

**DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMER AFFAIRS
AUTHORITY OF SASKATCHEWAN ACT***

**In the Matter of
The Securities Act, 1988, ss 1988-89, c S-42.2**

and

**In the Matter of
Vincent John Mullee
and
Vince Mullee Financial Inc.
(the Respondents)**

Hearing on: March 10, 2022

Before: Howard Crofts, Panel Chairperson
Honourable Eugene Scheibel
Honourable John Klebuc

(referred to as the “Panel”)

Appearances: Connor Smith on behalf of Staff (“Staff”) of the Financial and Consumer Affairs
Authority of Saskatchewan (the “FCAA”)

Vincent John Mullee, representing himself and Vince Mullee Financial Inc. as the
Respondents

Date of Decision: April 25, 2022

I. INTRODUCTION

1. This is the Panel’s decision in respect to its deliberations on the merits of the allegations against Mr. Vincent John Mullee (“Mullee”) and Vince Mullee Financial Inc. (“Mullee Financial”) brought by Staff of the FCAA in a statement of allegations dated June 25, 2020. On August 6, 2018, the Chairperson of the FCAA appointed this Panel to hear this matter pursuant to section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act*.

2. A virtual hearing was held on March 10, 2022 that was consistent with the *Guidelines for Managing Hearings during a Pandemic [Guidelines]*. These *Guidelines* supplement and amend, to the extent necessary, Part 11 and Rule 11.1 of *Saskatchewan Policy Statement 12-602, Procedure for Hearings and Reviews [Local Policy]*. All parties agreed to proceed with the virtual hearing approach and all parties were in attendance.

II. BACKGROUND

3. Mullee began his career in the investment business in about September 2000 as an unregistered agent for WealthCo Financial Advisory Services Inc. In February 2011 he started operating his own business under the name Vince Mullee Financial Inc. in Saskatoon which continued acting as a Dealer Representative for WealthCo Asset Management Inc. ("WealthCo"), providing financial advice and selling investments, insurance, and related financial products.

4. FCAA Staff began its investigation of Mullee and Mullee Financial after receiving a complaint from an investor on July 6, 2018. The substance of the complaint was that Mullee was the financial advisor for the investor who had purchased several different bonds from Mullee between 2001 to 2017. Subsequently she discovered that the bonds she had purchased from Mullee did not exist and that the money she had invested had been lost.

5. During the investigation which took place over the next few months, FCAA Staff interviewed twenty-one individuals who had invested funds with Mullee. The interviews revealed the same information, that investors had invested funds with Mullee while he was acting as their financial advisor. In each case, the individuals invested funds with Mullee in various securities, typically interest bearing bonds and subsequently discovered that the investment products they had purchased from Mullee did not exist and the amounts they had invested had been lost.

6. The investments Mullee sold to the twenty-one investors were being sold off book from WealthCo and in all cases were entirely fictitious. The funds derived from the sale of the fictitious investments were used for personal and business expenses or to pay off investors that wanted to cash out of the investments they had made – effectively a Ponzi Scheme for at least some of the funds received.

7. As the investigation continued, Staff became aware that Mullee had been charged with committing fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code*, RSC 1985, c C-46. In July 2020, Mullee was convicted of one charge of fraud and sentenced to a five year and six-month jail sentence. On July 22, 2020, Mullee appeared in Provincial Court in Saskatoon, Saskatchewan before The Honourable Judge B. M. Klause and entered a guilty plea to one count of fraud over \$5,000. The conviction and plea pertained only to Mullee and not to Mullee Financial. Both the Crown and the Defence had submitted a joint sentencing recommendation to the Court of five years and six months. After hearing several victim impact statements, the Honourable Judge B. M. Klause sentenced Mullee to the five years and six months recommended jointly by the Crown and Defence. Mullee was incarcerated and spent seventeen months of that sentence in Federal prison for his actions.

8. Along with the jail sentence imposed by the Court, Mullee was:
- a. Prohibited from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, for a period of 25 years; and
 - b. Ordered to make restitution in the amount of \$1,982,095.95 to the 21 investors that he had defrauded.
9. With the knowledge of the fraud charges, Staff issued a Statement of Allegations on June 25, 2020 alleging that Mullee had contravened the following Saskatchewan securities laws, that during the relevant time and with respect to Investors 1 through 21, the Respondents:
- a. Acted as dealers as defined by subsection 2(1) of *The Securities Act, 1988*, SS 1988-89, c S-42.2 (the “*Act*”) by holding out that they were engaging in the business of trading in securities or derivatives, and they were not registered to carry out these trades in contravention of subsection 27(2)(a) of the *Act*;
 - b. Held out that they were engaged in or participating in acts, practices, or courses of action relating to securities or derivatives or underlying interests in derivatives that they knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, a security or a derivative or an underlying interest in a derivative in contravention of subsection 55.1(a) of the *Act*;
 - c. Engaged in or participated in acts, practices, or courses of action relating to securities or derivatives or underlying interests in derivatives that they knew or reasonably ought to have known perpetrated a fraud on a person or a company in contravention of subsection 55.1(b) of the *Act*; and
 - d. Made statements that they knew or reasonably ought to have known were misleading or untrue in a material respect in contravention of subsection 55.11(1) of the *Act*.
10. As a remedy for the above allegations, Staff requested this Panel to consider whether it is in the public interest to make the following orders:
- a. Pursuant to section 134(1)(a) of the *Act*, all of the exemptions in Saskatchewan securities laws do not apply to the Respondents, permanently;
 - b. Pursuant to section 134(1)(d) of the *Act*, the Respondents shall cease trading in securities or derivatives in Saskatchewan, permanently;

- c. Pursuant to section 134(1)(d.1) of the *Act*, the Respondents shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan, permanently;
- d. Pursuant to section 134(1)(e) of the *Act*, the Respondents shall cease giving advice respecting securities, derivatives and trades thereof in Saskatchewan, permanently;
- e. Pursuant to section 134(1)(h)(i) of the *Act*, Mullee shall resign any position that he holds as a director or officer of an issuer, a registrant, or an investment fund manager;
- f. Pursuant to section 134(1)(h)(ii) of the *Act*, Mullee is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, permanently;
- g. Pursuant to section 134(1)(h)(iii) of the *Act*, Mullee shall not be employed by any issuer, registrant or investment fund manager in any capacity that would entitle him to trade or advise in securities or derivatives, permanently,
- h. Pursuant to section 134(1)(h.1) of the *Act*, the Respondents are prohibited from becoming or acting as a registrant, an investment fund manager, or a promoter, permanently;
- i. Pursuant to section 135.1 of the *Act*, the Respondents shall, jointly and severally, pay an administrative penalty to the FCAA, in the amount of \$100,000.00;
- j. Pursuant to section 135.6 of the *Act*, the Respondents shall, jointly and severally, pay financial compensation to each person or company found to have sustained financial loss caused in whole or in part by contraventions of Saskatchewan securities laws committed by the Respondents, in amounts to be determined; and
- k. Pursuant to section 161 of the *Act*, the Respondents shall, jointly and severally, pay the costs of or relating to a hearing in this matter.

11. On January 26, 2022, Staff brought a Notice of Application seeking an Order covering the remedies listed in subparagraphs 10 a. through h. above pursuant to section 134(1.1)(a) of the *Act* on the basis of Mullee's criminal conviction. At the hearing of this Notice of Application Staff candidly, and rightly, acknowledged that the remedies in subparagraphs 10 i. through k. are not available on an application pursuant to section 134(1.1)(a) of the *Act*. Staff also candidly, and rightly, acknowledged that the criminal conviction only applies to Mullee and not to Mullee Financial, thus the application based on the criminal conviction can only justify an Order against Mullee.

12. Staff provided written submissions which addressed the following factors that the Panel should take into consideration in deciding on sanctions:

- The severity of Mullee's actions and the harm that had been caused by those actions to the individual investors and to capital markets;
- Mullee was in a position of trust and violated that trust with the clients that he defrauded;

- Mullee's actions took place over a period of approximately six years, was not an isolated incident, involved more than 20 investors who lost almost \$2 million from his deceit;
- Mullee only stopped the prolonged, planned and deliberate course of action as a result of the fraud being discovered and the resulting investigation by FCAA Staff;
- Strong sanctions are warranted in order to send a sufficient message to capital market participants that fraud will not be tolerated; and
- The risk that Mullee poses to the investing public is so great that a permanent ban on access to capital markets is warranted.

13. In addition to the submissions noted above, Staff filed the following documents from the Provincial Court confirming the court proceedings and sentence passed on Mullee:

- A Warrant of Committal confirming the fraud conviction and five year and six month sentence;
- Transcript of the Crown's submissions and victim impact statements at Mullee's July 22, 2020 court and sentencing proceedings;
- Transcript of Defence Counsel's submissions confirming agreement with the joint sentencing recommendation with the Crown;
- Transcript of the court proceedings where Mullee's sentence was passed;
- Copies of Restitution Orders from the Provincial Court ordering Mullee to pay restitution to all of the victims that lost money through their investments with him; and
- A copy of the Provincial Court's Prohibition Order prohibiting Mullee from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, for a period of 25 years.

14. Since there are no previous cases from this jurisdiction with similar circumstances to this matter, in their submissions Staff cited cases from British Columbia, Alberta and Ontario supporting their request for a permanent ban. The cases cited are analysed below.

15. At the Merits Hearing, Staff confirmed that its requests to impose administrative penalties and costs on Mullee are withdrawn and further, that the request for compensation to investors also is withdrawn on the basis that restitution was ordered when Mullee was sentenced so compensation orders from this Panel would be double counting.

16. At the Merits hearing, Mullee appeared and provided the following verbal representations on his own behalf, that he:

- Cooperated with the RCMP and FCAA Staff who investigated the matter and this hearing process;
- Is paying restitution as ordered by the Provincial Court in Saskatchewan;
- Acknowledges that he cheated his friends, family and clients and is ashamed and remorseful for his actions;
- Takes full responsibility for his actions; and
- Confesses fully to all of the allegations against him.

17. It is upon this uncontested evidentiary and factual foundation that this Panel's decision is grounded.

III. DECISION ON SANCTIONS

18. The issues for this Panel to consider are:

- (a) whether the circumstances under subsection 134(1.1) of the *Act* applies to Mullee, namely, has Mullee been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives (s. 134(1.1)(a)); and if so
- (b) whether the Authority should exercise its jurisdiction to make a protective order in the public interest in respect of Mullee pursuant to subsection 134(1.1)(a) of the *Act*.

19. Given the background in this matter and the fact that Mullee pleaded guilty to one charge of fraud, that he was sentenced to five years and six months in Federal prison and served a portion of that sentence, this Panel finds it appropriate to order a permanent ban on Mullee for all of the prohibitions requested by Staff in paragraphs 10 a. through 10 h. above. Our analysis and reasons for this decision follows.

IV. ANALYSIS AND REASONS FOR OUR DECISION

20. As previously noted, there is no previous case in this jurisdiction to reference where the circumstances are similar to this matter. The Panel derives its jurisdiction from the *Act*, specifically section 134(1) which gives this Panel the authority to impose sanctions, including those requested by Staff in the Statement of Allegations and submissions.

21. In addition, section 134(1.1)(a) of the *Act* specifically provides the Panel with additional jurisdiction to make orders under section 134(1) where a person or company has already been convicted of a criminal offense in relation to securities. Section 134(1.1)(a) reads:

134(1.1) In addition to the power to make orders pursuant to subsection (1), the Commission or the Director may, after providing an opportunity to be heard, make an order mentioned in subsection (1) against a person or company, if the person or company:

- (a) has been convicted of an offence arising from a transaction or carrying on a business or course of action related to securities or derivatives;

22. The Panel met the condition of allowing Mullee the opportunity to be heard when he appeared at the Merits Hearing on March 10, 2022 and he made the representations noted in paragraph 16 above.

23. Beyond the above, the Panel also looked to other jurisdictions with legislation and cases with similar circumstances to this matter. In Ontario, the comparative legislation to section 134(1.1) of the *Act* can be found in section 127 (10) of the *Securities Act*, RSO 1990, c S.5, which reads as follows:

127(10) Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

- 1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

24. In Ontario in *Theroux, (Re)*, 2019 ONSEC 20, after Mr. Theroux was found guilty of five counts of fraud over \$5,000 the Panel of the Ontario Securities Commission (“OSC”) wrote:

[18] Mr. Theroux has been convicted in Ontario of five counts of fraud over \$5,000 contrary to the *Criminal Code*. Those convictions arose from transactions, a business or a course of conduct related to securities. Theroux admitted he solicited and accepted funds in excess of \$1,000,000 from investors, reflecting their investments in bonds, promissory notes and bridge financing marketed in respect of a biofuel venture with a company with which Theroux was associated. These fraudulent investments constituted investment contracts and therefore securities for purposes of the *Act*. Returns of up to 100% for a one-year term were promised. Substantial portions of the monies raised were diverted for his own personal use or to pay other investors and not invested in the biofuel venture. The five investors whose investments were used as the factual basis for Theroux’s conviction turned over funds totalling \$445,000, \$178,800 of which was retained by Theroux. None of them received their promised returns or the return of their initial investments. [internal footnote omitted]

In its decision, the OSC Panel imposed a permanent ban on Mr. Theroux preventing him from participating in the capital markets (at para. 34).

25. Similarly, British Columbia's section 161 of the *Securities Act*, RSBC 1996, c 418 (the "*BC Act*") gives Panels similar jurisdiction. It reads:

Enforcement orders

161(1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

(6) The Commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person:

- (a) has been convicted in Canada or elsewhere of an offence:
 - (i) arising from a transaction, business or course of action of conduct related to securities or derivatives, or
 - (ii) under the laws of the jurisdiction respecting trading in securities or derivatives

26. The British Columbia Securities Commission relied on the above legislation in *Beiklik, (Re)*, 2020 LNBCSC 224, 2020 BCSECCOM 261 (QL), where the Respondent was found guilty of two counts of fraud over \$5,000 in provincial court in securities related contraventions and it imposed a permanent market access ban under section 161(6)(a) of the *BC Act* (at paras 6-8 and 47).

27. Finally, the Alberta *Securities Act*, RSA 2000, c S-4, has comparable powers in section 198.1(2) which reads as follows:

198.1 Extra-Provincial Orders

(2) Notwithstanding section 198(3), the Commission may, with or without providing an opportunity to be heard, make an order under section 198(1)(a) to (h) in respect of a person or company if the person or company:

- (a) has been convicted in Canada or elsewhere of an offence
 - (i) arising from a transaction, business or course of conduct related to securities or derivatives, or
 - (ii) under laws respecting trading in securities or derivatives,

28. In *Re Carruthers*, 2020 ABASC 177, after Carruthers pled guilty to twenty counts of fraud over \$5,000 in the Alberta Queens Bench Court, a panel of the Alberta Securities Commission determined it was in the public interest to impose a permanent ban against the Respondent from participating in the capital markets in Alberta (at paras. 2, 6, and 40).

29. Accordingly, with reference to the foregoing legislation and cases in British Columbia, Alberta and Ontario with circumstances similar to Mullee and after taking into consideration the aggravating and mitigating factors noted in paragraphs 12 and 16 above, the Panel finds it within its jurisdiction, and in the public interest, to impose a permanent ban against Mullee from capital market access and/or activities related thereto identified in paragraphs 10 a. through 10 h. above.

30. To be clear, this Order is made against Mullee personally and not against Mullee Financial, as Mullee Financial has not been criminally convicted of anything. As Staff has, rightly, withdrawn its original claim for administrative penalties, costs, and compensation orders the Panel will hear no further applications or submissions on those points.

31. Had Staff not withdrawn these portions of its original Statement of Allegations the Panel would likely have had significant concerns about administrative delay in this proceeding. We are imposing sanctions pursuant to Allegations which were first made roughly 22 months ago after an investigation which began roughly 4 years ago. The earliest alleged transaction giving rise to Staff's Allegations occurred more than 20 years ago. In the 4 years since Staff's investigation into this matter began, Mullee has been criminally charged, convicted, sentenced, and has served enough of his carceral sentence to be eligible for day parole. There were nearly 19 months between Mullee's criminal sentencing and the conference call to set a hearing for Staff's section 134(1.1) Application. However, Staff has withdrawn its claim for administrative penalties, costs, and compensation orders. Moreover, Mullee did not raise delay as a concern and the Panel has not been presented with any evidence of prejudice. Thus, we need not comment any further on the developing topic of delay (see *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81, at paras. 139-172; appeal to the Supreme Court of Canada heard November 8, 2021).

32. This is a unanimous decision of the Panel.

Dated at Regina, Saskatchewan this 25th day of April, 2022.

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Howard Crofts, Chairperson

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Honourable Eugene Scheibel, Panel member

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Honourable John Klebuc, Panel member