



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF
ROBERT BRUCE RUSH AND
BREAKTHROUGH FINANCIAL INC.**

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

Hearing: In writing

Decision: July 15, 2016

Panel: Janet Leiper, C.S. - Commissioner and Chair of the Panel

Appearances: Keir Wilmut - For Staff of the Commission
Ruby Egit, Student-at-Law

REASONS AND DECISION

I. INTRODUCTION

[1] In this written hearing, Staff of the Ontario Securities Commission seeks an Order against Robert Bruce Rush and Breakthrough Financial Inc. (“**Breakthrough**”), pursuant to subsections 127(1) and (10) of the *Securities Act*, RSO 1990, c S.5 (the “*Act*”).

[2] On February 22, 2016, a Panel of the British Columbia Securities Commission (the “**BCSC**”) found that Rush and Breakthrough had perpetrated a fraud and engaged in unregistered trading, contrary to the British Columbia *Securities Act*, RSBC 1996, c 418 (the “*BC Act*”). Rush, the sole director of Breakthrough, was also found to have authorized, permitted and acquiesced to Breakthrough’s contraventions of securities laws.

[3] Staff relies on the inter-jurisdictional enforcement provision found in subsection 127(10) of the *Act*.

II. PROCESS

[4] On May 9, 2016, Staff of the Commission filed a Statement of Allegations against Rush and Breakthrough. On May 11, 2016, the Commission issued a Notice of Hearing in respect of that Statement of Allegations. The Commission set May 30, 2016 for a hearing of Staff’s application to continue this proceeding in writing.

[5] On May 30, 2016, the Respondents did not appear although properly served with the Statement of Allegations and Notice of Hearing. Staff made submissions and applied to continue by way of written hearing. The Commission issued an Order granting Staff’s request and setting a timetable. Staff’s materials were required to be served and filed no later than June 9, 2016. The Respondents were allowed until July 7, 2016 to serve and file responding materials.

[6] Staff’s materials were served and filed in accordance with the schedule. Neither of the Respondents served or filed responding materials although they were properly served with the Commission’s Order.

[7] Section 7(2) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 7.1 of the *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168 permit the Commission to proceed in the absence of a party where that party has received notice of a written hearing and fails to act or participate. I am therefore authorized to proceed with this written hearing in the absence of the Respondents.

III. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[8] The *Act* provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed “sanctions, conditions, restrictions or requirements on the person or company” (subsection 127(10), paragraph 4). The Commission must determine whether, based on any such finding by another securities regulatory authority, an order should be made under subsection 127(1) of the *Act*.

[9] In considering whether to grant an order under subsection 127(1), the applicable factors include whether the conduct would have been a breach of the *Act* and contrary to the public interest if the conduct had occurred in Ontario. The purposes of orders under section 127 of the *Act* are “protective and prospective”. They are made to restrain potential conduct that could be detrimental to the public interest in fair and efficient capital markets (*Re JV Raleigh Superior Holdings Inc.* (2013), 26 OSCB 4639 at para 17, citing *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 43).

IV. EVIDENCE AND ANALYSIS

A. The BCSC Order

[10] On February 22, 2016, the BCSC issued a Decision finding that the Respondents perpetrated a fraud and engaged in unregistered trading and that Rush, as sole director of Breakthrough, had authorized, permitted and acquiesced to Breakthrough’s contraventions of British Columbia’s securities laws, all contrary to the *BC Act*.

[11] The BCSC’s findings of fact included the following:

- a) In January 2008, Rush, a resident of British Columbia, incorporated Breakthrough. He was its sole officer and director.
- b) Rush was a mutual fund salesperson between March 2005 and November 2007. Afterwards, he was not registered in any capacity under the *BC Act*.
- c) In 2008, Rush advised a former client, Investor G, to reinvest a locked-in pension to achieve better investment results. As Rush advised, Investor G entered into transactions to obtain cash against the value of the pension to invest.
- d) Rush instructed Investor G to write a cheque for \$73,200, payable to Breakthrough, for placement in a foreign exchange trading account through an investment company, which is referred to as RHI in the BCSC Decision.
- e) Rush did not forward the \$73,200 to RHI. Instead, he spent the money on himself. He did not tell Investor G that he had not sent her funds to RHI.
- f) Between 2009 and 2011, Rush sent three account statements to Investor G that purported to show growth on her investment. Investor G received some payments, totalling \$12,790, ostensibly as returns on the investment. These came through either Breakthrough or another company incorporated by Rush, Avellanas Capital Management Inc. No payments came from RHI.
- g) In late 2010, Investor G asked to withdraw her investment from RHI. Rush did not return the funds and blamed RHI and its principal for the delay. The funds remained outstanding as of the date of the BCSC Decision.

[12] The BCSC found that the Respondents were deceitful in taking Investor G's funds with the promise they would be delivered to RHI and failing to do so. Further dishonest acts through mid-2012 resulted in deprivation to Investor G. Thus, the Respondents perpetrated a fraud on Investor G contrary to subsection 57(b) of the *BC Act*.

[13] The BCSC found that the foreign exchange investment scheme that was promoted to Investor G was a security and that the actions of introducing the idea to the investor, promoting its returns and acting as an intermediary between the investor and RHI were acts in furtherance of a trade. Under the *BC Act*, the Respondents were required to either be registered to carry on these trades or have an exemption from the registration requirement. They were not registered, nor did they have an exemption. As a result, the Respondents contravened section 34 of the *BC Act*.

[14] Finally, as the sole officer and director of Breakthrough, Rush had control of its bank accounts. Rush's knowledge and control led the BCSC to a finding that he had authorized, permitted or acquiesced to the contraventions of the *Act* by Breakthrough, contrary to section 168.2 of the *BC Act*.

[15] The BCSC found that there had been substantial harm to the investor, that fraud is the most serious misconduct under the *Act* and that there were no mitigating factors. At the time of the sanctions hearing, Rush had already been permanently banned from the Mutual Fund Dealers Association of Canada, following a finding that he had sold unsuitable and unapproved foreign exchange investments that turned out to be fraudulent.

[16] The BCSC found that Rush was totally unfit to participate in capital markets. Accordingly, it made an order for payment by Rush and Breakthrough, jointly and severally, to the BCSC of \$60,410 (*i.e.*, the net amount of funds kept as a result of the fraud upon Investor G). The BCSC also ordered the following administrative sanctions against Rush:

- a) Rush shall cease trading in, and be permanently prohibited from purchasing any securities or exchange contracts;
- b) the exemptions set out in the *BC Act*, the regulations or any decision as defined in the *BC Act*, do not apply permanently to Rush;
- c) Rush shall resign any position he holds as, and is prohibited from becoming or acting as, a director or officer of any issuer or registrant;
- d) Rush is permanently prohibited from becoming or acting as a registrant or promoter;
- e) Rush is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- f) Rush is permanently prohibited from engaging in investor relations activities; and
- g) Rush shall pay to the BCSC an administrative penalty of \$200,000.

[17] In relation to Breakthrough, the BCSC made the following orders:

- a) All persons shall cease trading permanently, and be permanently prohibited from purchasing, any of Breakthrough's securities;
- b) Breakthrough shall cease trading in, and be prohibited from purchasing, any securities or exchange contracts, permanently;
- c) Breakthrough is permanently prohibited from becoming or acting as a registrant or promoter; and
- d) Breakthrough is permanently prohibited from engaging in investor relations activities.

[18] Staff has established that Rush and Breakthrough were subject to an order made by a securities regulatory authority that imposed sanctions upon them, and has thereby established the threshold criteria set out in paragraph 4 of subsection 127(10) of the *Act*.

B. The Order Requested in the Public Interest

[19] Staff has requested that a public interest order be made with terms similar to those made by the BCSC to provide protection to investors from unfair, improper or fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets.

[20] In addition to terms similar to those in the BCSC Order, Staff has requested consideration of two additional terms that are available in Ontario: 1) comprehensive director and officer bans and 2) registration bans in relation to investment fund managers. Staff submits these sanctions are consistent with the sanctions imposed in British Columbia, which Staff characterizes as "broad" in nature.

[21] The *Act* recognizes the importance of inter-jurisdictional co-operation. It provides that "the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes" (section 2.1, paragraph 5).

[22] It is a fundamental principle that the Commission requires high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. Although there is no evidence that any soliciting took place in Ontario, Staff submits that it is in the public interest to protect Ontario investors by preventing the Respondents from participating in Ontario capital markets. Staff relies upon the authority found in prior decisions in which similar orders were made without requiring a direct link to Ontario (*Re Zeiben* (2016), 39 OSCB 1299; *Re Dhala* (2016), 39 OSCB 1289).

[23] An order 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 realities of the mobility of funds, people and information.

[24] The fraudulent conduct for which Rush and Breakthrough were sanctioned in British Columbia would have contravened the *Act* in Ontario, had the conduct happened in Ontario. The conduct is serious: it harmed investors, enriched Rush and involved deceit over a period of years, including by delivering false statements to continue the ruse.

[25] The findings made by the BCSC support a response by this Commission, which aims to deter future conduct of this kind and protect investors and the reputation of capital markets. Staff has established that it is appropriate to make an order in the public interest to prevent such conduct in the capital markets in Ontario.

V. ORDER

[26] Taking into consideration the evidence filed and the submissions of Staff and having found that it is in the public interest to do so, an Order will be issued imposing the following sanctions:

- a) Against Robert Bruce Rush:
 - i. Under subsection 127(1), paragraph 2 of the *Act*, Rush shall permanently cease trading in securities and derivatives;
 - ii. Under subsection 127(1), paragraph 2.1 of the *Act*, Rush is permanently prohibited from acquiring any securities;
 - iii. Under subsection 127(1), paragraph 3 of the *Act*, any exemptions contained in Ontario securities law do not apply to Rush permanently;
 - iv. Under subsection 127(1), paragraphs 7, 8.1 and 8.3 of the *Act*, Rush shall resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager;
 - v. Under subsection 127(1), paragraphs 8, 8.2 and 8.4 of the *Act*, Rush is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
 - vi. Under subsection 127(1), paragraph 8.5 of the *Act*, Rush is permanently prohibited from becoming or acting as a registrant, an investment fund manager or a promoter;
- b) Against Breakthrough Financial Inc.:
 - i. Under subsection 127(1), paragraph 2 of the *Act*, trading in any securities of Breakthrough shall cease permanently;
 - ii. Under subsection 127(1), paragraph 2 of the *Act*, trading in any securities or derivatives by Breakthrough shall cease permanently; and

- iii. Under subsection 127(1), paragraph 8.5 of the *Act*, Breakthrough is prohibited permanently from becoming or acting as a registrant or promoter.

DATED at Toronto this 15th day of July, 2016.

“Janet Leiper”

Janet Leiper, C.S.