

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the Act)**

**– AND –**

**IN THE MATTER OF JEAN-SMAILLE GERMEIL and FPE TRADING  
(collectively, the Respondents)**

**DECISION ON SANCTIONS AND COSTS  
(Sections 134, 135 and 135A)**

**Hearing:** In writing

**Decision:** May 27, 2019

**Panel:** Shirley P. Lee, QC  
Valerie B. Seager  
Kenneth Wheelans

Chair  
Commissioner  
Commissioner

**Submissions:** Stephanie Atkinson

Director of Enforcement  
for the Commission

No submissions were made  
by or on behalf of the  
Respondents

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## I. OVERVIEW

- [1] This was a hearing (the Sanctions and Costs Hearing) before the Nova Scotia Securities Commission (the Commission) pursuant to sections 134, 135 and 135A of the Act to determine whether it is in the public interest to issue an order with respect to sanctions and costs against the Respondents.
- [2] The proceeding arose from a Notice of Hearing issued by the Commission on January 8, 2018 (the Notice of Hearing), to which was attached a Statement of Allegations of the Director of Enforcement for the Commission (Staff) dated January 3, 2018 (the Statement of Allegations).
- [3] In the Statement of Allegations, Staff alleged that the Respondents, between approximately June 2013 and January 2015 (the Material Time), solicited investments from three residents of Ontario and one resident of Nova Scotia (the Investors), who, for privacy reasons, were referred to as AA, BB, CC and DD. Staff alleged that Jean-Smaille Germeil (Germeil) promoted FPE Trading (FPE) to the Investors as a foreign exchange investment opportunity and thereby solicited investments contrary to several provisions of the Act. The Investors gave the Respondents approximately \$37,500 for foreign exchange investing. \$10,800 was returned to two of the Investors, resulting in a loss of \$26,700 to the Investors.
- [4] The hearing on the merits in this proceeding was held as a hearing in writing under an order of the Commission in the Memorandum of Pre-hearing Conference dated April 11, 2018. The panel issued its decision on the merits on March 27, 2019 (the Merits Decision). In the Merits Decision, we found that, during the Material Time:
  - (a) the Respondents acted as a dealer without being registered to do so and without an available exemption from the dealer registration requirement, contrary to subsection 31(1) of the Act;
  - (b) the Respondents distributed securities when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director and without an available exemption from the prospectus requirements, contrary to subsection 58(1) of the Act;
  - (c) the Respondents engaged in unfair practices contrary to subsection 44A(2) of the Act;
  - (d) the Respondents made untrue and misleading statements contrary to subsection 50(2) of the Act; and
  - (e) the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Nova Scotia capital markets.

- [5] The Respondents have not participated or appeared in, made submissions on, or responded or objected to, the Sanctions and Costs Hearing held in writing.
- [6] Under Part 7 of Rule 15-501 General Rules of Practice and Procedure, the Commission has jurisdiction to proceed with a hearing in the absence of respondents when they have been given notice of the hearing but have not appeared, provided that the Commission is satisfied that a copy of the notice of hearing for the proceeding had been served upon the respondents.
- [7] In paragraph 90 of the Merits Decision, and in the corresponding order of the Commission dated March 27, 2019 (the Merits Order), the Respondents were provided with notice that they had until April 5, 2019, to notify the Secretary of the Commission that they require an oral sanctions hearing. If no notification was received from the Respondents, the sanctions hearing was to proceed in writing in accordance with the procedure set out in the Merits Decision and Merits Order.
- [8] The Merits Decision, the Merits Order, and Staff's submissions dated April 17, 2019, with respect to the Sanctions and Costs Hearing (the Staff Submissions) were all properly served upon the Respondents. There was no notification from the Respondents requesting an oral sanctions hearing. The panel is satisfied that the Respondents have been given the requisite notice.

## **II. SANCTIONS REQUESTED BY STAFF**

- [9] Staff submits that, based on the findings in the Merits Decision, the following order should be issued against the Respondents:
- (a) pursuant to clause 134(1)(a) of the Act, the Respondents comply with and cease contravening Nova Scotia securities laws;
  - (b) pursuant to clause 134(1)(b) of the Act, the Respondents permanently cease trading in securities beneficially owned by anyone other than themselves;
  - (c) pursuant to clause 134(1)(c) of the Act, any or all of the exemptions contained in Nova Scotia securities laws do not apply to the Respondents permanently;
  - (d) pursuant to clause 134(1)(d) of the Act, Germeil be permanently prohibited from becoming or acting as a director or officer of an issuer;
  - (e) pursuant to clause 134(1)(g) of the Act, the Respondents be permanently prohibited from becoming or acting as a registrant, investment fund manager, or promoter;
  - (f) pursuant to clause 134(1)(h) of the Act, the Respondents be reprimanded;

- (g) pursuant to section 135 of the Act, the Respondents, jointly and severally, pay an administrative penalty of \$150,000; and
- (h) pursuant to section 135A of the Act, the Respondents, jointly and severally, pay costs in connection with the investigation and conduct of this proceeding before the Commission in the amount of \$15,000.

[10] Staff submits that the Respondents' conduct involved numerous violations of Nova Scotia securities laws which had a significant impact on the Investors and that the proposed sanctions are warranted based on the Respondents' violations and will provide the necessary specific and general deterrence.

### III. THE LAW

[11] When exercising its public interest jurisdiction under section 134 of the Act, the Commission must consider the purpose of the Act, which, as set out in subsection 1A(1) of the Act, is to provide investors with protection from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets and, where it would not be inconsistent with an adequate level of investor protection, to foster the process of capital formation.

[12] The Commission stated in paragraph 101 of the Commission's Reasons for Decision *In the Matter of Quintin Earl Sponagle and Trevor Wayne Hill* dated August 4, 2011 (the Sponagle Decision) that:

[i]t is clear that the purpose of the Commission's public interest jurisdiction is protective and preventative not punitive: *Re Cartaway Resources Corp.* 2004 SCC 26. [...]

[13] The Commission discussed the considerations guiding the imposition of sanctions in paragraph 112 of the Sponagle Decision as follows:

The considerations guiding the imposition of sanctions on violators of securities laws were canvassed by the British Columbia Securities Commission in *Re Manna Trading Corp Ltd.*, 2009 BCSECOM 595. The Commission (at para 16), cites with approval *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly summary 22, in which the Commission (at page 24) discussed the factors relevant to sanction as follows:

[,,] the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that

the Commission considers in making orders...but the following are usually relevant:

- the seriousness of respondent's conduct,
- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respond[ent] was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and factors that mitigate the respondent's conduct,
- orders made by the Commission in similar circumstances in the past.

- [14] The sanctions requested by Staff described in paragraphs 9. (b) to (e) above (the Market Ban Sanctions) would result in permanent market bans on the Respondents. The Court of Appeal for British Columbia (BCCA) in *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149, considered the factors for imposing securities market bans. In that matter, the British Columbia Securities Commission (BCSC) had found that Mr. Davis perpetrated a fraud contrary to section 57(b) of the *Securities Act* (British Columbia) on one investor in the aggregate amount of \$7,000. On November 7, 2016, the BCSC ordered Mr. Davis to pay an administrative penalty of \$15,000 and imposed permanent market prohibitions against Mr. Davis with respect to trading in securities, application of exemptions, acting as a director, officer, registrant or promoter, acting in a management or consultative capacity in connection with activities in the securities market, and engaging in investor relations activities. The BCCA reviewed the BCSC's decision and determined that the BCSC had failed to consider Mr. Davis' personal circumstances and alternative sanctions and remitted the issue of sanctions to the BCSC for reconsideration.

- [15] In *Re Davis*, 2018 BCSECCOM 284 (the BC Davis Decision), the BCSC reconsidered its decision to impose permanent market prohibitions on Mr. Davis. The BCSC considered Mr. Davis' individual circumstances and concluded that his livelihood was not impacted by the market prohibitions at the time that they were imposed in November 2016, and that there was no evidence that, going forward, his livelihood would be impacted by the reinstatement of similar market prohibitions. The BCSC went on to state in paragraph 38 of the BC Davis Decision that, even if Mr. Davis' livelihood would be impacted by the imposition of market prohibitions, the risk that he presented to the integrity of the capital markets and to investors warranted his removal from the capital markets and it proceeded to order the permanent market bans on Mr. Davis.

#### **IV. ANALYSIS AND FINDINGS**

##### **A. Application of the Factors**

###### **1. Seriousness of the Conduct**

- [16] The dealer registration requirement in subsection 31(1) of the Act is a fundamental rule of the securities regulatory framework for the offering of securities to the public. It provides an important gatekeeping function to ensure that only properly qualified and suitable persons and companies are registered to trade on behalf of the public. The Respondents did not comply with this fundamental requirement, breaching a crucial means by which investors in Nova Scotia are protected.
- [17] The other fundamental rule is the requirement for delivery of a prospectus under section 58 of the Act. This ensures that prospective investors have sufficient information to make an informed investment decision. By breaching this requirement, the Respondents deprived the Investors of a critical source of information about the nature of the investment being made, the risk level of the investment, the background and experience of the Respondents, and how the Investors' funds would be invested.
- [18] In the Respondents' dealings with the Investors, they also engaged in unfair practices contrary to subsection 44A(2) of the Act and made untrue and misleading statements contrary to subsection 50(2) of the Act.
- [19] Although the number of Investors (four) and the amount of money lost by each is not large relatively speaking, the Respondents' conduct throughout the Material Time constitutes serious misconduct prohibited by the Act. Their conduct was found by the panel in the Merits Decision to be contrary to the public interest and harmful to the integrity of the capital markets in Nova Scotia.

## **2. Harm Suffered by Investors**

- [20] The Investors placed their trust in the Respondents to invest their money in the foreign exchange market and make a profit for them. In return, the Respondents made untrue statements to them about their investments, engaged in unfair practices and used the money given to them for the personal expenses of Germeil.
- [21] Although the amounts invested by the Investors may not be large, they could have been significant losses for the Investors personally.

## **3. Enrichment of the Respondents**

- [22] Germeil was enriched personally. The Investors' funds were comingled with Germeil's personal bank accounts and used to pay Germeil's day-to-day expenses, without the Investors' consent or knowledge.

## **4. Mitigating Factors**

- [23] The panel was not presented with any evidence of mitigating factors as the Respondents did not participate in the Sanctions and Costs Hearing.

## **5. Past Conduct**

- [24] There was no evidence of a prior regulatory history for the Respondents.

## **6. Continued Participation and Fitness to be in the Capital Markets**

- [25] As stated in paragraph 39 of the BC Davis Decision, persons seeking the privilege of participating in the capital markets are held to high standards of honesty and integrity.
- [26] The Respondents have not shown any honesty or integrity. The Respondents' conduct in breach of the Act was carried out through the Material Time, a period of approximately 20 months. In Germeil's dealings with the Investors, he made misleading statements that would be important to a prospective investor. He represented that the Respondents' trade was regulated by the Investment Industry Regulatory Organization of Canada and insured through the Canadian Investor Protection Fund and that Germeil was a registered mutual fund dealer with an Investment Funds Institute of Canada designation. None of these statements were true.



## 7. Specific and General Deterrence

- [27] The conduct engaged in by the Respondents involved serious breaches of fundamental protections under Nova Scotia securities laws: the requirements for dealer registration and a prospectus before the making of an investment and the prohibitions against unfair practices and untrue and misleading statements. The sanctions imposed must be sufficient to deter the Respondents and others from engaging in future misconduct.

## 8. Previous Orders

- [28] The Commission discussed the nature of administrative orders in paragraph 107 of the Sponagle Decision as follows:

[...] Administrative orders under section 134 are inherently preventative in nature. Though they may be based on past conduct, their application is clearly protective of the public interest in the future. While such administrative orders can be exceptionally serious and disabling to those upon whom they are imposed, their object is to protect the public by ensuring compliance with the *Securities Act* and by removing from the capital markets those who, in the view of the Commission, pose threats to its integrity.

- [29] The BC Davis Decision cited by Staff as support for the Market Ban Sanctions concerned sanctions very similar to those sought by Staff. This decision provides a suitable range of sanctions for the panel's consideration in relation to this matter and the factors relevant to this matter. In both cases, there was one key individual found to have made serious violations of the securities legislation involving a small number of investors who made investments that were not relatively large.
- [30] Since the Respondents' did not participate in the proceedings, there is no evidence of their individual circumstances and whether the Market Ban Sanctions would impact their livelihoods. However, there is no evidence that the Respondents had previously worked in the capital markets.

## B. Appropriate Sanctions

### 1. Market Bans

- [31] The Respondents breached fundamental provisions of the Act designed to protect investors and provide them with confidence in Nova Scotia's capital markets. They did not participate in the proceedings, appear or make submissions with respect to their actions or their personal circumstances.

- [32] The Respondents' misconduct evidences that they represent a serious future risk to both investors and capital markets. They are not fit to participate in the capital markets or to act in any capacity in the capital markets.
- [33] Even if the Respondents' livelihoods would be impacted by the imposition of the Market Ban Sanctions, we are of the view that the risks that they present to the integrity of the capital markets and to investors warrant their removal from the capital markets.
- [34] We find that the sanctions requested by Staff are reasonable and appropriate in the circumstances based on the seriousness of the Respondents' violations and the above consideration of the factors for imposing sanctions. They will provide the necessary specific and general deterrence and will provide investors with protection from practices and activities that undermine investor confidence in the fairness and efficiency of the capital markets.
- [35] The order requested pursuant to clause 134(1)(b) of the Act has been slightly modified to clarify that the cease trade order includes securities that may be issued by the Respondents.

## **2. Administrative Penalty**

- [36] Staff submits that an administrative penalty of \$150,000 is appropriate to address the egregiousness of the violations, the misleading nature of the Respondents' scam, the broken trust and faith of the Investors and the impact on Nova Scotia's capital markets.
- [37] In paragraph 108 of the Sponagle Decision, the Commission stated that:
- [...] [monetary administrative penalties] are intended to deter future misconduct by the person against whom they are ordered, as well as by others who would consider similar activity, by penalizing those who have breached the Act. This deterrent effect is achieved by removing any financial incentive to breach the Act, and also by imposing additional penalties sufficient to cause an apprehension in any person considering a breach of the Act in the future that they too will suffer a similar penalty if they proceed with such activity. [...]
- [38] In the BC Davis Decision, the BCSC ordered Mr. Davis to pay an administrative penalty of \$15,000 in addition to the permanent market bans that were imposed upon him.
- [39] The need for specific and general deterrence calls for an administrative penalty in a significant amount given the nature of the misconduct and violations of the Respondents.

- [40] We find that the amount of \$150,000 requested by Staff is appropriate given the seriousness of the misconduct and violations of the Respondents over an extended period of time and the multiple breaches involving each of the four Investors.
- [41] Staff has submitted that the administrative penalty be ordered against the Respondents jointly and severally. In the Merits Decision, we found Germeil to be the directing mind of FPE. The Investors' funds were all placed in accounts in the name of Germeil and used to pay Germeil's expenses. We find that joint and several liability would be appropriate.

## V. COSTS

- [42] Staff submits that the Respondents be ordered to pay \$15,000 in costs, jointly and severally, towards the costs associated with the investigation and conduct of this proceeding. Staff submitted a schedule of costs with the Staff Submissions showing the total cost of the investigation and proceeding to be \$15,010.77.
- [43] Section 135A of the Act provides the Commission with the power to order a Respondent to pay costs in connection with the investigation and conduct of a proceeding in respect of which an order was made pursuant to section 134 or 135 of the Act. A costs order is a means by which the Commission can recoup some of the costs expended during the investigation and hearing of a matter.
- [44] The panel agrees with Staff's submissions on costs and finds that the amount of \$15,000 is appropriate.

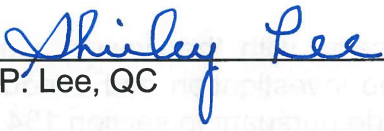
## VI. CONCLUSION

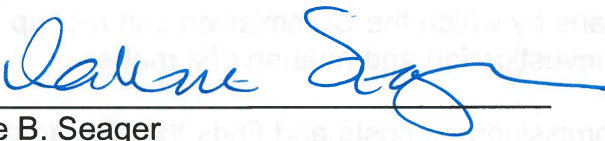
- [45] For the foregoing reasons, we will issue an order as follows:
- (a) pursuant to clause 134(1)(a) of the Act, the Respondents comply with and cease contravening Nova Scotia securities laws;
  - (b) pursuant to clause 134(1)(b) of the Act, the Respondents permanently cease trading in securities of any issuer, other than securities beneficially owned by the Respondents;
  - (c) pursuant to clause 134(1)(c) of the Act, any or all of the exemptions contained in Nova Scotia securities laws do not apply to the Respondents permanently;
  - (d) pursuant to clause 134(1)(d) of the Act, Germeil be permanently prohibited from becoming or acting as a director or officer of an issuer;
  - (e) pursuant to clause 134(1)(g) of the Act, the Respondents be permanently prohibited from becoming or acting as a registrant, investment fund manager, or promoter;


- (f) pursuant to clause 134(1)(h) of the Act, the Respondents be reprimanded;
- (g) pursuant to section 135 of the Act, the Respondents, jointly and severally, pay an administrative penalty of \$150,000; and
- (h) pursuant to section 135A of the Act, the Respondents, jointly and severally, pay costs in connection with the investigation and conduct of this proceeding before the Commission in the amount of \$15,000.

**DATED** at Halifax, Nova Scotia, this 27th day of May, 2019.

**NOVA SCOTIA SECURITIES COMMISSION**

  
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Shirley P. Lee, QC  
Chair

  
\_\_\_\_\_  
Valerie B. Seager  
Commission Member

  
\_\_\_\_\_  
Kenneth Wheelans  
Commission Member