



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

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File No. 2018-54

**IN THE MATTER OF
DANIEL P. REEVE**

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

Hearing: In Writing

Decision: November 26, 2018

Panel: Timothy Moseley Vice-Chair and Chair of the Panel

Appearances: Vivian Lee For Staff of the Commission

No submissions were made by or on behalf of Daniel P. Reeve

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

- [1] On October 13, 2017, the respondent Daniel P. Reeve was convicted in the Ontario Superior Court of Justice of defrauding at least 41 investors of approximately \$10 million.¹ Justice Skarica sentenced Mr. Reeve to 14 years in custody, the statutory maximum for fraud under the *Criminal Code*², and ordered Mr. Reeve to pay more than \$10 million in restitution to his victims.³
- [2] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) seeks an order from the Commission to protect Ontario investors by permanently prohibiting Mr. Reeve from participating in Ontario's capital markets. Staff relies on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)⁴, which provide that the Commission may make an order in the public interest in respect of a person who has been convicted of an offence arising from a course of conduct related to securities.
- [3] For the reasons that follow, I find that Mr. Reeve's conviction arose from transactions and a course of conduct related to securities and it is in the public interest to issue an order imposing the permanent bans requested by Staff.

II. SERVICE AND PARTICIPATION

- [4] On September 26, 2018, the Commission issued a Notice of Hearing naming Mr. Reeve as respondent, in relation to a Statement of Allegations dated September 24, 2018. On October 3, 2018, Mr. Reeve was served personally with the Notice of Hearing, Statement of Allegations and Staff's written hearing materials.⁵ I find that service was properly effected on Mr. Reeve on October 3, 2018.
- [5] The Notice of Hearing states that this proceeding shall be heard in writing and that Mr. Reeve had 21 days from the date of service to file a request for an oral hearing, and 28 days from the date of service to file a hearing brief and written submissions. Pursuant to Rule 11(3) of the *Ontario Securities Commission Rules of Procedure and Forms* (**OSC Rules of Procedure**)⁶, the deadlines for Mr. Reeve to request an oral hearing and to serve and file written submissions were October 24 and 31, 2018, respectively. No request for an oral hearing was made and no materials were filed on behalf of Mr. Reeve.
- [6] I am satisfied that Mr. Reeve was provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers Procedure Act*⁷ and the OSC Rules of Procedure⁸, the Commission may proceed in Mr. Reeve's absence.

¹ *R v Reeve*, 2017 ONSC 5376 (**Reasons for Judgment**) at para 1; *R v Reeve*, 2018 ONSC 3744 (**Reasons for Sentence**) at para 2

² RSC 1985, c C-46

³ Reasons for Sentence at paras 210 and 211

⁴ RSO 1990, c S.5

⁵ Exhibit 1, Affidavit of Service of Rose Del Sordo sworn October 5, 2018

⁶ (2017), 40 OSCB 8988, r 11(3)(e)-(g)

⁷ RSO 1990, c S.22, s 7(2)

⁸ OSC Rules of Procedure, r 21(3)

III. CRIMINAL CONVICTION AND SENTENCING

A. Conduct at issue and conviction

- [7] Mr. Reeve's criminal conduct is described in detail in Justice Skarica's Reasons for Judgment and his subsequent Reasons for Sentence.
- [8] Mr. Reeve was a financial planner who owned and operated investment offices in and around Kitchener, Ontario. He established a financial investment business, wrote several investment books and made media appearances regarding his approach to investing.⁹
- [9] From January 1, 2007, to September 30, 2009, Mr. Reeve solicited investors to make various investments that he characterized as "low-risk", "no-risk" and/or "guaranteed". Through approximately 70 transactions during this time, 41 investors deposited approximately \$12 million with Mr. Reeve. Despite Mr. Reeve's promises that these investments would return between 12 to 20 percent (and sometimes more), investors lost more than \$10 million.¹⁰
- [10] Unbeknownst to investors, Mr. Reeve deliberately diverted investor funds to the following "three priority purposes":
- a. shareholder loans to him and his ex-wife for, among other things, satisfying spousal support and equalization obligations;
 - b. payment of expenses incurred by his failing companies; and
 - c. repayments to other investors in a Ponzi-like distribution.¹¹
- [11] Mr. Reeve was charged with one count of fraud over \$5,000 and one count of theft over \$5,000, contrary to subsection 380(1) and paragraph 334(a) of the *Criminal Code*.¹²
- [12] After a trial that lasted many months spanning a period of almost two years, Justice Skarica found Mr. Reeve guilty on both counts.¹³ Justice Skarica entered a conviction on the fraud charge but conditionally stayed the count of theft over \$5,000, given that the two counts dealt with the same set of facts.¹⁴
- [13] Justice Skarica characterized the matter as "an overwhelming case of fraud and theft perpetrated by a devious, clever, calculating, cold-hearted man who has absolutely no remorse for the many lives that he ruined."¹⁵ He described the fraud and its impact on the victims as follows:

...For purposes of greed and ego, Mr. Reeve initiated a number of Ponzi schemes and scams that lasted over a period of two and a half years. Mr. Reeve was in a trust relationship with the vast majority of the investors and the 41 core victims. Most of the victims were long-time clients and/or friends. No person was too vulnerable to be victimized. Mr. Reeve was aware of the victims' financial and

⁹ Reasons for Sentence at paras 1 and 10

¹⁰ Reasons for Judgment at paras 2659, 2667 and 2696

¹¹ Reasons for Judgment at para 2625, 2640, 2667, 2683, 2688 and 2691-2692

¹² Reasons for Judgment at para 2

¹³ Reasons for Judgment at para 2658; Reasons for Sentence at para 2

¹⁴ Reasons for Judgment at para 2658

¹⁵ Reasons for Judgment at para 2697

personal circumstances. He was aware of their vulnerabilities whether financial, physical, emotional or psychological. Mr. Reeve was fully aware of the devastating impact that the loss of all or most of their life savings would have on the victims. The fraud was substantial – \$10-12 million. Mr. Reeve was unlicensed. He took full advantage of the high regard he had in the community and the personal trust and faith the victims had in him. There has been not a nickel in restitution. In my opinion, despite Mr. Reeve’s assurances of eventual repayment, no restitution will ever be made...¹⁶

B. Sentencing

- [14] Following a sentencing hearing in June 2018, Justice Skarica sentenced Mr. Reeve to the statutory maximum of 14 years in custody.¹⁷ In deciding to impose the maximum sentence, Justice Skarica observed that “many, if not most, of the victims, were left with lives of complete devastation, absolute destitution and utter despair”, and that Mr. Reeve, “like a true predator, walked away... with absolutely no empathy or remorse for the suffering and scarring left behind”.¹⁸
- [15] Justice Skarica also ordered Mr. Reeve to pay restitution in the amount of \$10,887,885 and a fine in the same amount, to be reduced by any amount paid towards the restitution order. Justice Skarica further ordered that Mr. Reeve serve an additional 10 years in prison if he fails to pay the fine within 10 years.¹⁹

IV. ANALYSIS

- [16] Paragraph 1 of subsection 127(10) of the Act provides that an order may be made under subsection 127(1) in respect of a person if the person “has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives”.
- [17] Staff’s request for an order pursuant to subsection 127(1), made in reliance upon subsection 127(10), therefore presents two issues:
- a. Did Mr. Reeve’s conviction arise from a transaction, business or course of conduct related to securities or derivatives?
 - b. If so, what, if any, sanctions should the Commission order against Mr. Reeve?
- A. Did Mr. Reeve’s conviction arise from a transaction, business or course of conduct related to securities or derivatives?**
- [18] The term “security” is defined in subsection 1(1) of the Act to include an “investment contract”. That term is not defined in the Act, but as the Supreme Court of Canada has held, an investment contract will be found where (1) there

¹⁶ Reasons for Sentence at para 156

¹⁷ Reasons for Sentence at para 163

¹⁸ Reasons for Sentence at para 161

¹⁹ Reasons for Sentence at paras 190, 199-201 and 211-214

is an investment of funds with a view to profit, (2) in a common enterprise, and (3) the profits are to be derived solely from the efforts of others.²⁰

[19] I now apply that three-pronged test to the facts of this case. In doing so, I rely on Justice Skarica's reasons, which stand as findings of fact for the purpose of the Commission's considerations under subsection 127(10) of the Act.²¹

1. Investment of funds with a view to profit

[20] There can be no dispute that the transactions at issue were investments of funds with a view to profit. As noted above in paragraph [9], the victims of the fraud made their investments having been promised high rates of return.

2. Investment of funds in a common enterprise, where the profits are to be derived solely from the efforts of others

[21] In describing the second and third prongs of the test to determine the existence of an investment contract, the Supreme Court of Canada held that:

...such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor's role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words the "commonality" necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves.²²

[22] At least from the point of view of the investors in this case, *i.e.*, the victims of the fraud, the transactions at issue were undertaken for their benefit. The investors did nothing more than advance the funds. They believed, based upon representations made to them by Mr. Reeve, that he would ensure that their investments would be in legitimate enterprises that would generate returns. They understood that Mr. Reeve had at least some managerial control over their investments. These facts establish commonality between the investors and Mr. Reeve, in circumstances where the anticipated profits were to be derived solely from the efforts of others.

3. Conclusion

[23] The transactions in respect of which Mr. Reeve was convicted of fraud were investments with a view to profit, in a common enterprise between Mr. Reeve and the investors, where the profits were to be derived solely from the efforts of someone other than the investors. As a result, all three prongs of the test referred to above are satisfied and the investment contracts were securities as that term is defined in the Act. It follows that Mr. Reeve's conviction arose from transactions, and a course of conduct, relating to securities. The test prescribed by subsection 127(10) of the Act is satisfied.

²⁰ *Pacific Coast Coin Exchange v Ontario (Securities Commission)*, 1977 CanLII 37 (SCC), [1978] 2 SCR 112 (***Pacific Coast***) at 128

²¹ *Black (Re)*, 2014 ONSEC 16, (2014) 37 OSCB 5847 at paras 24-26

²² *Pacific Coast* at 129-30

B. What, if any, sanctions should the Commission order against Mr. Reeve?

[24] Having found that the test in subsection 127(10) of the Act has been met, I must now determine what sanctions, if any, should be ordered against Mr. Reeve.

1. Legislative framework and public interest considerations

[25] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders imposed following breaches of securities law. The subsection does not itself empower the Commission to make an order; rather it provides a basis for an order under subsection 127(1).

[26] Orders made under subsection 127(1) of the Act are “protective and preventative” and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.²³

[27] In determining specific sanctions, the Commission may consider, among other factors, the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.²⁴

2. Facts of this case

[28] As this Commission has repeatedly held, fraud is one of the most egregious violations of securities law. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.²⁵

[29] I respectfully agree with Justice Skarica’s characterization of this matter as “an overwhelming case of fraud”.²⁶ In my view, each of the following facts is relevant to an assessment of the gravity of Mr. Reeve’s conduct and the effects of that conduct on the victims and on confidence in Ontario’s capital markets:

- a. the fraud involved a large number of victims (41) in approximately 70 transactions;²⁷
- b. the transactions resulted in the loss of approximately \$10 million;²⁸
- c. Mr. Reeve took advantage of the high regard he enjoyed in the investment and general community;²⁹
- d. Mr. Reeve’s conduct was a breach of trust;³⁰
- e. the victims included the disabled, the elderly, the emotionally vulnerable, grieving spouses, close long-time friends, loyal clients and complete strangers;³¹

²³ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 26 at paras 42-43

²⁴ *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136

²⁵ *Black Panther (Re)*, 2017 ONSEC 8, (2017) 40 OSCB 3727 at para 48

²⁶ Reasons for Judgment at para 2697

²⁷ Reasons for Sentence at para 111

²⁸ Reasons for Sentence at para 111

²⁹ Reasons for Sentence at para 111

³⁰ Reasons for Sentence at para 114 and 156

³¹ Reasons for Sentence at para 95

- f. the fraud was well publicized in southwestern Ontario and has the potential to affect investor confidence in investment firms and, ultimately, the Canadian financial system;³²
- g. the circumstances of the fraud were so egregious that they warranted the maximum sentence under the *Criminal Code*;³³ and
- h. Mr. Reeve took no responsibility and showed no remorse for his misconduct.³⁴

[30] Justice Skarica agreed with the Crown that there were no mitigating circumstances in this case. To the contrary, Justice Skarica stated that this case presented virtually every aggravating circumstance recognized by the *Criminal Code* and the case law.³⁵

[31] As noted above, in this proceeding Mr. Reeve neither appeared nor responded to Staff's submissions to put forward any potential mitigating factors.

3. Analysis

[32] It is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring Mr. Reeve from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons.

[33] This case is among the most serious to have come before the Commission. Only a permanent ban on Mr. Reeve participating in the capital markets would adequately protect investors and those markets.

V. CONCLUSION

[34] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff. I will therefore order that:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Mr. Reeve shall cease permanently;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Mr. Reeve shall be prohibited permanently;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Mr. Reeve permanently;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Mr. Reeve shall resign any positions that he holds as director or officer of any issuer or registrant;
- e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mr. Reeve shall be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

³² Reasons for Sentence at para 111

³³ Reasons for Sentence at para 163

³⁴ Reasons for Sentence at paras 15, 99-100, 112 and 158

³⁵ Reasons for Sentence at paras 110 and 148

f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Reeve shall be prohibited permanently from becoming or acting as a registrant or promoter.

[35] Staff's requested order would have, in items (d), (e) and (f) above, referred explicitly to both "registrants" and "investment fund managers". I adopt the Commission's reasons in *Inverlake Property Investment Group Inc (Re)*³⁶ and *Vantooren (Re)*,³⁷ in which the Commission found such a distinction unnecessary. As a result, the order I shall issue refers only to registrants, which term includes investment fund managers.

Dated at Toronto this 26th day of November, 2018.

"Timothy Moseley"

Timothy Moseley

³⁶ 2018 ONSEC 35, (2018) 41 OSCB 5309 at para 39

³⁷ 2018 ONSEC 36, (2018) 41 OSCB 5603 at para 30