

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act*, RSBC 1996, c. 418

Citation: Re Kitts, 2021 BCSECCOM 99

Date: 20210315

**Reciprocal Order**

**Brian Arthur Kitts**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

- [1] This is an order under sections 161(1) and 161(6)(c) of the *Securities Act*, RSBC 1996, c. 418.
- [2] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies and exchanges. The executive director of the Commission has applied for an order reciprocating in British Columbia certain of the orders made by the Alberta Securities Commission (ASC) against Brian Arthur Kitts (Kitts) in a decision involving both Vesta Capcorp Inc. (Vesta) and Kitts (Application).
- [3] The ASC made its orders on November 12, 2019 in its decision *Re Kitts*, 2019 ABASC 173 which followed the ASC's findings against Kitts and Vesta in the decision *Re Kitts*, 2019 ABASC 91.
- [4] In his Application, the executive director tendered affidavit evidence and made written submissions to the Commission. We find that the executive director provided notice of the Application to Kitts. Although Kitts was provided the opportunity to be heard, he did not participate in the hearing.
- [5] The Commission makes reciprocal orders under section 161(6) when such an order will, in the public interest, protect investors and the capital markets in British Columbia. Although the order in British Columbia is based on findings and sanctions in another jurisdiction, the Commission must be able to regulate a cross-border securities industry with highly mobile funds, people and information.
- [6] The ASC found the following facts:
  - a. Kitts was the sole director and officer and guiding mind of Vesta;
  - b. Vesta raised approximately \$5.3 million from investors through short-term promissory notes that promised to repay principal and either "fees and profit sharing" or "profit sharing" at a 20% monthly rate of return;
  - c. Investors generally understood the funds provided to Vesta would be used for short-term financing to real estate industry participants and that the investors would receive their principal and profit-sharing payments once Vesta was repaid by the real estate industry participants;

- d. Investors' understanding was largely based on information conveyed directly to them by Kitts;
  - e. Kitts was aware the information he was providing to investors was fictitious; and
  - f. Vesta used investor funds to repay principal and fictitious profit-sharing to investors in a manner consistent with a Ponzi scheme.
- [7] The ASC determined that Vesta and Kitts contravened section 93(b) (currently 93(1)(b)) of the Alberta *Securities Act*, concluding that Kitts and Vesta knowingly engaged in prohibited acts that placed investors' pecuniary interests at risk.
- [8] The ASC imposed permanent market prohibitions on Kitts and made orders for administrative penalties, disgorgement and costs against both Kitts and Vespa.
- [9] The executive director also tendered evidence of Kitts' past misconduct which included both criminal sentences and administrative sanctions for securities fraud in Utah. The ASC found that rather than accept responsibility for his misconduct in Utah, Kitts absconded and embarked on a new fraud in Canada and elsewhere in the United States.
- [10] The executive director submitted that there were no mitigating factors relating to Kitts' conduct.
- [11] The executive director submitted that there were aggravating factors, in particular Kitts' continuation and escalation of fraudulent activity in Alberta while he was a fugitive from criminal proceedings in Utah.
- [12] To prevent Kitts from engaging in similar conduct in British Columbia, we find that it is in the public interest to order that:
- a) under section 161(1)(d)(i), Kitts resign any position he holds as a director or officer of an issuer or registrant;
  - b) Kitts is permanently prohibited:
    - i. under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives;
    - ii. under section 161(1)(c), from relying on any exemptions set out in this Act, the regulations or a decision;
    - iii. under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant.
    - iv. under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter.

- v. under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
- vi. under section 161(1)(d)(v) from engaging in promotional activities by or on behalf of
  - a. an issuer, security holder or party to derivative, or
  - b. another person that is reasonably expected to benefit from the promotional activity; and
- vii. under section 161(1)(vi) from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person.

March 15, 2021

**For the Commission**

Gordon Johnson  
Vice Chair

Deborah Abbey  
Commissioner