposes. None of the investors received any funds back from him.¹
- [2] On May 30, 2016, after a hearing at which despite having received notice, Dhanani did not appear, the British Columbia Securities Commission (the "BCSC") found that his conduct was fraudulent and contravened section 57(b) of the British Columbia *Securities Act* (the "BC Act").² On December 16, 2016, following a sanctions hearing at which despite having again received notice, Dhanani did not appear, the BCSC made an order prohibiting Dhanani from participating in the securities market in British Columbia, requiring him to disgorge the \$188,800.00 and imposing an administrative penalty of \$225,000.00 (the "BCSC Order").³
- [3] On March 1, 2017, on the basis of a Statement of Allegations of Staff of the Commission ("Staff") dated February 28, 2017 and the BCSC Order, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and (10) of the *Securities Act* (the "Act")⁴ for a hearing to consider an order effectively prohibiting Dhanani from engaging in securities-related activities in Ontario.⁵ At the hearing on March 13, 2017, at which despite having been properly served,⁶ Dhanani did not appear, I granted Staff's application to continue this proceeding as a written hearing and set a timetable for service and filing of Staff's materials and Dhanani's responding materials.⁷ Although my Order and Staff's materials were served on Dhanani and filed, Dhanani did not file responding materials.⁸

¹ *Re Dhanani*, 2016 BCSECCOM 179. An account with the funds of the third investor was frozen before the funds could be used.

² *Ibid*; *Securities Act*, RSBC 1996, c 418.

³ *Re Dhanani*, 2016 BCSECCOM 413.

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

⁵ *Re Dhanani* (2017), 40 OSCB 2073 (Notice of Hearing); 40 OSCB 2075 (Statement of Allegations).

⁶ Affidavit of Service of Lee Crann, sworn March 9, 2017 (Exhibit 1).

⁷ *Re Dhanani* (2017), 40 OSCB 2594 (Order). See *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 5.1 ("SPPA"); *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168, r 11.5 ("Rules of Procedure"). The Notice of Hearing contained notice of Staff's application for a written hearing and stated that if Dhanani did not attend, the hearing could proceed in his absence; see SPPA, s 7; Rules of Procedure, r 7.1.

⁸ Affidavit of Service of Lee Crann, sworn March 27, 2017 (Exhibit 2). Staff also filed a hearing brief that was marked as Exhibit 3.

II. DECISION

- [4] On the basis of the BCSC Order and the findings in its decisions of May 30 and December 16, 2016, it is in the public interest to grant an order in the form in Schedule A, as requested by Staff, to prohibit Dhanani from participating in the securities market in Ontario.

III. REASONS

- [5] In view of the fact that securities markets and trading transcend provincial and national borders, the Commission has long recognized that protection of Ontario investors may require it to address improper conduct that occurs outside of Ontario. In 1971, for example, it published a policy notifying registrants that a violation of the securities laws of any jurisdiction would be considered “in principle to be prejudicial to the public interest” and might affect their fitness for continued registration in Ontario.⁹ The Commission subsequently declared that insider trading outside Ontario, and by implication other conduct that would contravene the Act if it occurred in Ontario, could provide a basis for an order prohibiting trading in Ontario,¹⁰ and it has also exercised this protective authority with respect to individuals who have been convicted of securities-related criminal offences outside of Ontario.¹¹
- [6] In 2008, subsection 127(10) was added to the Act to provide express statutory authority for such orders “to facilitate interprovincial enforcement of securities laws”.¹² Subsection 127(10) now authorizes the Commission to make an order under subsection 127(1) in respect of a person who is subject to an order of a securities, derivatives or financial regulatory authority in any jurisdiction that imposes sanctions, conditions, restrictions or other requirements on the person.¹³

⁹ National Policy No.17; see Notice: Canadian Provincial Securities Administration, [1971] OSCB 22(March); Notice: National Policy No.17 - Violations of Securities Laws of Other Jurisdictions - Conduct Affecting Fitness for Registration, [1978] OSCB 129 (June).

¹⁰ See *Re Kaiser Resources Limited* (1981), 1 OSCB 13C at 16C:

“It is ... our view that activity by a person of the type prohibited by section 75, wherever such activity takes place, may properly form the basis for a determination by the Commission ... that it is in the public interest ... to deny that person the benefit of the exemptions contained in ... the Act. This is by no means to attempt to give an extraterritorial effect to the Act. Rather, it is an assertion by the Commission of its jurisdiction and responsibility to determine the sorts of activity which should disentitle persons from trading, or restrict their ability to trade, in securities in this Province. In so doing, the Commission is doing no more than to carry out its statutory obligation to supervise the capital markets of this Province.”

See also *Re Clark* (1981), 1 OSCB 442C (tipping and insider trading).

¹¹ See e.g. *Re Banks* (2003), 26 OSCB 3377; *Re Biller* (2005), 28 OSCB 10131. The BCSC has exercised similar authority; see e.g. *Re Holoboff*, [1993] 29 BCSC Weekly Summary 7; *Re Woods*, [1997] 8 BCSC Weekly Summary 22; *Re Seto*, 2006 BCSECCOM 569.

¹² *Hansard*, October 27, 2008, <http://hansardindex.ontla.on.ca/hansardeissue/I080.htm>, Budget Measures and Interim Appropriation Act, 2008 (No. 2), at 1409-1410; see SO 2008, c 19, Sched R, s 1.

¹³ Act, s 127(10)4.

- [7] Although the Commission's authority and practice under this provision derive from regulatory considerations,¹⁴ they have been analogized to principles of comity relating to the enforcement of judgments in civil proceedings.¹⁵ This is not surprising in view of the fact that securities legislation in Canada is largely uniform or harmonized, as are the sanctioning principles applied by securities regulatory authorities.¹⁶
- [8] The BCSC Order, therefore, provides a sufficient basis for the Commission to make a parallel order under subsection 127(1), even though the conduct in question has no connection with Ontario.¹⁷ As subsection 127(10) does not limit "the generality of" subsection 127(1), the Commission retains its discretion to make an order that in its opinion is in the public interest and to determine the specifics of such an order; in exercising this discretion, however, the Commission will rely on the findings in the BCSC's decisions on liability and sanctions.¹⁸
- [9] In a proceeding like this one, under paragraph 127(10)4, an order under subsection 127(1) will generally be found to be in the public interest, unless the respondent demonstrates otherwise.¹⁹ The order and findings of the other regulatory authority have the effect of imposing a burden on the respondent to adduce evidence that they should not be accepted or that the sanction imposed by the other authority is not in the public interest in Ontario.²⁰ As other securities regulatory authorities in Canada follow adjudicative procedures and sanctioning practices much like the Commission's, it will be the rare case in which a

¹⁴ See notes 9 and 10, above; see also Act, ss 2.1(3), (5).

¹⁵ See e.g. *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at paras 22-26; *Re New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras 23-27; see also *Re Black* (2015), 38 OSCB 2043 at paras 83-85.

¹⁶ See e.g. *Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at 1135-36; *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at 7746-47; *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 at 24; *Re Anderson*, 2004 BCSECCOM 699 at paras 30-32; *Re Dhanani*, note 3, above at para 10.

¹⁷ See e.g. note 9, above; *Re DeLaet* (2014), 37 OSCB 1615 at paras 51, 68; *Re Transcap Corporation* (2014), 37 OSCB 2119 at para 32; *Re Zeiben* (2016), 39 OSCB 1299 at para 24; *Re Sebastian* (2016), 39 OSCB 1305 at para 19.

¹⁸ See e.g. *Re Black* (2014), 37 OSCB 5847 at paras 9, 26; cf. *McLean v. British Columbia (Securities Commission)*, [2013] 3 SCR 895 at para 54 (Commission must make own determination, but provision obviates "need for inefficient parallel and duplicative proceedings").

¹⁹ This will not always be the case; an order based on a settlement agreement may not alone provide a factual basis that warrants a "reciprocal" order in the public interest; see e.g. *Re Moore*, 2014 ABASC 88. The settlement agreement, including any admissions, when combined with the order, however, will usually be sufficient; see *Re Moore*, 2014 ABASC 139.

Cf. *Lines v. British Columbia (Securities Commission)*, 2012 BCCA 316 (imposition of more onerous sanctions than those consented to in no contest settlement unreasonable). The *Lines* decision does not affect an order that is not more onerous than the order agreed to without admissions. Nor does it limit the Commission's general exercise of discretion under s. 127(1) with respect to such an order; see ss 127(10)4 and 5. Staff may seek a more onerous sanction and may also adduce additional evidence; see e.g. *Re Pierce*, 2016 BCSECCOM 188 (more onerous sanction permissible); see also *Re Pierce*, 2016 BCSECCOM 264 (more onerous sanction imposed); and see e.g. *Re Euston Capital Corp.* (2009), 32 OSCB 6313 at paras 15-22 (Staff adduced additional evidence).

²⁰ For this reason, a determination that a "reciprocal" order is in the public interest has been described as having a "low threshold"; see e.g. *Re JV Raleigh Superior Holdings Inc.*, note 15, above at para 26; *Re New Futures Trading International Corp.*, note 15, above at para 27; *Re Optam Holdings Inc.* (2017), 40 OSCB 2167 at para 16.

respondent will be able to satisfy this evidentiary burden.²¹ As a result, the Commission's order will generally mirror the order of the other authority, subject to differences in legislation.²²

- [10] In this case, the BCSC's findings and BCSC Order warrant an order in Ontario. Dhanani engaged in fraud in connection with the purported sale of securities. As the BCSC said, his fraud was "most egregious and cynical".²³ Such fraud would have contravened the Act, had it occurred in Ontario;²⁴ it represents a serious risk to our capital markets.²⁵ An order to protect investors in Ontario, in the form in Schedule A, is in the public interest.
- [11] Such an order is necessary because of the limits on provincial jurisdiction. In an ideal world, the BCSC Order would apply throughout Canada when it is made, as has been recognized in four provinces that have amended their securities acts to make protective orders like those requested in this application automatically applicable in their province.²⁶ To facilitate enforcement of such provisions and to enable other securities regulatory authorities in Canada to seek a "reciprocal" order under their own legislation, should they determine to so do, it is desirable for Staff to notify all other provincial and territorial securities regulatory authorities of all orders under section 127 when they are made by this Commission.²⁷
- [12] It would also be desirable for an order under subsection 127(10) to be made as soon as practicable after an order of another securities regulatory authority. In an effort to make applications like this one more efficient, Staff generally request on the initial return date that the proceeding be conducted as a written hearing, as they did in this case. While this procedure is reasonable, a more expeditious process may be available. Staff might consider, in cases like this one, serving their factum and other materials when they serve the notice of hearing and informing the respondent of their intention to request that the order they are seeking be made on the initial return date. If the respondent does not appear,

²¹ To meet the burden of showing that an order or findings should not be accepted as fact, Commission decisions require proof that the original decision was procured by fraud, involved a denial of natural justice or was made without jurisdiction; see e.g. *Re New Futures Trading International Corp.*, note 15, above at para 27; *Re Black*, note 18, above at paras 29-33.

²² See e.g. *Re Optam Holdings Inc.*, note 20, above at para 17; *McLean v. British Columbia (Securities Commission)*, note 18, above at para 15 ("twin orders"); *Re Zeiben*, note 17, above at para 33; *Re DeLaet*, note 17, above at para 79. This is not the case in a proceeding under paragraph 127(10)1 or 2, based on a criminal conviction, or in a proceeding under paragraph 127(10)3 based on a finding by a court, and may not be the case in a proceeding under paragraph 127(10)4 based on an order of a non-Canadian regulator.

²³ *Re Dhanani*, note 3, above at paras 12, 18, 24.

²⁴ See Act, s 126.1; see also note 9, above.

²⁵ The BCSC found that Dhanani "represents the upper end of risk to our capital markets"; *Re Dhanani*, note 3, above at para 18.

²⁶ See *Securities Act*, RSA 2000, c S-4, ss 198(3)-(10); *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. See also *Re Narayan* (2016), 39 OSCB 10503 at para 6.

²⁷ The potential for such pan-Canadian orders and the orders, themselves, enhance the specific and general deterrence of orders made by the Commission.

this would expedite the process.²⁸ This process is available under both the Commission's current Rules of Procedure and its proposed Rules.²⁹

IV. CONCLUSION

- [13] I shall make the order requested by Staff. The order parallels the BCSC Order, but it is not identical because of differences between the Act and the BC Act.³⁰ Suffice it to say that this order will effectuate the prohibitions in the BCSC Order to the extent and in the manner authorized by the Act and will bar Dhanani permanently from participation in Ontario's capital market.
- [14] The provision of the order relating to investment fund managers requires further explanation.³¹ The definitions of "investment fund" and "investment fund manager" were added to the Act in 2002, but without imposing regulatory obligations on them.³² In 2005, when investment fund managers were not required to be registered, subsection 127(1) of the Act was amended to authorize the Commission to prohibit a person from becoming or acting as a director or officer of an investment fund manager and to prohibit a person from becoming or acting as a registrant, investment fund manager or promoter.³³ In 2009, the Act was amended to require investment fund managers to be registered, but the authority in subsection 127(1) to make orders relating to investment fund managers was not altered.³⁴ As result, paragraph 127(1)8.5, for example, continues to authorize an order that prohibits a person from acting as a registrant and an investment fund manager, even though the former term, "registrant", now includes the latter.³⁵ Because this paragraph continues to refer to both categories, the order expressly includes an investment fund manager in order to avoid any ambiguity.
- [15] I shall order that (a) trading in any securities or derivatives by Dhanani cease permanently, (b) the acquisition of any securities by Dhanani be prohibited permanently, (c) the exemptions contained in Ontario securities law not apply to Dhanani permanently, (d) Dhanani resign any positions he holds as a director or officer of any issuer or registrant, including an investment fund manager,

²⁸ In this case by approximately two months. If the respondent objects to a written hearing or requires additional time, the matter can be addressed on the initial return date and the panel can set a schedule. If the respondent does not appear, as in this case, and as is frequently the case, the matter can be determined expeditiously.

²⁹ See Notice and Request for Comments Regarding the Rules of Procedure and Forms and Practice Guideline of the Ontario Securities Commission (2017), 40 OSCB 3743, r 11, 21(3).

³⁰ Staff is not seeking disgorgement and monetary sanctions like those imposed by the BCSC; see text above at note 3. Apart from other considerations, these sanctions are not necessary in this case to protect investors or the market in Ontario.

³¹ Staff proposed that Dhanani be prohibited from becoming or acting as an investment fund manager pursuant to paragraph 127(1)8.5 to reflect the prohibition in the BCSC Order against his "acting in a management or consultative capacity in connection with activities in the securities market" under s. 161(1)(d)(iv) of the BC Act, as the Act does not authorize the Commission to make an order in these terms; see Written Submissions of Staff, March 20, 2017 at paras 43, 44.

³² See SO 2002, c 22, s 177; Amendments to the Securities Act and Commodity Futures Act, (2003), 26 OSCB 2765.

³³ Act, ss 127(1)8.3-8.5; SO 2005, c 31, Sched 20, s 8.

³⁴ SO 2009, c 18, Sched 26, s 4, amending Act, s 25.

³⁵ This is also the case with respect to directors and officers of an investment fund manager; see Act, ss 127(1)8.1-8.4.

(e) Dhanani be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager, and (f) Dhanani be prohibited permanently from becoming or acting as a registrant, including an investment fund manager, or promoter.

Dated at Toronto this 12th day of May, 2017.

"Philip Anisman"

Philip Anisman

SCHEDULE A

IN THE MATTER OF AYAZ DHANANI (also known as AZIM VIRANI, MICHAEL LEE, ALEX NEBRIS, PAUL DHANANI, SAMUEL RAMOS, and RAHIM JIWA)

Philip Anisman, Chair of the Panel

May 12, 2017

ORDER (Subsection 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 May 30, 2016 and the Decision of the BCSC dated December 16, 2016, in the matter of *Ayaz Dhanani (also known as Azim Virani, Michael Lee, Alex Nebris, Paul Dhanani, Samuel Ramos, and Rahim Jiwa)* ("Dhanani") and on reading the materials filed by Staff, Dhanani not having appeared and not having filed any materials, although properly served;

IT IS ORDERED THAT:

1. pursuant to paragraph 127(1)2 of the Act, trading in any securities or derivatives by Dhanani cease permanently;
2. pursuant to paragraph 127(1)2.1 of the Act, the acquisition of any securities by Dhanani is prohibited permanently;
3. pursuant to paragraph 127(1)3 of the Act, the exemptions contained in Ontario securities law do not apply permanently to Dhanani;
4. pursuant to paragraphs 127(1)7, 8.1, and 8.3 of the Act, Dhanani resign any position that he holds as a director or officer of any issuer or registrant, including an investment fund manager;
5. pursuant to paragraphs 127(1)8, 8.2 and 8.4 of the Act, Dhanani is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager; and

6. pursuant to paragraph 127(1)8.5, Dhanani is prohibited permanently from becoming or acting as a registrant, including an investment fund manager, or a promoter.

Philip Anisman