



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

Citation: Lim (Re), 2018 ONSEC 39
Date: 2018-07-19
File No. 2018-14

**IN THE MATTER OF
DAVID TUAN SENG LIM and MICHAEL MUGFORD**

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

Hearing: In Writing

Decision: July 19, 2018

Panel: Philip Anisman Commissioner

Submissions by: Christina Galbraith For Staff of the Commission
Peter Kott

No submissions were made by or on behalf of David Tuan Seng Lim or Michael Mugford

REASONS AND DECISION

I. INTRODUCTION

- [1] The operation of our securities markets is premised on prices determined by supply and demand, reflecting investor decisions to purchase and sell securities. Activities that create artificial prices corrode the fairness of these markets and investor confidence in them. Such manipulative conduct, long recognized as fraud,¹ is prohibited under Ontario's securities laws and may disentitle those who engage in it from participation in the securities market.²

II. BCSC ORDER

- [2] The British Columbia Securities Commission (**BCSC**) found that the respondents, David Tuan Seng Lim (**Lim**) and Michael Mugford (**Mugford**), breached the equivalent prohibition of conduct resulting in an artificial price in the British Columbia Securities Act (**BCSA**)³ by running a "pump and dump" scheme with respect to shares of Urban Barns Foods Inc. (**URBF**).⁴ Lim, Mugford and others acquired a dormant public shell corporation through a reverse takeover that resulted in their controlling URBF and its shares (the "accumulation").⁵ They ensured that they would control the market for URBF shares by depositing the shares under an escrow agreement, which provided the structure for the manipulation.⁶
- [3] Lim, who was registered as an investment adviser in British Columbia, coordinated the manipulation in conjunction with Mugford and the others.⁷ He orchestrated purchases of URBF shares to establish the price for and create interest in them; he initiated trading in URBF shares by purchasing shares on his own behalf through an offshore account and for his clients, who included corporations owned by Mugford and other participants in the scheme.⁸ The shares that were purchased came from accounts that were also controlled by him.⁹
- [4] These purchases were accompanied by publication of tout sheets, also orchestrated by Lim with Mugford's help.¹⁰ These tout sheets proclaimed that URBF had "solved the global food crisis" with its "unique technology".¹¹ They did not disclose that URBF had spent only \$12,000 on equipment, had no other material assets or unique proprietary technology and was not carrying on any business other than the promotion of its shares.¹² The BCSC found that the tout sheets were "so grossly promotional that they were completely devoid of

¹ See, e.g., *Scott v Brown, Doering, McNab & Co.*, [1892] 2 QB 724 (CA).

² *Securities Act*, RSO 1990, c S.5, ss 126.1(1)(a) and 127(1) (the **Act**).

³ *Securities Act*, RSBC 1996, c 418, s 57(a) (**BCSA**).

⁴ *Lim (Re)*, 2017 BCSECCOM 196 (**BCSC Findings**); *Lim (Re)*, 2017 BCSECCOM 319, para 24 (**BCSC Sanctions Decision**).

⁵ BCSC Findings, paras 17-19, 35 and 37-39. The phases of a market manipulation are described in *R v Carter* (1990), 9 CCLS 21 (OCJ-GD), para 43, affirmed 9 CCLS 82 (Ont. CA).

⁶ BCSC Findings, paras 30-36 and 88(5)-(6).

⁷ BCSC Findings, paras 7-13, 131-142; BCSC Sanctions Decision, para 16.

⁸ BCSC Findings, paras 68-71, 88(10) and 111.

⁹ BCSC Findings, paras 76-81 and 123-124.

¹⁰ BCSC Findings, paras 21-22, 43-63 and 88(7)-(8).

¹¹ BCSC Findings, paras 45-47.

¹² BCSC Findings, para 47.

reality ... fabrications designed to trick the reader into believing” that URBF shares were “worth far more than they really were”.¹³ Not surprisingly, Lim paid for these publications through a nominee in an attempt to conceal his involvement in their publication.¹⁴

- [5] These activities were the “pump” or “markup” phase of the respondents’ manipulation, designed to create a demand for URBF shares and increase their price artificially.¹⁵
- [6] During and following this period, Lim and others sold approximately 4.8 million URBF shares to public investors and received approximately US\$4.8 million (the “dump” or “sell-off”).¹⁶ The BCSC concluded that Lim and Mugford intentionally created an artificial price for the shares of URBF, contrary to subsection 57(a) of the BCSA.¹⁷
- [7] On the basis of these findings, the BCSC permanently prohibited Lim and Mugford from participating in the securities market; it prohibited them from selling or purchasing securities, denied them the use of any exemption under British Columbia securities law, required them to resign any positions they held as a director or officer of an issuer or registrant and prohibited them from becoming or acting as a registrant or promoter or as a director or officer of an issuer or registrant, from acting in a management or consultative capacity in connection with securities market activities and from engaging in investor relations, with limited carveouts allowing them to sell and purchase securities and exchange contracts for their own account through a registered dealer and allowing Lim to act as a director or officer of an issuer whose securities are owned only by him or his immediate family members. The BCSC also imposed administrative penalties of \$800,000 on Lim and \$375,000 on Mugford.¹⁸

III. THIS PROCEEDING

- [8] This proceeding was brought by enforcement staff (**Staff**) of the Ontario Securities Commission (the **Commission**) to reciprocate the BCSC’s order, following the expedited procedure for interjurisdictional enforcement proceedings in the Commission’s *Rules of Procedure*.¹⁹ The purpose of this procedure is to enable Staff efficiently to pursue the interjurisdictional enforcement that subsection 127(10) of the Act is intended to facilitate.²⁰
- [9] Rule 11(3) permits Staff to adopt an expedited procedure, under which Staff serve their hearing brief and written submissions with the notice of hearing and statement of allegations.²¹ A respondent then has twenty-one days to request an oral hearing. If a request is not filed, the hearing proceeds in writing and the

¹³ BCSC Findings, paras 118-119.

¹⁴ BCSC Findings, paras 132, 146 and 157; BCSC Sanctions Decision, para 25. Needless to say, concealment is a hallmark of such frauds.

¹⁵ BCSC Findings, paras 111 and 120-122.

¹⁶ BCSC Findings, paras 76-81, 88(6) and (11) and 123-124; BCSC Sanctions Decision, para 18.

¹⁷ BCSC Findings, paras 113-125, 131-142 and 152-159.

¹⁸ BCSC Sanctions Decision, paras 43-45 and 54-56. Paragraph 56 contains the BCSC order.

¹⁹ *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988, r 11(3) (**Rules of Procedure**).

²⁰ See *Dhanani (Re)* (2017), 40 OSCB 4457, 2017 ONSEC 15, paras 6-7 and 11 (**Dhanani**); *McClure (Re)* (2017), 40 OSCB 8135, 2017 ONSEC 34, para 1 (**McClure**).

²¹ See *Nadal (Re)* (2018), 41 OSCB 1863, 2018 ONSEC 9, paras 10-11 (**Nadal**).

respondent may file written submissions within twenty-eight days of service, after which Staff have fourteen days to file written submissions in reply.

- [10] Staff served the respondents electronically on March 28, 2018; service was subsequently accepted by counsel for Lim on April 3, 2018.²² The respondents, Lim and Mugford, did not respond in any manner.²³ As a result, the Commission is entitled to proceed without their participation.²⁴ Nevertheless, I requested Staff to provide the respondents with an opportunity to make submissions on a draft order.²⁵

IV. RECIPROCAL ORDER

- [11] Reflecting the fact that provincial borders do not constrain securities market activities, subsection 127(10) authorizes the Commission to make an order under subsection 127(1) on the basis of a sanctions order of another securities regulatory authority.²⁶ The order of the other securities regulator is a sufficient basis for the Commission to make a parallel order to protect investors and markets in Ontario.²⁷
- [12] Subsection 127(10) thus implements the Commission's longstanding recognition that the conduct of a person may provide a basis for an order, even if it had no connection with Ontario.²⁸ In this case, for example, although Lim was registered in Ontario during the period of the manipulation,²⁹ there is no indication that Mugford had any connection to Ontario, and the manipulation, itself, although orchestrated from British Columbia, appears to have occurred in the United States.³⁰ Had the conduct occurred in Ontario, it would have contravened the Act, as subsection 126.1(1)(a) of the Act is substantively identical to subsection 57(a) of the BCSA.
- [13] When determining the nature of an order under subsection 127(1), the Commission necessarily relies on the findings underlying the order being

²² See *Rules of Procedure*, r 6; Exhibit 1, Affidavit of Service of Lee Crann, sworn April 13, 2018.

²³ The procedure in rule 11(3) contemplates a minimum of a month delay before Staff's application can be considered by a Commission panel. In a case like this one, in which a respondent is not likely to respond to the notice of hearing, the proceeding might be further expedited, if Staff elect to serve their materials in the same manner, but with a return date before a panel, and notify the respondent of their intention to seek an order at the oral hearing if the respondent does not appear; see *Dhanani*, para 12; *McClure*, paras 11-15.

²⁴ *Rules of Procedure*, r 21(3); *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7.2.

²⁵ See paragraphs 16 to 20, below.

²⁶ Act, s 127(10)4.

²⁷ Orders of a securities regulatory authority in Canada are automatically effective in five provinces; see *Dhanani*, para 11 n 26; *McClure*, para 15 n 22. See also, e.g., *Securities Act, 1988*, SS 1988-89, c S-42.2, s 147.5, as amended (commission may make decision substantially similar to decision of extraprovincial securities commission without giving person affected an opportunity to be heard); *Securities Act*, RSPEI 1988, c S-3.1, s 139, as amended (same).

²⁸ See, e.g., *Dhanani*, paras 5-8; *Nickford (Re)* (2018), 41 OSCB 3846, 2018 ONSEC 24, para 13 (**Nickford**).

²⁹ Lim was registered as a representative of an investment dealer from January 1, 2009 to December 31, 2014; Exhibit 2, Hearing Brief of Staff, March 27, 2018, Tab 3 (s. 139 certificate).

³⁰ URBF was quoted on the over-the-counter Bulletin Board in the US and all funds were in US dollars; BCSC Findings, paras 17-19, 68, 72-75, 77-78 and 120. URBF was a reporting issuer in BC under *Multilateral Instrument 51-105 – Issuers Quoted in the U.S. Over-The-Counter Markets*, s 3; BCSC Findings, para 20.

reciprocated.³¹ The effect of subsection 127(10) is thus to require a respondent to adduce evidence relevant to sanctions if a variation from the order being reciprocated is sought.³² As the respondents did not adduce any evidence, or make any submissions, it is in the public interest to make an order that mirrors the non-monetary sanctions in the BCSC order to the extent available under the Act, subject to any modifications that may be necessary to protect investors and market integrity in Ontario.³³ Accordingly, a few provisions of the order to be made require explanation.

- [14] The BCSC order prohibits Lim and Mugford from selling or purchasing securities, but does not refer to derivatives. Staff requested that they be prohibited from trading in both securities and derivatives.³⁴ In view of the findings concerning their manipulative conduct, neither Lim nor Mugford should be permitted to trade in Ontario in any type of instrument, subject to the carveout in the BCSC order.³⁵ The order will so provide and will expressly include derivatives that are securities in the prohibition against purchasing.³⁶
- [15] The carveout in the BCSC order that permits trading by Lim and Mugford for their “own account (including one RRSP account, one TFSA account and one RESP account)” is intended to permit them to trade for their own benefit and in their own names, which restriction would preclude concealment of their identities.³⁷ To avoid any ambiguity, the order will make this intent express.
- [16] Although Lim conducted the URBF manipulation through multiple accounts, the BCSC Sanctions Decision does not limit the number of accounts Lim and Mugford may have, presumably because it allows them to trade in tax-based accounts of different types and because of the requirement that accounts be in their own names. As a result, it would not prohibit their opening multiple accounts with different securities firms in their own names, which might permit them to conceal coordinated trading that may affect securities prices. Restricting their trading to one non-tax based account, as the BCSC order does for tax-based accounts, would address this issue.
- [17] As this restriction would limit the scope of the carveout in the BCSC order, I requested the Registrar to provide Staff with a draft order that restricted the carveout in this manner and invited submissions on the revised carveout from Staff, if so advised. The draft order prohibited the sale and acquisition of securities, including derivatives, except in accounts in Lim’s or Mugford’s own name, “which accounts may include no more than one RRSP account, one TFSA account, one RESP account and one other account,” through a registered dealer who has been informed of the BCSC decision.

³¹ See, e.g., *JV Raleigh Superior Holdings Inc. (Re)* (2013), 36 OSCB 4639, para 16 (findings are determinations of fact); *Dhanani*, paras 9-10; *Nickford*, paras 26-29. Although such reliance has been analogized to principles of comity, it derives from regulatory considerations; *Dhanani*, para 7.

³² *Dhanani*, para 9; *Nadal*, paras 26-27.

³³ See *McClure*, para 6.

³⁴ The Commission may prohibit selling securities and derivatives, but its authority to prohibit purchasing is limited to securities; Act ss 127(1)2-2.1.

³⁵ See *Inverlake Property Investment Group Inc. (Re)* (2018) 41 OSCB 5309, 2018 ONSEC 35, para 34 (***Inverlake***).

³⁶ See *Cook (Re)* (2018), 41 OSCB 1497, 2018 ONSEC 6, paras 11-13.

³⁷ BCSC Sanctions Decision, paras 44-45 and 56.

- [18] Although the respondents were not entitled to receive further notice,³⁸ I also asked Staff to provide Lim and Mugford with a copy of the draft order and my request in order to give them an opportunity to make submissions on the terms of the carveout and present any facts not contained in the BCSC Sanctions Decision that might explain its breadth. Although Staff forwarded my request and draft order to each of them and subsequently served and filed supplementary submissions and authorities,³⁹ no response has been received from Lim or Mugford.
- [19] Characterizing the carveout in my draft order as “slightly more restrictive” than the BCSC order, Staff submitted, correctly, that the Commission has discretion to make an order that is more onerous than the one being reciprocated and more onerous than the order requested by Staff so long as the respondents receive notice and an opportunity to make submissions.⁴⁰ Staff, in effect, supported the more limited carveout as a minor modification of their requested prohibition against trading. Staff also relied on the fact that the respondents had the burden of justifying any carveout.⁴¹
- [20] The BCSC Sanctions Decision and order provide a basis for a similar carveout, but they do not suggest a need for a carveout that permits an unlimited number of trading accounts. The order will, therefore, like the draft order, limit the carveout to a single non-tax based account and, following the BCSC order, to one RRSP, one TFSA and one RESP account.
- [21] Although the Act does not expressly authorize the Commission to prohibit a person from acting “in a management or consultative capacity” in connection with securities market activities or “from engaging in investor relations”, much of the substance of these prohibitions in the BCSC order is caught by prohibiting Lim and Mugford from acting as directors or officers of an issuer or registrant and from acting as a registrant or promoter.⁴² The order, therefore, will prohibit them from acting in these capacities.
- [22] The BCSC Sanctions Decision states that Lim may be a director and officer of two named corporations, provided that all securities of these corporations “continue to be owned by Lim and his immediate family members”.⁴³ The carveout in the BCSC order defines such family members to include his spouse, parents, siblings, children and in-laws.⁴⁴ As the BCSC order presumably reflects the shareholdings in the two corporations or other evidence before the BCSC, the order will include this extended list.

³⁸ See note 24 above and accompanying text. The Statement of Allegations gave notice that Staff were requesting specified orders mirroring the BCSC order and any other order the Commission considers appropriate; Statement of Allegations (2018), 41 OSCB 2764, para 2(c).

³⁹ Staff again served the respondents electronically, but did not serve Lim’s counsel; Exhibit 3, Affidavit of Service of Lee Crann, sworn July 12, 2018; see also note 22, above, and accompanying text.

⁴⁰ See, e.g., *Dhanani*, para 9, n 19; *Nadal*, paras 28-31 and 36-37; *Al-Tar Energy Corp. (Re)* (2011), 34 OSCB 447, 2011 ONSEC 1, paras 44-45.

⁴¹ See, e.g., *Quadrex Hedge Capital Management Ltd. (Re)* (2018), 41 OSCB 1023, 2018 ONSEC 3, para 103.

⁴² See, e.g., *McClure*, paras 9-10; *Inverlake*, paras 35-37.

⁴³ BCSC Sanctions Decision, para 45.

⁴⁴ BCSC Sanctions Decision, para 56(a).

- [23] Staff request, as well, that the order prohibit Lim and Mugford from acting as an investment fund manager or as a director or officer of an investment fund manager.⁴⁵ Although such a prohibition was necessary prior to 2009, the Act now requires investment fund managers to be registered, unless they are exempted from registration.⁴⁶ The prohibition against their acting as a registrant or a director or officer of a registrant would therefore include investment fund managers; as the order will deny Lim and Mugford all exemptions under Ontario securities law,⁴⁷ investment fund managers arguably need not be expressly mentioned.⁴⁸ However, because the Act continues to contain separate provisions relating to registrants and investment fund managers and continues expressly to authorize orders with respect to investment fund managers,⁴⁹ to avoid any potential ambiguity the order will prohibit Lim and Mugford from acting as a “registrant, including an investment fund manager”.⁵⁰
- [24] For all of these reasons, I shall make an order in the form attached to these reasons as Schedule “A”.

Dated at Toronto this 19th day of July, 2018.

“Philip Anisman”
Philip Anisman

⁴⁵ The BCSC Sanctions Decision does not refer to investment fund managers in its order or otherwise.

⁴⁶ Act, s 1(1) “registrant” and s 25(4); *Dhanani*, para 14.

⁴⁷ See *Dancho (Re)* (2017), 40 OSCB 9167, 2017 ONSEC 40, para 10.

⁴⁸ See, e.g., *Inverlake*, paras 38-39.

⁴⁹ Act, ss 127(1)8.1-8.5.

⁵⁰ See *Dhanani*, para 14; *McClure*, para 10.

SCHEDULE "A"



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

FILE NO. 2018-14

IN THE MATTER OF DAVID TUAN SENG LIM and MICHAEL MUGFORD

Philip Anisman, Chair of the Panel

July 19, 2018

ORDER

(Subsections 127(1) and 127(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 June 5, 2017 (the **Findings**) and the decision of the BCSC dated October 23, 2017 (the **BCSC Order** and together with the Findings, the **BCSC Decision**) in the matter of David Tuan Seng Lim (**Lim**) and Michael Mugford (**Mugford**) and on reading the materials filed by Staff, the respondents, Lim and Mugford, not having participated in the hearing, although properly served;

IT IS ORDERED that henceforth:

1. Lim shall not trade in securities or derivatives, except for his own benefit in accounts in his own name, which accounts may include no more than one RRSP account, one TFSA account, one RESP account and one other account, through a registered dealer who has been given a copy of the BCSC Decision and a copy of this Order;
2. Lim shall not acquire securities (including a derivative that is a security), except for his own benefit in accounts in his own name, which accounts may include no more than one RRSP account, one TFSA account, one RESP account and one other account, through a registered dealer who has been given a copy of the BCSC Decision and a copy of this Order;
3. any exemptions in Ontario securities law shall not apply to Lim;
4. Lim shall not become or act as a director or officer of any issuer or registrant, including an investment fund manager, and shall immediately resign from any such position that he currently holds, except an issuer all of whose securities are owned by Lim and/or his spouse, parent, child, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law and/or sister-in-law;

5. Lim shall not become or act as a registrant, including an investment fund manager, or promoter;

AND IT IS ORDERED that henceforth:

6. Mugford shall not trade in securities or derivatives, except for his own benefit in accounts in his own name, which accounts may include no more than one RRSP account, one TFSA account, one RESP account and one other account, through a registered dealer who has been given a copy of the BCSC Decision and a copy of this Order;
7. Mugford shall not acquire securities (including a derivative that is a security), except for his own benefit in accounts in his own name, which accounts may include no more than one RRSP account, one TFSA account, one RESP account and one other account, through a registered dealer who has been given a copy of the BCSC Decision and a copy of this Order;
8. any exemptions in Ontario securities law shall not apply to Mugford;
9. Mugford shall not become or act as a director or officer of any issuer or registrant, including an investment fund manager, and shall immediately resign from any such position that he currently holds;
10. Mugford shall not become or act as a registrant, including an investment fund manager, or promoter.

Philip Anisman