

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

– AND –

**IN THE MATTER OF JASON KEITH GIDDENS
(the Respondent)**

**DECISION
(Sections 134B and 134(1) of the Act)**

Decision: February 4, 2020

Panel: Valerie Seager

Chair

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I. BACKGROUND

A. Introduction

- [1] This decision concerns an application by the Director of Enforcement (the Director) for a reciprocal order to be issued in relation to Jason Keith Giddens, the Respondent, pursuant to section 134B(2) of the *Securities Act*, RSNS 1989, c. 418, as amended (the Act).
- [2] The Respondent pleaded guilty to six (6) counts of fraud contrary to section 380(1)(b) of the Criminal Code of Canada (the Code) (fraud less than \$5,000), one count of fraud contrary to section 380(1)(a) of the Code (fraud in excess of \$5,000), and one count of use of multiple forged documents.
- [3] In his Decision on Sentence dated October 16, 2017 the Honourable Warren K. Zimmer, Judge of the Provincial Court of Nova Scotia, found that between April 30, 2014, and April 10, 2015, the Respondent used multiple forged documents relating to the possession and issuance of company shares to persuade various victims to invest with him or to cover up his misdeeds. The total amount of the frauds was \$22,638. Judge Zimmer ordered the Respondent to pay restitution to the various victims and sentenced him to the following:
 - (a) For the count of fraud in excess of \$5,000, 90 days of incarceration to be served intermittently on weekends;
 - (b) 300 days of house arrest broken down into the following periods of custody to be served consecutively in the community:
 - (i) For each count of fraud less than \$5,000, 30 days (180 days total for six counts);
 - (ii) For the count of using forged documents, 30 days.
- [4] In addition to the time to be served and restitution, Judge Zimmer imposed various conditions in a Conditional Sentence Order and two Probation Orders (one of which would be in effect during the week while the Respondent served his intermittent incarceration and the second of which would take effect for two years following the end of the Respondent's house arrest). These Orders, among other things, prohibited the Respondent from holding any financial position of trust, remunerated or not, for any individual or entity and required him, during his probationary period, to provide complete financial disclosure to his supervisor detailing his employment, sources of income, and expenses.

B. The Application

- [5] By Notice of Application dated October 16, 2019, the Director asked the Commission to consider whether it is in the public interest for the Commission to order that:
- (a) pursuant to subsection 134(1)(b) of the Act, the Respondent shall cease trading in securities except on his own behalf though a registrant of the Commission;
 - (b) pursuant to subsection 134(1)(c) of the Act, that any or all of the exemptions contained in Nova Scotia securities law do not apply to the Respondent for such period as specified in the order;
 - (c) pursuant to subsection 134(1)(d)(ii) of the Act, that the Respondent shall be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
 - (d) pursuant to subsection 134(1)(e) of the Act, that the Respondent shall be prohibited from disseminating to the public or authorizing the dissemination to the public, directly or indirectly, any information or record of any kind relating to the distribution or trading of securities; and
 - (e) pursuant to subsection 134(1)(g) of the Act, that the Respondent shall be prohibited from becoming or acting as a registrant, investment fund manager or promoter.
- [6] In requesting the Order, the Director relies on section 134B(2)(a)(i) of the Act, which provides in part:
- (2) Notwithstanding the requirement for a hearing in subsection (1) of Section 134, the Commission may, with or without providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) of Section 134 in respect of a person or company if the person or company
 - (a) has been convicted in Canada or elsewhere of an offence
 - (i) arising from a transaction, business or course of conduct related to securities or derivatives ...

II. OPPORTUNITY TO BE HEARD

- [7] The Commission has the power to issue the requested Order with or without providing the Respondent with the opportunity to be heard. Nevertheless, in accordance with the principles of natural justice, the Respondent was provided with notice of the Notice of Application and given the opportunity to respond. In an Affidavit of Service sworn by Vanessa F. Allen on October 22, 2019, Ms. Allen swears that she sent copies of the Notice of Application, draft Order, and written submissions of the Director to the Respondent by courier. The Respondent was given the opportunity to respond in writing to the Notice of Application by November 25, 2019. No response has been received from the Respondent. I am satisfied that the Respondent was given a procedurally fair opportunity to be heard.

III. THE ISSUES

- [8] There are two requirements to grant the requested relief pursuant to section 134B(2) of the Act: (i) the Respondent must have been convicted of an offence arising from a transaction, business, or course of conduct related to securities; and (ii) the requested order must be in the public interest.
- [9] As the Decision of Sentence makes clear, the Respondent fraudulently convinced multiple individuals to purchase company shares that they never actually received. In some cases, the Respondent forged securities-related documents and used those documents to support the validity of the purported investment opportunity he offered. I am satisfied that the first requirement of the requested relief, that the Respondent has been convicted of an offence arising from a transaction, business, or course of conduct related to securities, has been satisfied.
- [10] The second requirement of the requested relief is that the requested order must be in the public interest. The principal purpose of securities regulation in Nova Scotia, as set out in section 1(A) of the Act, is the protection of investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. In determining whether a reciprocal order should be issued, the Commission has adopted a public interest test requiring actual or potential violations of Nova Scotia securities law or other sufficient reason relevant to Nova Scotia (*In the Matter of Tri Clean Enterprises Inc.*, (27 August 2010), *In the Matter of Timothy Wade MacDonald* (21 September 2015), and *In the Matter of Thalbinder Singh Poonian et al.* (16 August 2016)).

IV. PUBLIC INTEREST

- [11] In applying the above test, past conduct must be examined to determine whether potential future conduct should be restrained. As set out in *Foreign Capital Corp., Re*, (2005) 28 OSCB 4221, past conduct is a guide to a person's potential future conduct and may be an important indicator of the need for protective action.
- [12] In this case, the Respondent has been convicted of criminal offences relating to the sale of securities in Nova Scotia which took place over the course of a year and involved several victims. I am satisfied that an order is a necessary protective measure with respect to maintaining confidence in the capital markets, general deterrence, and specific deterrence of the Respondent from similar activities in the future, and is therefore in the public interest.
- [13] The Director has requested that the sanctions set out in the requested order be imposed permanently. The Director submits that these are appropriate preventative measures, and almost identical sanctions were imposed in *MacDonald*. The Director refers to *In the Matter of Conrad Black et al.* (26 February 2015), in which the Ontario Securities Commission (the OSC) set out a non-exhaustive list of factors relevant to determining appropriate sanctions to impose in the public interest. These factors include:
- (a) the seriousness of the allegations proved;
 - (b) the respondent's experience in the marketplace;
 - (c) the level of a respondent's activity in the marketplace;
 - (d) whether or not there has been a recognition of the seriousness of the improprieties;
 - (e) the need to deter a respondent and other like-minded individuals from engaging in similar abuses of the capital markets in the future;
 - (f) whether the violations are isolated or recurrent;
 - (g) the size of any profit gained or loss avoided from the illegal conduct;
 - (h) any mitigation factors, including the remorse of the respondent;
 - (i) the effect any sanction might have on the livelihood of the respondent;

- (j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;
- (k) whether a sanction will have an impact on the respondent and be effective; and
- (l) the size of any financial sanctions or voluntary payment when considering other factors.

The OSC noted that the applicability and importance of each factor will vary according to the fact and circumstances of the case.

- [14] The Director applied these factors to support the permanent sanctions requested in the Order. The Director referred to, among other things, the Respondent's conduct representing serious breaches of trust, the Respondent's limited remorse, and the specific and general deterrent effect of the Order. The Director relied on *Braun, Re*, 2007 ABASC 694, to support a permanent order. *Braun* involved, what appears to have been, a sophisticated Ponzi scheme fraud affecting 89 investors over the course of two years, netting the respondent in that matter over \$22 million.

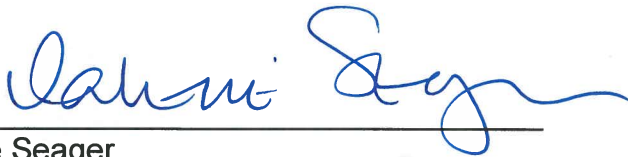
V. CONCLUSION

- [15] There is no doubt that the Respondent's criminal conduct was reprehensible and represents serious offences. However, the size of the profit gained was limited to \$22,638. While Judge Zimmer does refer to the Respondent's alleged failed attempt to leave Canada upon being discovered, he also indicated that the Respondent expressed some level of remorse when he was before the Court, apologized to all of the people he had wronged, and expressed a desire to repay those who he had defrauded. The Decision of Sentence also refers to certain mental health considerations. The circumstances in *Braun* and the circumstances in this matter, considering the factors identified by the OSC, are not comparable.

[16] Notwithstanding the foregoing, the Respondent's actions were criminal and detrimental to the public's perception of the fairness and efficiency of the capital markets. I am prepared to issue the Order requested by the Director but limited to a period of ten (10) years.

DATED at Halifax, Nova Scotia, this 4th day of February, 2020.

NOVA SCOTIA SECURITIES COMMISSION



Valerie Seager
Chair