

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

– AND –

**IN THE MATTER OF YUNFU JIANG
(the Respondent)**

DECISION

(Sections 134, 135 and 135A of the Act)

Hearing January 18, 2024

Decision April 2, 2024

Panel	Valerie Seager	Chair
	Tom Atkinson	Commissioner
	Anne Day	Commissioner

Submissions	Jennie Pick	Counsel for the Director of Enforcement of the Nova Scotia Securities Commission
	Yunfu Jiang	For himself

I. BACKGROUND

A. Introduction

- [1] On January 18, 2024 a hearing was held before a panel of the Nova Scotia Securities Commission (**Panel**) to consider the Statement of Allegations of the Director of Enforcement (**Director**) dated August 2, 2023 and decide whether it is in the public interest to make:
- (a) an order pursuant to section 134 of the *Securities Act*, Nova Scotia (**Act**) in relation to the Respondent in a manner to be determined by the Commission;
 - (b) an order pursuant to section 135 of the Act that the Respondent pay an administrative penalty in an amount to be determined by the Commission;
 - (c) an order pursuant to section 135A of the Act that the Respondent pay costs in connection with the investigation and conduct of the proceedings before the Commission; and
 - (d) such other orders as the Commission considered appropriate.
- [2] In the Statement of Allegations the Director alleged that the Respondent signed written undertakings to the Director but failed to comply with those undertakings in violation of section 29EB of the Act.

B. Conclusion

- [3] The Panel finds that
- (a) the Respondent failed to comply with certain of his written undertakings to the Director in violation of section 29EB of the Act.

C. The Evidence

The Director

- [4] The Director's evidence was provided by affidavits of Stephanie Atkinson, the Director, dated July 6, 2023, and Lianne Bradshaw, senior Investigator for the Commission's Enforcement Branch, dated July 5, 2023 (collectively, the "Affidavits").
- [5] The Director stated that:
- (a) According to information provided by the British Columbia Securities Commission (**BCSC**), between August 4, 2020 and August 13, 2020 the Respondent accepted approximately \$536,000 USD (**Funds**) from fifty-four individuals or companies (**Lenders**). None of the Lenders resided in Nova Scotia. The Funds were directly transferred from the Lenders into a Bank of

Montreal (**BMO**) account in the Respondent's name in Nova Scotia (**Account**). The Funds were expected to be invested in another company.

- (b) On or about August 30, 2020, further to an *ex parte* application by the Director which relied primarily on the information provided by the BCSC, the Commission issued a freeze direction prohibiting the use or withdrawal of the Funds (**Freeze**).
- (c) Pursuant to Section 29C of the Act the Director applied to the Supreme Court of Nova Scotia to continue the Freeze. Before a preliminary matter relating to this application could be heard, the Director agreed to apply to the Commission to release the Freeze if the Respondent signed certain undertakings.
- (d) On or about April 30, 2021 the Respondent signed the following written undertakings to the Director (**Undertakings**):

I, Yunfu Jiang, hereby undertake that I will do as follows in the event the Nova Scotia Securities Commission (the Commission) revokes the Freeze Direction issued by the Commission on August 30, 2020, releasing the funds which are currently being held in an account in my name at the Bank of Montreal (respectively, the Funds and the Account);

1. I will email or contact through social media each of the individuals who provided the Funds (the Depositors) to seek clear instructions as to where or to whom they would like to have their portion of the funds sent.
2. If a Depositor chooses to have their portion of the Funds remain in the Account until such time as they provide further instruction as to the disposition of their portion, then their portion of the Funds will so remain in the Account.
3. In the event that a Depositor cannot be contacted and/or does not provide instructions as to where or to whom they would like to have their portion of the Funds sent, those Funds will remain in the Account until such time as instructions are provided as to disposition.
4. I will maintain a record of my communications with the Depositors per the above Undertakings and provide a copy of that record to enforcement staff of the Commission.
5. In no case will the Funds be used to purchase securities or derivatives or forwarded to any entity or individual for the purpose of facilitating the purchase of securities or derivatives on behalf of the Depositors, form or of GTV Media Group Inc., Saraca Media Group Inc., Voice of Guo Media Inc., Canada Himalaya Club Media Inc., or their affiliates, subsidiaries, divisions, successors, assigns, or related entities.

6. If the Bank of Montreal is willing, I may make arrangements with the Bank of Montreal for the Depositors to provide their instructions directly to the Bank of Montreal for action, subject always to Undertaking 5 in this Agreement.
7. Once all instructions from the Depositors have been received and carried out, I will provide to enforcement staff of the Commission copies of bank records documenting any money transfer or movements out of the Account consequent on the Depositors instructions.

- [6] On May 26, 2021, following receipt of the signed Undertakings, the Commission lifted the Freeze.
- [7] On June 28, 2021 the Respondent advised Enforcement Staff (**Staff**), through his counsel, that implementation of the Undertakings may be delayed.
- [8] In October 2021 Staff contacted the Respondent's counsel asking as to the status of the Respondent's efforts to implement the Undertakings. No reply was received.
- [9] Staff then compelled records from BMO relating to the Funds and learned that the Respondent had withdrawn the Funds as a lump sum on June 14, 2021. The Respondent did not advise Staff of this withdrawal.
- [10] In February 2022 Staff wrote to the Respondent's counsel asking for information about the withdrawal of the Funds. Counsel advised that he was informed by the Respondent that the Funds were withdrawn because BMO would no longer hold an account for the Respondent, but that the Respondent continued to hold the Funds. Subsequent inquiries by Staff as to the status of the Funds were not answered.
- [11] In April 2022 Staff issued a summons to the Respondent requiring that he provide certain information regarding the withdrawal of the Funds from the Account.
- [12] In response to the summons, the Respondent made the following statements to Staff:
- (a) The Respondent withdrew the Funds from BMO because BMO required him to close all of his accounts by November 29, 2020.
 - (b) The Respondent deposited the Funds into an account in the name of Ebuysave Enterprises Ltd. (**Ebuysave**) held at the Royal Bank of Canada in British Columbia.
 - (c) For security reasons, the Respondent does not communicate privately with the Lenders and communicates via posts in discord groups and video chats.

(d) As of the date of the Respondent's response, none of the Lenders had requested that the money be returned or deposited elsewhere.

- [13] The Respondent's response to the summons included a copy of a letter from BMO dated October 29, 2020 addressed to Meijuan Qi, the Respondent's wife, advising that her accounts with the bank must be closed by November 29, 2020. A list of the accounts to be closed was included with the letter. The BMO letter was not addressed to the Respondent, who was the sole holder of the Account, and the attached list did not include the Account.
- [14] Following further investigation, Staff established that the Funds had been co-mingled with other funds in the Ebuysave account, and by December 31, 2021 the balance of the Ebuysave account was zero.
- [15] Prior to the commencement of these proceedings none of the Respondent's communications with Staff about the Funds included evidence of his attempts to contact the Lenders or records documenting the transfer of Funds out of the Account.

The Respondent

- [16] In his submissions, the Respondent provided screen shots of several WhatsApp messages written in Mandarin. He stated these messages showed that he had contacted the "ECB company" "(by which we understood the Respondent to be referring to Ebuysave)" to verify if that company had provided the Lenders with their money.
- [17] In direct testimony at the Hearing, the Respondent admitted that he had breached the Undertakings, although it was unclear which specific sections of the Undertakings he was referring to. He stated that he withdrew the Funds from the BMO account because of the October 2020 letter from BMO requiring that all accounts with the bank be closed: "...I was desperate to transfer the money out of Bank of Montreal as soon as possible, according to the letter. And at that time, because of the desperation to refund the money to the lenders one by one, I just forgot the promise I made to SC."
- [18] The Respondent testified that, for various security and political reasons, he did not communicate with the Lenders directly. He transferred the Funds to Ebuysave and relied upon them to communicate with the Lenders as to their instructions regarding the Funds. He stated: "I communicated with the lenders and the people who were dealing with the refund job, of that ECB company. I followed up. What I got, the information, the confirmation that the money, every penny of the money, had been refunded successfully, and that no one lost one penny".

Preliminary Issue

- [19] The majority of the Respondent's pre-hearing submissions consisted of WhatsApp messages in Mandarin. Staff arranged for translation of these messages and

provided a certified copy of the translation. Staff sought to admit the translated messages into evidence.

- [20] In support of its position, Staff relied on *Re Pegasus Pharmaceuticals*, 2021 BCSECCOM 374 (**Pegasus**). In Pegasus, staff of the BCSC sought to admit as evidence certain documents that were in Chinese. The applicants in that case objected to the translations on the grounds of procedural fairness and failure to comply with certain requirements necessary for admissibility. The BCSC held that the translations were admissible, noting that “the primary test for admissibility of evidence in Commission proceedings is relevance to the allegations in the notice of hearing” and that “a respondent has a full and fair opportunity to question witnesses relating to the reliability of the translation”.
- [21] The circumstances in Pegasus are not directly analogous to the current case. However, as with the BCSC, the Commission, pursuant to section 14 of the General Rules of Practice and Procedure of the Commission, is not bound by the rules of evidence and the primary test for the admission of evidence is its relevance to the proceeding.
- [22] Mr. Jiang did not object to the admission of the translated WhatsApp messages and agreed that the translations were accurate. The Panel determined the messages were relevant and accepted them into evidence.

III. ANALYSIS

- [23] Section 29EB of the Act provides: “A person or company that gives an undertaking in writing, including by electronic means, to the Commission or Director shall comply with the undertaking”.
- [24] The purpose of the Hearing is not to determine the location of the Funds or if the Funds have been repaid to the Lenders. The sole purpose of the Hearing is to determine if the Respondent breached the Undertakings.
- [25] The burden of proof upon the Director in proceedings under the Act is that of civil proceedings, which is to say that we must be satisfied on a balance of probabilities that the Director has proven the allegations. We are satisfied, based on the evidence before us, including the Respondent’s own admissions, that the Respondent did not comply with the Undertakings.
- [26] The Undertakings required the Respondent to email or contact through social media each of the individuals who provided the Funds to seek clear instructions as to where they would like their portion of the Funds sent or if they wished the Funds to remain in the Account. Further, if a Lender could not be contacted and/or did not provide instructions as to where or to whom they would like to have their portion of the Funds sent, those Funds would remain in the Account until such instructions were received. The Undertakings also required the Respondent to maintain a record of his communications with the Lenders and provide a copy of that record to the Commission.

- [27] The Respondent signed the Undertakings on or about April 30, 2021. The Respondent withdrew the Funds from the Account on June 14, 2021. There is no evidence that the Respondent communicated with any of the Lenders before that withdrawal, or that the Respondent transferred the Funds in accordance with the Lenders' directions. The WhatsApp messages to which the Respondent referred as evidence of communication are (i) dated after the date that the Respondent withdrew the Funds from the Account; (ii) do not contain the information required by the Undertakings (i.e. clear instructions as to where a Lender's Funds should be sent); and (iii) with a few exceptions, do not appear to be with the individuals who had previously been identified as Lenders. Even if the WhatsApp messages reflect implementation of the Undertakings, which in our view they do not, the Respondent did not provide the Director with a copy of those messages until this Hearing, contrary to the requirements of the Undertakings.
- [28] The Respondent indicated that for a variety of practical and political reasons the Funds were transferred to Ebuysave to act as an intermediary in obtaining the necessary directions from the Lenders and distributing the Funds. The Respondent did not provide any evidence to show this relationship nor, apart from the WhatsApp messages (which, as stated above, are not helpful), did the Respondent provide any evidence to show that he contacted the Lenders. In fact, based on the translation of the WhatsApp messages, which we accept, the entity claiming to be dealing with the Funds in those messages was neither the Respondent nor Ebuysave. In any event, the Undertakings do not contemplate the transfer of the Funds to an intermediary.
- [29] Although the Respondent testified that Ebuysave returned all the Funds to the Lenders, he provided no evidence to indicate that or to show that the terms of the Undertakings were implemented.
- [30] The Respondent referred to BMO's letter requiring that the Account be closed as the reason the Funds were removed from the Account shortly after the Undertakings were signed. The BMO letter is dated October, 2020, before the Undertakings were signed by the Respondent, yet this information was not communicated to Staff until early 2022 and only after Staff made inquiries once they became aware that the Respondent had withdrawn the Funds. In any event, the BMO letter is not addressed to the Respondent and does not list the Account as an account that must be closed.

CONCLUSION

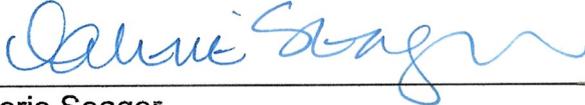
- [31] For the reasons set out above, we find the Respondent has breached Sections 1, 2, 3, 4 and 7 of the Undertakings and violated section 29EA of the Act.
- [32] There is no evidence the Respondent breached Section 5 of the Undertakings.
- [33] Section 6 of the Undertakings is permissive, not mandatory, and therefore the Respondent has not breached it.

SUBMISSIONS ON PENALTY

[34] We will receive submissions on penalty. If both parties agree, submissions may be made in writing, otherwise we will seek to schedule a hearing for penalty submissions.

DATED at Halifax, Nova Scotia, this 2nd day of April, 2024.

NOVA SCOTIA SECURITIES COMMISSION



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