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Securities Commission

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Wesley William Robinson and DRR900306 Ltd. (Re) 2022 NSSEC 1

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

– AND –

IN THE MATTER OF WESLEY WILLIAM ROBINSON and DRR900306 NS LTD.

SANCTIONS DECISION

Hearing	In Writing	
Decision	January 6, 2022	
Panel	Valerie Seager Michael Deturbide Ken Wheelans	Chair Commissioner Commissioner
Submissions	Jennie Pick	Counsel for the Director of Enforcement of the Nova Scotia Securities Commission
	Wesley William Robinson	For himself and DRR900306 NS Ltd.

I. INTRODUCTION

[1] Following a hearing in May, 2021 (the "Hearing") before a panel (the "Panel") of the Nova Scotia Securities Commission (the "Commission"), the Panel found that Wesley William Robinson and DRR 900306 NS Ltd. ("DRR") (collectively, the "Respondents") had contravened the *Securities Act*, Nova Scotia (the "Act"), and more specifically that the Respondents:

(a) acted as a dealer without being registered to do so in violation of section 31 of the Act with respect to all complainants in the matter (the "Complainants");

(b) acted as an adviser to the Complainant KH without being registered to do so in violation of section 31 of the Act;

(c) violated section 44(2) of the Act with respect to the Complainant KH by providing undertakings with respect to the future value of securities with the intention of effecting a trade in such securities;

(d) engaged in an unfair practice with the each of the Complainants in violation of section 44A(2) of the Act;

(e) violated sections 50(2) and 132B(1) of the Act with respect to each of the Complainants;

(f) violated section 58(1) of the Act with respect to each of the Complainants;

(g) perpetrated a fraud on each of the Complainants in violation of part 3.1(1)(b) of National Instrument 23-101 *Trading Rules* and section 132A(1)(b) of the Act; and

(g) violated certain provisions of a temporary order and extension orders issued against the Respondents in advance of the hearing.

[2] Following the Hearing the Panel requested submissions from the Respondents and the Director of Enforcement (the "Director") with respect to penalties and sanctions.

[3] After receiving submissions from the Director and at the Respondents' request, the Respondents were granted two extensions to the deadline for their submissions on the basis that they were working to secure funds to retain counsel. A further extension was requested and denied. The Respondents provided their submission in advance of the deadline and the Director subsequently filed a reply.

[4] In its submissions, the Director requested an order imposing the following sanctions and penalties be imposed:

(a) pursuant to section134(1)(a)(i) of the Act, the Respondents comply with Nova Scotia securities laws;

(b) pursuant to section 134(1)(b)(ii) of the Act, trading in any securities and derivatives by the Respondents shall cease permanently;

(c) pursuant to section 134(1)(c) of the Act, the exemptions contained in Nova Scotia securities law shall not apply to the Respondents permanently;

(d) pursuant to section 134(1)(d)(ii) of the Act, Robinson is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;

(e) pursuant to section 134(1)(g) of the Act, the Respondents are prohibited permanently from becoming or acting as a registrant or promoter;

(f) Pursuant to section 135 of the Act, the Respondents shall, jointly and severally, pay an administrative penalty to the Commission of $1,000,000;

(g) pursuant to section 135A of the Act, the Respondents shall, jointly and severally, pay costs in connection with the investigation and conduct of the proceeding in the amount of $25,000; and

(h) pursuant to section 133 of the Act, an application shall be made to the Supreme Court of Nova Scotia for (1) a declaration pursuant to subsection 133(1) of the Act that the Respondents have not complied with Nova Scotia securities law and (2) for such further orders pursuant to subsection 133(1C) of the Act as the Court considers appropriate including orders pursuant to subsection 133(1C), paragraph 13, requiring the Respondents to compensate or make restitution to aggrieved parties.

II. THE LAW

[5] The purpose of the Act, as set out in section 1A, 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.

[6] Section 134 of the Act allows the Commission to make a variety of sanction orders if, after a hearing, it finds that to do so would be in the public interest.

[7] Section 135 of the Act provides that where the Commission determines, after a hearing, that a person or company has contravened or failed to comply with any provision of Nova Scotia securities laws and where the Commission considers it to be in the public interest, the Commission may order the person or company to pay an administrative penalty of not more than one million dollars for each contravention or failure to comply.

[8] A non-exhaustive list of the factors to be considered in determining the appropriate sanctions and penalties to be ordered in any given matter are set out in *In the Matter of Electronic Benefits Inc., Everett R. Stuckless and Advantage Financial Group Inc.* (NSSEC, 12 March 2008) (affirmed 2009 NSCA 6) (*Electronic Benefits*) at p. 14:

(a) the seriousness of the person's conduct;

(b) the harm suffered by investors as a result of the person's conduct;

(c) the damage done to the integrity of the capital markets by the person's conduct;

(d) the extent to which the person was enriched;

(e) factors that mitigate the person's conduct;

(f) the person's past conduct;

(g) the risk to investors and the capital markets posed by the person's continued participation in capital markets;

(h) the person's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to issuers;

(i) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets;

(j) the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and

(k) orders made by the Commission in similar circumstances in the past.

[9] These factors were subsequently considered and applied in *In the Matter of Quintin Earl Sponagle and Trevor Wayne Hill* (NSSC, 4 August 2011) (*Sponagle)* at para. 112.

[10] With respect to monetary penalties, in *Sponagle* the Commission stated at para. 108:

> … [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.

[11] The amount of the administrative penalty must be considered in light of the list of factors set out above, including orders made by the Commission in similar circumstances in the past. The hearing panel in *Re Douglas G. Rudolph, Peter A.D. Mill, CFG*CN LTD. (also known as CanGlobe Financial Group), and CanGlobe International Capital Inc.,* 2021 NSSEC 7 (*CanGlobe)* noted that "the Panel must ensure that any administrative penalty issued is sufficiently high to act as a deterrent for similar activities in the future, proportionate to the offences in question and fit [and] proper for the Respondents" (para 20). The panel went on however to urge caution in disguising amounts that that should be ordered as disgorgement as administrative penalties and noted that "…an administrative penalty that equals the total amount of the money taken from investors by fraudulent means under the CanGlobe scheme plus an administrative penalty in the $500,000 - $700,000 range runs the danger of being a thinly veiled attempt to include the disgorgement amount within the administrative penalty…. " (para 28).

III. ANALYSIS

Sanctions

[12] There is no doubt the Respondents' actions were serious breaches of Nova Scotia securities laws. On multiple occasions the Respondents violated nine provisions of the Act. These violations included the perpetration of multiple frauds, one of the most serious offences in the Act. The Respondents' actions were deliberate and intentional and evidenced a significant degree of detail and advance planning. The Panel specifically found that the Respondents' schemes were designed to delude the Complainants and were based on numerous misrepresentations. The funds derived from these schemes were co-mingled with the Respondents' funds and were used for the Respondents' personal expenses and other purposes unrelated to the transactions the Complainants believed they were entering into.

[13] In addition to the fraudulent conduct, the Respondents showed blatant disregard for critical sections of the Act designed to protect and regulate the capital markets, including key sections relating to registration and prospectus requirements.

[14] The Respondents' schemes involved, in the aggregate, in excess of $1 million. Only one of the five Complainants has received their invested money back, and that was only after the Complainant commenced court proceedings and obtained a Mareva injunction. Two of the Complainants testified at the Hearing as to the financial damage inflicted on them by the Respondents and the personal impact on them of the Respondents' conduct.

[15] The Respondents did not participate in the Hearing and provided no reasonable explanation in response to the Complainants' allegations, nor did the Respondents refer to any mitigating factors in their sanction submission.

[16] Mr. Robinson's past conduct further evidences his disregard for the integrity of the capital markets and is relevant to the determination of sanctions. As stated by the Director in its submission:

> This is not Mr. Robinson's first proceeding before the Commission. By the Commission's order of March 21, 1997, his registration as a mutual fund salesperson was cancelled and certain trading exemptions were deemed unavailable to him for a period of two years. These sanctions were imposed as a result of the Commission's finding that Robinson had violated the "fair dealing standard" in the Securities Regulations in force at the time by "recklessly" disregarding and placing his own interests ahead of the interests of a client.
>
> ….Former registrants are "expected to have a high level of awareness of securities law requirements and the importance of those requirements to the functioning of the capital markets" as they are "well positioned to understand the regulatory regime, including the importance of the registration and prospectus requirements and the impact of their actions on investors" (see *MRS Sciences Inc., Re*, 2014) ONSEC 14 (*MRS*). For this reason the OSC in *MRS* – a sanctions decision following finding the *MRS* respondents had carried out unregistered activity and made illegal distributions – found the experience of former registrants "is an important consideration to take into account when imposing sanctions". (para 88). The experience of a former registrant found to have perpetrated fraud was also considered to be an aggravating factor in determining an appropriate sanction *in Black Panther Trading Corp., Re*, 2017 ONSEC 8 , at para 12. (*Panther*).

[17] The Respondents' behaviour strikes at the heart of the integrity of Nova Scotia capital markets and without strong measures to address this behaviour it appears likely to continue. Following an earlier sanction for violating Nova Scotia securities laws, the Respondents again disregarded the basic requirements of those laws and perpetrated a fraud on capital market participants for personal benefit. The Respondents have made no attempt to return the fraudulently obtained funds to the Complainants (except, in the case of one Complainant, after the courts were involved) and provided little to no evidence of any attempt to reimburse or otherwise compensate the Complainants. Even when temporary orders were imposed restraining the Respondents from engaging in further harmful conduct until a hearing could be conducted, the Respondents ignored those orders and continued to flout the law.

[18] The sanctions requested by the Director would result in permanent market access bans of the Respondents from the capital markets. Permanent market access bans are appropriate where the misconduct and consequential harm is serious. As set out by the Commission in *Germeil, Jean-Smaille and FPE Trading (Re),* 2019 NSSEC 2 (*Germeil)* at paras 32-35:

> 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 market or to act in any capacity in the capital markets.

> 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.
>
> 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.

[19] Permanent market access bans may or may not permit market access for personal trading. A carve-out for personal trading may not be permitted where the conduct is serious and there are no mitigating factors (see *Re Bluforest Inc.*, 2021 ABASC 25 (*Bluforest*), *Black Panther Trading Corp., Re*., 2017 ONSEC 8 (*Black Panther)* and *Meharchand (Re)*, 2019 ONSEC 7) (*Meharchand*).

[20] In their submissions the Respondents agreed to the bans proposed by the Director in paragraphs 4(a) and 4(b) above, but submitted that the banning of exemptions in paragraph 4(c) should only apply for one year, and the ban on being an officer or director of an issuer in paragraph 4(d) should only apply for one year as it would "take away my ability to earn an income and thereby making it impossible to repay my creditors". Mr. Robinson argued that "A permanent ban will literally force me to leave the country in order to earn income and repay my creditors".

[21] Applying the factors set out in *Electronic Benefits*, we find the sanctions proposed by the Director to be reasonable and appropriate and in the public interest. The Respondents have demonstrated that they are unfit to participate in the capital markets and their repeated disregard for the applicability of Nova Scotia securities laws requires that any ban on such participation be permanent. While it may be true that a permanent ban will prevent the Respondents from earning income through capital market participation, it will not prevent them from earning income in some other manner.

Administrative Penalty

[22] The Director originally proposed an administrative penalty of $1 million. However, in light of the subsequent release of the *CanGlobe* decision the Director requested an administrative penalty in the range of $400,000 to $600,000. The Respondents did not contest the amount of the administrative penalty but asked that it be structured such that their creditors be repaid before the fine.

[23] Based on the factors described above and the guidance provided in *CanGlobe* and *Sponagle*, as well comparable situations in other jurisdictions (see *Panther, Bluforest, Meharchand*), we find that an administrative penalty, payable jointly and severally by the Respondents, of $500,000 is appropriate. We do not agree to any

delay in the repayment of the administrative penalty pending repayment of the Respondents' creditors. Since the Respondents have to date made no effort to repay any of the Complainants (other than as ordered by a court), the practical result of acceding to that request would mean that both the Complainants and the Commission would remain unpaid indefinitely.

Costs

[24] Section 135A of the Act gives the Commission the power to order the Respondents to pay costs in connection with the investigation and prosecution of an offence or the investigation and conduct of the proceeding in respect of which an order was made.

[25] Staff submitted a schedule of costs and asked for costs of $25,000, which represents substantial recovery of the fees and disbursements the Director is permitted to claim. The Respondents agreed with the cost amount although again requested that payment be delayed pending repayment of their creditors. We find the cost amount of $25,000 to be appropriate and we do not consent to any payment delay.

Section 133

[26] In its submissions the Director asked the Commission to order that, pursuant to section 133 of the Act, an application shall be made to the Supreme Court of Nova Scotia for (1) a declaration pursuant to subsection 133(1) of the Act that the Respondents have not complied with Nova Scotia securities law and (2) for such further orders pursuant to subsection 133(1C) of the Act as the Court considers appropriate including orders pursuant to subsection 133(1C), paragraph 13 requiring the Respondents to compensate or make restitution to aggrieved parties.

[27] The relevant sections of section 133 provide as follows:

> 133 (1) The Commission may apply to the Supreme Court of Nova Scotia for a declaration that a person or company has not complied with or is not complying with Nova Scotia securities laws.
>
> (1C) Where the court makes a declaration under subsection (1), the court may, notwithstanding the imposition of any other penalty on the person or company and notwithstanding any order made by the Commission, make any order that the court considers appropriate against the person or company, including without limiting the generality of the foregoing, one or more of the following orders:
>
> > 13. An order requiring the person or company to compensate or make restitution to an aggrieved person or company.

[28] The Director cited no cases in which the Commission has sought restitution before the courts pursuant to section 133. However, section 128 of the Ontario *Securities*

Act (Ontario Act) is similar to section 133. In *Ochnik, Re*, 2006 29 OSCB 3929, a case involving an illegal loan scheme, the panel in that matter ordered that an application under section 128 of the Ontario Act be made to the Ontario courts seeking restitution by the directing minds of the illegal scheme to the aggrieved parties.

[29] The Act gives the Commission a broad range of remedial powers to carry out its public interest mandate. A section 133 order of the kind requested by the Director serves a compensatory purpose not otherwise available to complainants under the Act. While ultimately an order for restitution or any other remedy would be up to the court hearing the matter, the present case is ideally suited to a section 133 application given the limited number of complainants and the discrete and readily ascertainable amounts involved.

[30] The Respondents argue that a section 133 order is not necessary, since they acknowledge their indebtedness and intend to fully repay their creditors. However, four of the five Complainants have not received back any of the funds they provided to the Respondents, and it appears that the Complainant who received his funds did so only after the intervention of the courts. The Respondents provided no evidence, either at the Hearing or in their submissions regarding sanctions, of any attempts made to repay the Complainants. We agree with the Director that an order under section 133 is appropriate in this case.

IV. CONCLUSION

[31] Based on the foregoing, we will issue an order that provides that:

(a) Pursuant to section134(1)(a)(i) of the Act the Respondents comply with Nova Scotia securities laws;

(b) Pursuant to section 134(1)(b)(ii) of the Act, trading in any securities and derivatives by the Respondents shall cease permanently;

(c) Pursuant to section 134(1)(c) of the Act, the exemptions contained in Nova Scotia securities law shall not apply to the Respondents permanently;

(d) Pursuant to section 134(1)(d)(ii) of the Act, Robinson is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;

(e) Pursuant to section 134(1)(g) of the Act, the Respondents are prohibited permanently from becoming or acting as a registrant or promoter;

(f) Pursuant to section 135 of the Act, the Respondents shall, jointly and severally, pay an administrative penalty to the Commission of $500,000;

(g) Pursuant to section 135A of the Act, the Respondents shall, jointly and severally, pay costs in connection with the investigation and conduct of the proceeding in the amount of $25,000; and

(h) Pursuant to section 133 of the Act, an application shall be made to the Supreme Court of Nova Scotia for (1) a declaration pursuant to subsection 133(1) of the Act that the Respondents have not complied with Nova Scotia securities law and (2) for such further orders pursuant so subsection 133(1C) of the Act as the Court considers appropriate including orders pursuant to subsection 133(1C), paragraph 13, requiring the Respondents to compensate or make restitution to aggrieved parties.

DATED at Halifax, Nova Scotia, this 6th day of January, 2022.

NOVA SCOTIA SECURITIES COMMISSION

(signed) *"Valerie Seager"*
Valerie Seager
Chair

(signed) *"Michael Deturbide"*
Michael Deturbide
Commissioner

(signed) *"Ken Wheelans"*
Ken Wheelans
Commissioner