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

Citation: Re Braun, 2019 BCSECCOM 65 Date: 20190219

Alan Braun, Jerry Braun, Steven Maxwell (aka Steven Fassman), Braun Developments (B.C.) Ltd., 8022275 Canada Inc. and 0985812 B.C. Ltd. (dba TerraCorp Investment Ltd.)

Panel	Nigel P. Cave	Vice Chair
	Audrey T. Ho	Commissioner
	Don Rowlatt	Commissioner
Hearing Date	January 31, 2019	
Submissions Completed	January 31, 2019	
Decision Date	February 19, 2019	

Appearing

James Torrance	For the Executive Director
Patrick J. Sullivan	For Alan Braun
Owais Ahmed	For Jerry Braun

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The Findings of this panel on liability made on October 24, 2018 (2018 BCSECCOM 332) are part of this decision.

[2] We found that each of Alan Braun, Jerry Braun, Steven Maxwell, Braun Developments (B.C.) Ltd., 8022275 Canada Inc. and 0985812 B.C. Ltd. (dba TerraCorp Investment Ltd.) contravened section 57(b) of the Act in the following manner:

a) Alan contravened section 57(b) with respect to three investments by two investors in the amount of $450,000;

b) Jerry contravened section 57(b) with respect to three investments by two investors in the amount of $450,000;

c) Maxwell contravened section 57(b) with respect to three investments by two investors in the amount of $450,000;

d) Braun Developments contravened section 57(b) with respect to three investments by two investors in the amount of $450,000;

e) 275 Inc. contravened section 57(b) with respect to three investments by two investors in the amount of $450,000;

f) TerraCorp contravened section 57(b) with respect to two investments by one investor in the amount of $300,000;

g) Alan and Jerry are liable under section 168.2 of the Act with respect to each of Braun Developments' and TerraCorp's respective contraventions of section 57(b); and

h) Maxwell is liable under section 168.2 with respect to 275 Inc.'s contraventions of section 57(b).

[3] The executive director filed an affidavit and provided written and oral submissions on the appropriate sanctions in this case. Counsel for Alan and Jerry provided written and oral submissions on the appropriate sanctions in this case and Jerry provided an affidavit. Although they were provided with notice of this hearing, none of the other respondents attended the hearing, filed any evidence or provided any written or oral submissions on sanctions.

II. Position of the parties

[4] The executive director sought the following sanctions in this case:

a) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(i), (ii), (iii), (iv) and (v) of the Act against Alan;

b) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(i), (ii), (iii), (iv) and (v) against Jerry;

c) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(i), (ii), (iii), (iv) and (v) against Maxwell;

d) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(iii), (iv) and (v) against the corporate respondents;

e) orders against Alan, Jerry and Braun Developments under section 161(1)(g) of the Act in the aggregate amount of $323,500, as follows:

   (i) $322,500 to be made on a joint and several basis against each of Alan, Jerry and Braun Developments; and

(ii) $1,000 to be made on a joint and several basis against each of Alan and Jerry;

(f) an order against Maxwell under section 161(1)(g) in the amount of $120,500;

(g) an order under section 162 of the Act in the amount of $450,000 against Alan;

(h) an order under section 162 in the amount of $400,000 against Jerry; and

(i) an order under section 162 in the amount of $450,000 against Maxwell.

[5] Alan did not contest the quantum of the orders under sections 161(1)(g) and 162 sought by the executive director against him. With respect to the broad market prohibitions sought by the executive director, he submitted that:

(a) market prohibitions of 25 years were appropriate in the circumstances;

(b) orders against him under sections 161(1)(b)(ii) (i.e. the prohibition on trading) and 161(1)(d)(iv) (i.e. the prohibition acting in a management or consultative capacity in connection with activities in the securities market) were not necessary.

[6] Jerry submitted that the appropriate sanctions against him should be as follows:

(a) that he be prohibited for five years from acting as a director or officer of any issuer or registrant, except that he be allowed to:

(i) remain an officer and director of August Stone Inc. provided that it does not engage in capital raising activities in British Columbia; and

(ii) act as an officer and director of any issuer whose securities are solely owned by him or his immediate family members;

(b) that he be prohibited from acting in a management or consultative capacity in connection with activities in the securities market for five years;

(c) that he be prohibited from engaging in investor relations activities for five years;

(d) that the exemptions set out in the Act, the regulations, or a decision do not apply to him for a period of five years;

(e) that he be prohibited for five years from acting as a registrant or promoter; and

(f) that, pursuant to section 162 of the Act, he pay an administrative penalty of $50,000.

[7] Jerry further submitted that, in the event the panel made an order against him under section 161(1)(b)(ii), that such order contain a carve out to allow him to trade and purchase securities for his own account through a registrant provided that he give a copy of any orders that we make to the registrant.

[8] In support of his submissions, Jerry provided an affidavit which outlined the following relevant facts:

a) he is currently 33 years old; and

b) he is currently a 50% shareholder in a closely held company called August Stone Inc. which imports marble to Canada and that he is currently a director and officer of that company along with one other individual who is the other 50% shareholder. That company has not, to date, raised any money by way of debt or other securities with the exception of the money that Jerry and the other existing shareholder had collectively put into the company.

III. Analysis

A. Factors

[9] Orders under sections 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37.

[10] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified factors relevant to sanction as follows (at page 24):

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and

- orders made by the Commission in similar circumstances in the past.

B. Application of the Factors

Seriousness of the conduct

[11] Previous decisions of this Commission have repeatedly held that fraud is the most serious misconduct found in the Act (see *Manna Trading Corp. Ltd. et al.*, 2009 BCSECCOM 595).

[12] The reason that fraud is the most serious misconduct under the Act is set out in the Commission's recent decision in *Re Bai*, 2018 BCSECCOM 156 (at paragraph 9):

> It is the most serious misconduct owing to the deceit that will have been perpetrated upon investors and fraud requires that the respondent have had the requisite mental intent (or *mens rea*) with respect to his or her misconduct.

[13] Alan and Jerry acknowledged that their misconduct was serious.

[14] Jerry submitted that his misconduct was less serious than that of the other respondents in that he was solely acting at the direction of his father. The contemporaneous evidence during the relevant period is generally supportive of this submission.

[15] However, the misconduct of all of the respondents in this case was exacerbated by what can only be described as the predatory nature of the respondents' interactions with one of the two investors. This investor testified during the hearing and was clearly a vulnerable investor. All of the respondents interacted with her and would have immediately recognized that she was a vulnerable investor. Yet that did not deter the respondents and they fraudulently entered into investment transactions with her. Alan and Jerry preyed upon a shared spirituality with the investor. Jerry and Maxwell drove the investor to her financial institution in order to assist her in transferring her money to the respondents. That Jerry appears to have been acting principally at the direction of his father, is only a partial mitigation of his culpability with respect to the very serious misconduct that occurred in this case.

Harm suffered by investors and the enrichment of the respondents

[16] One of the investors who was defrauded by the respondents in this case has suffered significant financial loss. She has had none of her money repaid. As noted above, this investor is a vulnerable investor and she testified as to the emotional harm that this experience has had upon her.

[17] The other investor who was defrauded by the respondents was repaid $6,000. That investor also had a financial supporter who provided him with most of the money to invest with the respondents and that person has lost almost all of that money.

[18] The respondents have collectively been enriched by the amount of the investors' losses. As will be discussed in greater detail below, each of Maxwell, Alan and Jerry have been significantly enriched (directly or indirectly), but in differing amounts.

Aggravating or mitigating circumstances

[19] None of the respondents has a history of securities regulatory misconduct.

[20] However, Maxwell has a significant history of criminal fraud which has resulted in his serving a lengthy period of incarceration. Although this criminal record did not involve securities fraud, a history of fraudulent misconduct is a significant aggravating factor and highlights the risk that Maxwell poses to our capital markets and our orders must reflect this.

Participation in our capital markets and fitness to be a registrant or a director or officer

[21] Those who commit fraud of any kind, but particularly of the quantum carried out by the respondents in this case and in a manner that took advantage, in a most egregious way, of a vulnerable investor represent a very serious risk to our capital markets.

[22] Each of Maxwell, Alan and Jerry carried out their misconduct through the use of family, or closely held, corporations and through their roles as directors and officers of those corporations. It is clear that their actions fall far short of the legal obligations incumbent on those who wish to act as a director or officer of a corporation and our orders must reflect this.

[23] Each of the corporate respondents has been used to carry out fraudulent misconduct. Our orders must ensure that these entities cannot be used in a similar manner in the future.

Specific and general deterrence

[24] The sanctions that we impose must be sufficiently severe to establish that both the respondents and others will be deterred from fraudulent misconduct.

[25] Our orders must also be proportionate to the misconduct (and the circumstances surrounding it) of the respondents.

Previous decisions

[26] The executive director directed us to two recent decisions of this Commission which he submitted involved circumstances in which the respondent's fraudulent misconduct, in terms of quantum and the circumstances of the misconduct, was similar to that of the respondents in this case: *Re The Falls Capital Corp.*, 2015 BCSECCOM 422 and *Re Nickford*, 2018 BCSECCOM 57.

[27] Jerry cited *Davis v. British Columbia Securities Commission*, 2018 BCCA 149 in support of several submissions that he made in the context of specific sanctioning issues. We will refer to those below.

[28] In *The Falls*, the individual respondent, Wharram, fraudulently misappropriated approximately $500,000. He was also found to have made false statements to Commission investigators. The panel ordered that Wharram be permanently banned from the capital markets, pay an administrative penalty of $500,000 and disgorge the full amount of the funds that he had misappropriated.

[29] In *Nickford*, the respondent fraudulently misappropriated approximately $300,000. The panel ordered that Nickford be permanently banned from the capital markets, pay an administrative penalty of $300,000 and disgorge the full amount of the funds that she had misappropriated.

[30] The decisions in *The Falls* and in *Nickford* are somewhat useful guidance for the appropriate sanctions in this case as the misconduct of the respondents in those cases was similar in quantum to that of the individual respondents in this case. In some respects, the misconduct of the respondents in this case was more serious in that they preyed upon a vulnerable investor. However, unlike in *The Falls*, there was no additional contravention of the Act by any of the respondents in this case.

C. Analysis of appropriate orders

Market prohibitions

[31] The executive director asked for permanent market prohibitions against the respondents.

[32] We did not receive any submissions from Maxwell or the corporate respondents on sanctions.

[33] Alan submitted that market prohibitions of 25 years would be an appropriate sanction in his case. He also submitted that orders prohibiting him from trading and from acting in as a consultant or in a management capacity were not necessary in this case. Finally, he submitted that if we did impose a prohibition on trading that we provide a carve-out from that order to allow him to trade for his own account through a registrant.

[34] Jerry submitted that:

a) market prohibitions against him of five years would be more appropriate in the circumstances;

b) prohibitions on his trading in securities were not necessary in the circumstances;

c) in the alternative, if we did impose a prohibition on his trading in securities, that he be allowed a carve-out to allow him to trade for his own account through a registrant; and

d) any prohibition on his acting as a director or officer of a company contain carve-outs allowing him to continue in this capacity in August Stone Inc. (provided it does not engage in capital raising activities in British Columbia) and in other companies, provided that those entities are ones where all the securities of the companies are owned by him or his family members.

[35] Given the severity of the misconduct in this case, that the fraudulent scheme was largely driven by Alan and that the misconduct involved preying upon a vulnerable investor, we find that Alan represents a significant risk to our capital markets and that permanent market prohibitions are appropriate in the circumstances.

[36] We do not agree with Alan's submission that prohibitions on his trading in securities are unnecessary in the circumstances. The fraudulent misconduct in this case arose from his trading in securities and that conduct was central to the harm that occurred to the investors. We also do not agree that a prohibition on his acting in a management or consultative capacity *in connection with activities in the securities markets* is unnecessary in the circumstances. The limitation on his acting in a management or consultative capacity is narrow and prohibits him, among other things, from engaging in those activities with respect to capital raising, trading in securities and advising public companies. The public interest requires us to protect our capital markets and prohibit Alan from engaging in exactly that type of conduct.

[37] Although his role in the fraudulent scheme was less than that of Alan, Maxwell has a material aggravating factor – that of his significant history of fraudulent conduct. He poses a significant risk to our capital markets and permanent market prohibitions are also appropriate in the circumstances.

[38] Similarly, we do not think it is in the public interest to allow the securities of the corporate respondents to be traded again and permanent cease trade orders against the companies are appropriate in the circumstances.

[39] That leaves only the determination of the appropriate length and breadth of the market prohibitions against Jerry.

[40] Jerry submitted that due to his relatively young age, permanent market prohibitions might amount to prohibitions lasting 50 years or more. He submitted that the *Davis* decision requires us to consider the proportionality of our sanctions and, in this context, Jerry's misconduct does not warrant permanent market prohibitions.

[41] Jerry also submitted that orders prohibiting him from trading in securities or from acting in a management or consultative capacity were unnecessary in the circumstances. He submitted that the second of these orders would doom him to being a wage earner only.

[42] The contemporaneous communications related to the misconduct in this case do support Jerry's submissions that he was largely acting at the direction of his father. There are multiple instances in which the evidence confirms that Jerry sought or received directions

from Alan with respect to various aspects of the misconduct. That does not absolve Jerry from either liability or from playing a significant role in the misconduct in this case. The evidence was that Jerry and Maxwell drove the vulnerable investor to her bank in order to transfer her funds into the fraudulent scheme. However, it does suggest that Jerry's role in the misconduct was less serious than that of Alan and he does not have the significant aggravating factor of Maxwell's history of fraudulent conduct. This, when taking into account his relatively young age, suggests that market prohibitions of significant length, but less than permanent, are appropriate in the circumstances. We find that the risk that Jerry poses to our capital markets will be addressed by these market prohibitions.

[43] We do not agree with Jerry's submissions that prohibitions on his trading in securities or acting in a management or consultative capacity are unnecessary in the circumstances for the same reasons set out above with respect to Alan. The limited nature of a prohibition on Jerry acting in a management and consultative capacity is responsive to his submission that he would be limited to acting as a wage earner only. Our orders do not prevent him from acting in a management capacity provided that that role does not involve acting in the securities markets.

[44] Alan and Jerry cited a number of previous decisions of this Commission in which those found to have committed fraud were still permitted to maintain personal trading accounts (see: *Davis*). The quantum of the fraud and the severity of the misconduct committed by the respondent in *Davis* was, in some ways, less serious than in the case before us but there are other cases where the misconduct was more significant than in the circumstances before us and a similar carve-out was granted. We are similarly prepared to provide the carve-out for personal trading requested by Alan and Jerry. We do not see a risk to the capital markets in our doing so.

[45] We are not prepared to grant to Jerry a broad carve-out that would allow him to act as a director or officer of family companies. In this case, there was clear and demonstrable harm arising from Jerry's role in the management (whether as a director or officer) and control of a company, all the securities of which were owned by Jerry and his family members. Braun Developments is an example of just such a company. Braun Developments and its bank accounts were used as part of a fraudulent scheme.

[46] As demonstrated by his misconduct, the risk to the public is simply too great. Those who are subject to our market prohibition orders may apply under section 171 of the Act for a variance of those orders. Should Jerry (or any other respondent) wish to act as a director or officer of a specific family company, it is appropriate that he should have to apply to this Commission under section 171 of the Act and demonstrate why, in that specific circumstance, granting such a variance would not be prejudicial to the public interest.

[47] We are prepared to allow Jerry to continue as a director and/or officer of August Stone Inc., provided that company does not engage in capital raising activities and that a copy of our orders in this case are provided to all directors and securityholders (from time to time) of that company. The company was formed after these proceedings were public and we may infer that Jerry's business partner is aware of our findings in this matter. It

has not raised capital to date and does not have investors that need to be protected. Jerry asked that the limitation on raising capital be limited to the Province of British Columbia. Our securities laws hold that a British Columbia controlled company that issues a security to a non-resident is still engaged in a trade in a security within the province. We see no reason to limit our order geographically in the manner requested by Jerry.

Section 161(1)(g) orders

[48] The executive director submits that we should make the following orders under section 161(1)(g) of the Act:

a) against Alan, Jerry and Braun Developments, joint and severally, in the amount of $322,500;

b) against Alan and Jerry, jointly and severally, in the amount of $1,000; and

c) against Maxwell in the amount of $120,500.

[49] Alan did not contest that an order against him in the amount of $323,500 under section 161(1)(g) was appropriate in the circumstances.

[50] Jerry submitted that no order under section 161(1)(g) should be made against him in the circumstances.

[51] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, recently adopted a two-step approach to considering applications for orders under section 161(1)(g) (para 144):

> I now turn to apply these principles to the three appeals before this Court. I agree with and adopt the two-step approach identified by Vice Chair Cave in *SPYru* at paras 131-132:
>
> > [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
> >
> > [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[52] The Court of Appeal in *Poonian* further adopted several principles to apply in interpreting section 161(1)(g) (para 143):

1. The purpose of s. 161(1)(g) is to deter persons from contravening the *Act* by removing the incentive to contravene, i.e. by ensuring the person does not retain the "benefit" of their wrongdoing.

2. The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the *Act*, such as the claims process set up under Part 3 of the *Securities Regulation* or the s.157 compliance proceedings in the *Act*.

3. There is no "profit" notion, and the "amount obtained" does not require the Commission to allow for deductions of expenses, costs, or amounts other persons paid to the Commission. It does, however, permit deductions for amounts returned to the victim(s).

4. The "amount obtained" must be obtained *by that respondent, directly or indirectly*, as a result of the failure to comply with or contravention of the *Act*. This generally prohibits the making of a joint and several order because such an order would require someone to pay an amount that person did not obtain as a result of that person's contravention.

5. However, a joint and several order may be made where the parties being held jointly and severally liable are under the direction and control of the contravener such that, in fact, the contravener obtained those amounts *indirectly*. Non-exhaustive examples include the use of a corporate *alter ego*, use of other person's accounts, or use of other persons as nominee recipients.

[53] Finally, the Court of Appeal in *Poonian* approved an approach to determining the amounts obtained, directly or indirectly, by a respondent that requires the executive director to provide evidence of an "approximate" amount, following which the burden of proof switches to the respondent to disprove the reasonableness of this number.

Step 1 – Can a section 161(1)(g) order be made?

[54] The evidence during the hearing was that the $450,000 that was obtained by the respondents from their fraudulent misconduct went to the various respondents as follows:

a) $449,000 of the funds went first to 275 Inc., and the remaining $1,000 went first to Jerry and was then forwarded to, or for the benefit of, Alan;

b) of the $449,000 that went first to 275 Inc., $120,500 of that amount was retained by 275 Inc. and the remainder was then forwarded to Braun Developments;

c) of the $120,500 retained by 275 Inc., all of that money was obtained by, or used for the benefit of, Maxwell; and

d) of the $328,500 that went to Braun Developments there was further evidence (discussed below) of how that money was dispersed or expended.

[55] The executive director did not request that we make an order under section 161(1)(g) against TerraCorp. Given that there was no evidence that TerraCorp ever received any funds, we do not see a legal basis, nor a practical reason, to make an order under section 161(1)(g) against that company.

[56] Given the evidence set out in paragraph 54 above, we could make orders under section 161(1)(g) against 275 Inc. in the amount of $449,000 and against Jerry in the amount of $1,000.

[57] However, given that we have evidence that all or a portion of these amounts were immediately forwarded to or expended by other respondents (as part of the fraudulent transactions) we can also make orders under section 161(1)(g) against Maxwell in the amount of $120,500, Braun Developments in the amount of $328,500 and Alan in the amount of $1,000. We think that to be the more appropriate starting point for our analysis of the appropriate orders under section 161(1)(g).

[58] Braun Developments is a company that was owned, during the relevant period, equally by Alan and Jerry (i.e. 50%/50% share ownership) and both of them were directors of the company. The evidence of the bank records of the company's bank accounts clearly demonstrated that there was an intermingling of corporate and personal funds and expenses. Therefore, consistent with the principles in *Poonian*, this is a clear case in which we can find that Alan and Jerry indirectly obtained the funds which were directly obtained by Braun Developments and, subject to what we set out below, we find that all three of them could be held jointly and severally liable for the full amount obtained by Braun Developments.

[59] However, as noted in *Poonian,* in determining the appropriate quantum of any order under this section the Commission may take into account the portion of the gross amount of the funds obtained from the respondents' fraudulent misconduct that the respondents have returned to the investors. The evidence was that $6,000 was repaid to one of the investors. Although that investor testified that he reached an agreement with Alan for the payment of that money, the evidence was not clear as to the person or entity (i.e. Alan, Jerry or Braun Developments) that made that payment. As a consequence, that amount should be deducted from our orders against the three of them. The net amount of the investors' money that went to Braun Developments is $322,500

[60] Jerry submitted that we should not make any order against him pursuant to section 161(1)(g) for two reasons:

a) that Braun Developments was really Alan's company and, as such, that we could not find Jerry to be jointly and severally liable for any amount fraudulently obtained by Braun Developments; and

b) in the alternative, that the money that went to Braun Developments was then paid to Alan or expended by Braun Developments on behalf of Alan and that none of that money could be said to have been obtained, directly or indirectly, by Jerry.

[61] As noted above, we rejected the first of those two submissions. The evidence was that the shares of Braun were owned equally by Alan and Jerry and that Alan and Jerry were the only two directors of the company. That does not support a finding that Braun Developments was "Alan's company".

[62] We agree, in part, with the second of Jerry's submissions. The executive director has established that the net amount of $322,500 went into the bank accounts of Braun Developments. Where the evidence establishes that further movements of that money benefitted one or more of the respondents (and not others) we are prepared to adjust the amount of our orders under section 161(1)(g) accordingly.

[63] The first question is which party should bear the onus of proof with respect to those payments. In *Re Oei*, 2018 BCSECCOM 231, the panel held that the onus of proving that certain payments were repayments to investors (in support of deducting those payments from an amount that could have been ordered against the respondent under section 161(1)(g)) was on the respondent. We agree with that approach. *Prime facie*, any funds taken from the Braun Developments accounts or payments made by Braun Developments to a third party would be payments made to satisfy an obligation of the company (and therefore to the benefit of the two 50/50 shareholders). The onus of proving that certain payments by Braun Developments were not to, or for the benefit of, Jerry should rest with Jerry.

[64] Although Jerry did not lead any additional evidence in support of his submissions on this issue, there was evidence led by the executive director during the hearing that established that certain payments were made by Braun Developments to or for the benefit of Alan – those payments included mortgage payments on a house owned by Alan and his wife (and other expenses related to that house) and expenses related to foreign exchange trading. Those payments totaled $165,581. We agree that these amounts were obtained by Alan only and should not be made the subject of joint and several orders against Braun Developments or Jerry. The $1,000 amount that went from Jerry to Alan is similar in nature and our order under section 161(1)(g) against Jerry should not include this amount.

[65] Jerry submitted that other amounts (including payments to an accounting firm, payments to a church, payments to third parties relating to prior investments (unrelated to the matters in the notice of hearing) and cash withdrawals), could also be considered to be payments made to, or on behalf of, Alan. However, Jerry has not satisfied the onus of proof with respect to those payments. The evidence suggested that the accounting firm were the accountants for Braun Developments. We did not have sufficient information to determine if any of the other payments to third parties or cash withdrawals were for the benefit of any or all of Alan, Jerry or Braun Developments.

[66] In summary, subject to the public interest considerations set out below, we could make orders under section 161(1)(g) against the respondents in the following amounts:

a) Maxwell - $120,500;

b) Alan - $323,500 (being the $1,000 initial payment that first went to Jerry and then to Alan, plus the net amount of $322,500 that went to Braun Developments after repayments to an investor);

c) Braun Developments - $156,919 (being the net amount of $322,500 that went to Braun Developments after repayments to an investor, less the $165,581 paid directly to, or for the benefit of, Alan); and

d) Jerry - $156,919 (being the net amount of $322,500 that went to Braun Developments after repayments to an investor, less the $165,581 paid directly to, or for the benefit of, Alan).

Step 2 – Is it in the public interest to make a section 161(1)(g) order?

[67] There is no reason why it would not be in the public interest to make orders under section 161(1)(g) against the respondents in the amounts set out above. These are the amounts they obtained through their fraudulent misconduct.

[68] As noted above, this is a case where it is also in the public interest to make a portion of our orders ($156,919) under section 161(1)(g) joint and several as between Alan, Jerry and Braun Developments.

Administrative penalties

[69] The executive director asked for orders under section 162 in the amount of $450,000 against Alan and Maxwell and in the amount of $400,000 against Jerry.

[70] Alan did not contest this amount. Jerry submitted that an order under section 162 in the amount of $50,000 would be appropriate. Jerry submitted that he was merely acting on the direction of Alan and that his administrative penalty should reflect this difference in the severity of the misconduct.

[71] As noted above, we do consider there to have been a difference in the roles that the three individual respondents played in the fraudulent scheme. Alan clearly played the leading role but that does not mitigate, to the extent suggested by Jerry, the roles of Jerry and Maxwell in the misconduct.

[72] We have considered all of the *Eron* factors in determining the appropriate orders under section 162. These are the factors that we have weighed most heavily:

- the seriousness of the contraventions which includes the quantum of the fraudulent misconduct and that the respondents preyed upon an extremely vulnerable investor;

- the differences in the relative roles in the misconduct of the differing respondents;

- the enrichment of the individual respondents;

- the harm to investors;

- the harm to the integrity of our capital markets; and

- the material aggravating factor that is applicable to Maxwell.

[73] The decisions in *The Falls* and *Nickford* are generally supportive of an order under section 162 against Alan in the amount of $450,000. Alan did not contest this figure.

[74] An order under section 162 against Jerry in the amount of $200,000 is appropriate in the circumstances. This figure reflects his submissions that the seriousness of his conduct was less than that of his father (as Jerry was largely acting on Alan's instructions) but still reflects the seriousness of his conduct. This amount achieves the goals of specific and general deterrence while being proportionate to the misconduct.

[75] We also view Maxwell's role in the misconduct to be somewhat lesser than that of Alan and his order should be a lesser amount than $450,000. However, his history of fraudulent conduct warrants an order under section 162 that is larger than that of Jerry - $300,000 is appropriate in all of the circumstances.

[76] Finally, the executive director did not seek orders under section 162 against any of the corporate respondents.

IV. Orders

[77] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

Alan Braun

(a) under section 161(1)(d)(i), Alan Braun resign any position he holds as a director or officer of an issuer or registrant;

(b) Alan Braun is permanently prohibited:

(i) under section 161(1)(b)(ii), 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 through a registered dealer, if he gives the registered dealer a copy of this decision;

(ii) under section 161(1)(c), from relying on any of the 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 acting in a management or consultative capacity in connection with activities in the securities market; and

(vi) under section 161(1)(d)(v), from engaging in investor relations activities;

(c) Alan Braun pay to the Commission $323,500 pursuant to section 161(1)(g) of the Act; and

(d) Alan Braun pay to the Commission an administrative penalty of $450,000 under section 162 of the Act.

Jerry Braun

(e) under section 161(1)(d)(i), Jerry Braun resign any position he holds as a director or officer of an issuer or registrant, except that he may continue to act as a director or officer of August Stone Inc., for so long as that entity does not engage in capital raising activities and that a copy of this decision is provided to all other directors and securityholders of that company;

(f) Jerry Braun is prohibited for the longer of 15 years and the date that the obligations set out in subparagraphs (g) and (h) are paid:

(i) under section 161(1)(b)(ii), 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 through a registered dealer, if he give the registered dealer a copy of this decision;

(ii) under section 161(1)(c), from relying on any of the 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 acting in a management or consultative capacity in connection with activities in the securities market; and

(vi) under section 161(1)(d)(v), from engaging in investor relations activities;

(g) Jerry Braun pay to the Commission $156,919 pursuant to section 161(1)(g) of the Act; and

(h) Jerry Braun pay to the Commission an administrative penalty of $200,000 under section 162 of the Act.

Steven Maxwell

(i) under section 161(1)(d)(i), Maxwell resign any position he holds as a director or officer of an issuer or registrant;

(j) Maxwell is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

(ii) under section 161(1)(c), from relying on any of the 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 acting in a management or consultative capacity in connection with activities in the securities market; and

(vi) under section 161(1)(d)(v), from engaging in investor relations activities;

(k) Maxwell pay to the Commission $120,500 pursuant to section 161(1)(g) of the Act; and

(l) Maxwell pay to the Commission an administrative penalty of $300,000 under section 162 of the Act.

Braun Developments (B.C.) Ltd.

(m) Braun Developments is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;

(n) under section 161(1)(b)(i), that all persons permanently cease trading in, and be prohibited from purchasing, any securities of Braun Developments; and

(o) Braun Developments pay to the Commission $156,919 pursuant to section 161(1)(g) of the Act.

8022275 Canada Inc.

(p) 8022275 is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision; and

(q) under section 161(1)(b)(i), that all persons permanently cease trading in, and be prohibited from purchasing, any securities of 8022275 Canada Inc.

0985812 B.C. Ltd.

(r) 098512 is permanently prohibited:

(i) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

(ii) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;

(s) under section 161(1)(b)(i), that all persons permanently cease trading in, and be prohibited from purchasing, any securities of 0985812 B.C. Ltd (dba TerraCorp Investment Ltd.); and

(t) the obligations to pay the amounts set out in subparagraphs (g) and (o) and a portion of the amount in subparagraph (c) above are joint and several as between Alan, Jerry and Braun Developments, in the following manner:

(i) Alan, Jerry and Braun Developments are jointly and severally liable to pay to the Commission $156,919; and

(ii) Alan is severally liable for $166,581, being the remainder of the amount set out in subparagraph (c) above.

February 19, 2019

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlatt
Commissioner