



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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Citation: SBC Financial Group Inc. (Re), 2018 ONSEC 60

Date: 2018-12-21

File No. 2018-67

**IN THE MATTER OF  
SBC FINANCIAL GROUP INC. and  
PRABHJOT SINGH BAKSHI**

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

**Hearing:** In Writing

**Decision:** December 21, 2018

**Panel:** D. Grant Vingoe Vice-Chair and Chair of the Panel

**Appearances:** Vivian Lee For Staff of the Commission

No submissions made by or on behalf of SBC Financial Group Inc.  
and Prabhjot Singh Bakshi.

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## REASONS AND DECISION

### I. INTRODUCTION AND BACKGROUND

- [1] In a decision issued by the British Columbia Securities Commission (the **BCSC**) on April 16, 2018,<sup>1</sup> the BCSC Hearing Panel (the **BCSC Panel**) found that SBC Financial Group Inc. (**SBC**) and Prabhjot Singh Bakshi (**Bakshi**)(together, the **Respondents**) engaged in unregistered trading and illegal distributions of securities, contrary to sections 34(a) and 61 of the British Columbia *Securities Act* (the **BC Act**).<sup>2</sup> The BCSC Panel also found that Bakshi was liable for SBC's contraventions of BC securities law, contrary to section 168.2(1) of the BC Act.
- [2] In a second decision, dated September 5, 2018 (the **BCSC Sanctions Decision**),<sup>3</sup> the BCSC Panel imposed various sanctions on the Respondents. The BCSC Panel ordered that, among other things:
- a. Bakshi be prohibited from trading in securities for a period of at least ten years, subject to a limited exception;
  - b. Bakshi be prohibited from becoming or acting as a director or officer of any issuer or registrant, for a period of at least ten years;
  - c. Bakshi disgorge funds and pay an administrative penalty;
  - d. SBC be prohibited from trading in securities for a period of ten years; and
  - e. SBC disgorge funds.
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) relies on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)<sup>4</sup> and requests that the Commission issue an order that replicates the non-monetary sanctions imposed by the BCSC Panel.
- [4] For the reasons that follow, I find that it is in the public interest to issue an order substantially in the form requested by Staff.

### II. BRITISH COLUMBIA SECURITIES COMMISSION PROCEEDING

#### A. The Respondents

- [5] Bakshi was the sole officer, director and shareholder of SBC.<sup>5</sup> He was also a former registrant in various categories, however he ceased to be registered in any capacity under the BC Act in February 2009, before the start of the misconduct that was sanctioned by the BCSC Panel.<sup>6</sup>
- [6] SBC was a British Columbia corporation controlled by Bakshi. SBC was placed into bankruptcy on January 23, 2015 and subsequently dissolved for failing to file records on November 21, 2016. SBC was never registered in any capacity under the BC Act.<sup>7</sup>

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<sup>1</sup> *Re SBC Financial Group Inc.*, 2018 BCSECCOM 113 (**BC Merits Decision**)

<sup>2</sup> RSBC 1996, c 418

<sup>3</sup> *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267 (**BC Sanctions Decision**)

<sup>4</sup> RSO 1990 c S.5

<sup>5</sup> BC Merits Decision at para 12

<sup>6</sup> BC Merits Decision at para 9

<sup>7</sup> BC Merits Decision at para 10

- [7] Neither Respondent ever filed a prospectus under the BC Act.<sup>8</sup>
- [8] The Respondents held themselves out to investors as being in the investment management and financial services business.<sup>9</sup>
- [9] Between August 2010 and September 2014<sup>10</sup> (the **Material Time**) the Respondents solicited investments in two different products: an interest-bearing loan arrangement between investors and SBC, and a Hawaiian real estate transaction.<sup>11</sup>

#### **B. The SBC Loan Transactions**

- [10] The interest-bearing loan arrangements between investors and SBC were typically documented by at least one of the following documents: a Lender Loan Questionnaire, a letter agreement or a promissory note. The terms of the notes varied among investors. Promised returns were between 5-30% and maturity dates varied from two months to 5 years. The most common term to maturity was three years.<sup>12</sup>
- [11] Bakshi provided investors with regular account statements which purported to show their investments and returns.<sup>13</sup> Investors had the option of receiving their purported interest payments or allowing their returns to compound.<sup>14</sup>
- [12] The BCSC Panel found that the limitation period operational under section 159 of the BC Act operated to reduce the possible contraventions of issuances of a security without a prospectus<sup>15</sup> from the 53 issuances of securities alleged by the Executive Director to 48 issuances, for proceeds totalling \$1,735,238.<sup>16</sup> The limitation period did not impact the allegations relating to trading in securities without registration<sup>17</sup> as the trading constituted a continuous course of conduct.<sup>18</sup>

#### **C. The Hawaiian Land Transactions**

- [13] Three investors invested a total of \$400,000 with SBC in relation to what Bakshi claimed was a transaction to invest in parcels of land in Hawaii. Once re-zoned, title to the land was to be transferred to investors, at which time they were told they could choose to sell the lot or build a vacation home on the lot.<sup>19</sup>
- [14] The BCSC Panel found that all elements of this investment were fabricated by Bakshi.<sup>20</sup>
- [15] Notwithstanding the above findings, the BCSC Panel found that although Bakshi engaged in deceitful conduct relating to these transactions, they did not satisfy the "common enterprise" aspect of the "investment contract" test in *Pacific Coast*

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<sup>8</sup> BC Merits Decision at para 11

<sup>9</sup> BC Merits Decision at paras 18 and 119

<sup>10</sup> BC Merits Decision at paras 72 and 139

<sup>11</sup> BC Merits Decision at para 14

<sup>12</sup> BC Merits Decision at para 15

<sup>13</sup> BC Merits Decision at para 19

<sup>14</sup> BC Merits Decision at para 20

<sup>15</sup> BC Act, s 61

<sup>16</sup> BC Merits Decision at para 92

<sup>17</sup> BC Act, s 34(a)

<sup>18</sup> BC Merits Decision at paras 78 and 82

<sup>19</sup> BC Merits Decision at paras 28, 31

<sup>20</sup> BC Merits Decision at para 42

*Coin Exchange of Canada v. Ontario Securities Commission*.<sup>21</sup> Having held that the transactions were not a “security” as defined by the BC Act, the BCSC Panel dismissed the fraud allegations against Bakshi and reduced the magnitude of the wrongdoing involved in the remaining allegations of contraventions of section 34(a) and section 61 of the BC Act.<sup>22</sup>

**D. Findings – Breach of sections 34(a), 61 and 168.2(1) of the BC Act**

- [16] The BCSC Panel found that the Respondents contravened section 34(a) of the BC Act with respect to trading in securities between October 2010 and September 2014 in the amount of \$2,675,238. They also found the Respondents contravened section 61 of the BC Act with respect to 45 issuances of securities for \$1,535,238. Finally, they found that Bakshi contravened section 168.2(1) of the BC Act as he was an officer and director SBC and authorized, permitted or acquiesced in the contraventions of the BC Act by SBC.<sup>23</sup>

**E. BCSC Sanctions Decision**

- [17] In the BCSC Sanctions Decision, the BCSC Panel imposed both monetary and market conduct sanctions against the Respondents. Staff does not seek an order replicating the monetary sanctions.
- [18] The BCSC Panel imposed the following non-monetary sanctions:

Bakshi

- a. under section 161(1)(d)(i) of the BC Act, Bakshi resign any position he holds as a director or officer of an issuer or registrant;
- b. Bakshi is prohibited until the later of 10 years from the date of the BCSC Order and the date that he pays the amounts set out in paragraphs 87(c) and 87(d) of the BCSC Sanctions Decision:
  - i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account) through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;
  - ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
  - iii. under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;
  - iv. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
  - v. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
  - vi. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

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<sup>21</sup> [1978] 2 SCR 112

<sup>22</sup> BC Merits Decision at paras 95, 106, 108, 110

<sup>23</sup> BC Merits Decision at paras 139 and 140

## SBC

- c. SBC is prohibited for 10 years:
  - i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
  - ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
  - iii. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
  - iv. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
  - v. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities.

### **III. SERVICE AND PARTICIPATION**

[19] In this proceeding, the Respondents were served via email on November 16, 2018, with the Notice of Hearing, Statement of Allegations, Staff's written submissions, and hearing brief.<sup>24</sup> Bakshi was served personally and on behalf of SBC via courier at his home address, and SBC was also served at their last known registered office address.<sup>25</sup> I find that service was properly effected on the Respondents.

[20] Pursuant to Rule 11(3) of the *Ontario Securities Commission Rules of Procedure and Forms (OSC Rules of Procedure)*<sup>26</sup> the deadline for the Respondents to serve and file written submissions was December 14, 2018. Although properly served, no materials were filed on behalf of the Respondents.

[21] I am satisfied that the Respondents were provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers Procedure Act* and the *OSC Rules of Procedure*, the Commission may proceed in the absence of a party where that party has been given adequate notice of the hearing.<sup>27</sup>

### **IV. ANALYSIS**

#### **A. Introduction**

[22] The issues for me to consider are:

- a. whether one of the circumstances under subsection 127(10) of the Act applies to the Respondents, namely, are the Respondents subject to an order made by a securities regulatory authority imposing sanctions, conditions, restrictions or requirements (s. 127(10)(4)); and if so
- b. whether the Commission should exercise its jurisdiction to make a protective order in the public interest in respect of the Respondents pursuant to subsection 127(1) of the Act.

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<sup>24</sup> Hearing Brief marked as Exhibit 1

<sup>25</sup> Affidavit of Service of Lee Crann, sworn November 20, 2018, marked as Exhibit 2

<sup>26</sup> *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988, r 11(3)(g)

<sup>27</sup> *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2); *OSC Rules of Procedure*, r 21(3)

[23] The BCSC is a securities regulatory authority. In the BCSC Sanctions Decision, the BCSC Panel made the orders set out in paragraph [18] above, imposing sanctions on the Respondents. The test under paragraph 4 of subsection 127(10) of the Act is therefore satisfied.

[24] I must therefore consider whether it is in the public interest for the Commission to make an order against the Respondents, and if so, what that order should be.

#### **B. Statutory authority to make public interest orders**

[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.<sup>28</sup>

[27] In exercising its jurisdiction to make an order in reliance on subsection 127(10) of the Act, the Commission does not require that the underlying conduct have a connection to Ontario.<sup>29</sup>

#### **C. Orders against dissolved corporations**

[28] Following its bankruptcy, SBC was dissolved on November 21, 2016, for failure to file records.<sup>30</sup>

[29] The BCSC Panel acknowledged this fact in their Sanctions Decision, but determined that sanctions against SBC were warranted and in the public interest:

Although SBC has been dissolved, we find it to be in the public interest to make our market prohibition orders against the company. Dissolved companies can be reinstated relatively easily and we would not be adequately protecting the public if we did not make orders to cover off that possibility.<sup>31</sup>

[30] Additionally, there is a provision of the British Columbia *Business Corporations Act*, which provides that legal proceedings may be pursued against a company within two years of its dissolution, as if it had not been dissolved.<sup>32</sup> Staff’s Statement of Allegations in this matter is dated the 14<sup>th</sup> day of November 2018, and thus this proceeding was commenced within the two-year period.

[31] I agree with the reasoning of the BCSC Panel in this respect and accordingly will reciprocate the non-monetary sanctions ordered by the BCSC against both Bakshi and SBC.

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<sup>28</sup> *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

<sup>29</sup> *Wong Sang Shen Cho (Craig Cho)*, 2014 ONSEC 20, (2014) 37 OSCB 7285 at para 48

<sup>30</sup> BCSC Merits Decision at para 10

<sup>31</sup> BCSC Sanctions Decision at para 45

<sup>32</sup> British Columbia *Business Corporations Act*, SBC 2002, c 57, subsection 346 (1)(b)

#### **D. Appropriate sanctions**

- [32] Staff submits that the Respondents' conduct warrants an order designed to protect Ontario investors from the Respondents, by limiting the Respondents' participation in Ontario's capital markets. I agree that such an order would be in the public interest.
- [33] In determining specific sanctions, the Commission may consider a number of factors, including the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.<sup>33</sup>
- [34] In this case, the misconduct was serious. The BCSC Panel found that sections 34 and 61 of the BC Act are "cornerstone" provisions, "as they relate directly to the protection of the investing public in the purchase and sale of securities."<sup>34</sup>
- [35] The BCSC Panel went on to note the harm that was caused to investors by the Respondents' lack of registration saying:
- The investors lost substantial investments without having received sufficient information regarding SBC and its securities with which to make an informed investment decision and the respondents dealt with investors in an unregistered capacity and without fulfilling basic obligations that, as a registrant, they would have owed their clients.<sup>35</sup>
- [36] The harm suffered by investors was significant. While some investors received interest payments on their investments, many did not. All the investors' investments were lost when SBC was petitioned into bankruptcy, and the investors did not receive any distributions from the bankruptcy proceedings.<sup>36</sup>
- [37] In contrast, the Respondents were personally enriched by their misconduct in the amount of \$2,115,040, as SBC was the beneficiary of the proceeds of its unregistered trading and illegal distributions, and Bakshi, as the owner and directing mind of SBC was indirectly enriched by SBC's enrichment. The BCSC Panel also found that Bakshi was personally enriched as he directly obtained a portion of the investors' funds.<sup>37</sup>
- [38] The BCSC Panel found no mitigating factors with respect to the Respondents, and no aggravating factors with respect to SBC. The BCSC Panel found that Bakshi's previous registration status was an aggravating factor. As a former registrant Bakshi should have known that the conduct he and SBC carried out required registration. He also should have been familiar with the prospectus requirements and available exemptions under the BC Act, and understood that certain SBC investors did not qualify for the exemptions they claimed in relation to SBC's offering of securities.<sup>38</sup>

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<sup>33</sup> *Belteco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136

<sup>34</sup> BCSC Sanctions Decision at para 14

<sup>35</sup> BCSC Sanctions Decision at para 18

<sup>36</sup> BCSC Sanctions Decision at para 20

<sup>37</sup> BCSC Sanctions Decision at paras 22 – 24

<sup>38</sup> BCSC Sanctions Decision at paras 29 and 31



[39] It is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring the Respondents from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons. I accept Staff's submission that the sanctions imposed by the BCSC Panel are proportionate to the Respondents' misconduct and that it would be appropriate for me to issue a substantially similar order.

#### **E. Differences between BC and Ontario sanctions**

[40] Due to differences between the Act and the BC Act, some of the sanctions I impose cannot be identical to those imposed by the BCSC Panel. This is true with respect to two aspects of the sanctions.

[41] First, the BCSC Sanctions Decision prohibits the Respondents from trading in or purchasing "exchange contracts". Subsection 127(1) of the Act does not expressly refer to exchange contracts. The BC Act defines "exchange contract" to mean a futures contract or option that meets certain specified requirements. As a result, Staff seeks an order permanently prohibiting the Respondents from trading in derivatives. In my view, when considering the factors described above that support the making of orders prohibiting trading, there is no reason to distinguish between securities and derivatives. In the circumstances of this case, it is equally in the public interest to protect Ontario investors and the capital markets by prohibiting the Respondents from trading in derivatives. I will therefore make the order requested by Staff.

[42] Second, the BCSC Sanctions Decision prohibits the Respondents from engaging in "investor relations activities" and from "acting in a management or consultative capacity in connection with activities in the securities market". In Ontario, the Act does not use those terms. Instead, such activities would largely be covered by the prohibitions already requested, against Bakshi acting as a director or officer of an issuer, or against either Respondent acting as a registrant or promoter. I find that it is in the public interest to make the order as requested by Staff, and that such an order effectively mirrors the relevant provisions of the BCSC Sanctions Decision.

#### **V. CONCLUSION**

[43] 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:

Against SBC that:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by SBC shall cease until September 5, 2028;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by SBC shall cease until September 5, 2028;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to SBC until September 5, 2028; and
- d. pursuant to paragraph 8.5 of subsection 127(1) of the Act, SBC is prohibited until September 5, 2028 from becoming or acting as a registrant or promoter;

Against Bakshi that:

until the later of September 5, 2028 and the date that Bakshi pays to the BCSC the amounts set out in paragraphs 87(c) and 87(d) of the BCSC's Sanctions Decision:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Bakshi shall cease, except that he may trade for his own account (including one RRSP account) through a registered dealer, if he provides the registered dealer with copies of the BCSC Sanctions Decision and this order;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Bakshi shall cease, except that he may purchase securities for his own account (including one RRSP account) through a registered dealer, if he provides the registered dealer with copies of the BCSC Sanctions Decision and this order;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Bakshi;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bakshi shall resign any positions that he holds as a 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, Bakshi is prohibited from becoming or acting as a director or officer of any issuer or registrant; and
- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Bakshi is prohibited from becoming or acting as a registrant or promoter.

Dated at Toronto this 21<sup>st</sup> day of December, 2018.

"D. Grant Vingoe"

D. Grant Vingoe