

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

**In The Matter of
*The Securities Act, 1988***

and

**In the Matter of
Fred Louis Sebastian**

Hearing Held: March 11, 2019

Panel: Peter Carton (Chairperson)

Appearances: Dallas Smith (Counsel for Staff of the Financial and Consumer Affairs Authority of Saskatchewan)

No one appeared on behalf of the Respondent, Fred Louis Sebastian

Date of the Decision: November 14, 2019

I. INTRODUCTION

[1] This was a hearing (“**the Financial Compensation Hearing**”) before a Hearing Panel appointed in accordance with section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act* (the “**Panel**”) to consider a Director’s Request that the Financial and Consumer Affairs Authority of Saskatchewan (the “**Authority**”) issue an order pursuant to section 135.6 of *The Securities Act, 1988* (the “**Act**”) that Fred Louis Sebastian (the “**Respondent**”) pay financial compensation to the Estate of [REDACTED] in the amount of \$47,000.00 for her financial loss, dated November 14, 2018.

II. BACKGROUND

[2] By Statement of Allegations filed by Staff of the Authority (“**Staff**”) dated December 2, 2014, FCAA Staff alleged that, in and around 2012, the Respondent, contravened sections 27, 44, 55.1 and 58 of the Act.

[3] A hearing to consider the merits of Staff’s allegations was held on June 8, 2015 (the “**Merits Hearing**”). The Panel hearing the merits consisted of Paul Robinson, as Chairperson, and Peter Carton, as Panel Member, (the “**Merits Panel**”). The decision on the merits was rendered on July 23, 2015 (the “**Merits Decision**”). In the Merits Decision, the Merits Panel found that the Respondent contravened:

(a) clause 27(2)(a) and 27(2)(b) of the Act by acting as a dealer and an adviser without being registered to do so;

(b) subsection 44(2) of the Act by giving an oral undertaking relating to the future value of a security with the intention of effecting a trade in that security; and

(c) clause 55.1(b) of the Act by engaging in a course of conduct in relation to securities that he knew or reasonably ought to have known perpetrated a fraud on a person.

The Merits Panel concluded that Staff had not established that the Respondent contravened section 58 of the Act.

[4] At paragraph 24 of the Merits Decision, the Merits Panel found that the Respondent solicited funds from the investor by making exaggerated claims about the money to be made from investing in E-Debit, however, he had no intention of investing the funds on her behalf. The Merits Panel also concluded that the Respondent engaged in a course of conduct in relation to securities that he knew or reasonably ought to have known, perpetrated a fraud on a person, contrary to clause 55.1(b) of the Act.

[5] At paragraph 26 of the Merits Decision, the Merits Panel found that the Respondent’s actions were a deliberate attempt to gain the confidence of a trusting elderly individual with limited investment experience for the purpose of personal enrichment.

[6] On August 25, 2015, the Authority issued an order to reflect the provisions of the Merits Decision ordering that:

(a) pursuant to clause 134(1)(a) of the Act, all of the exemptions in Saskatchewan securities laws do not apply to the Respondent, permanently;

(b) pursuant to clause 134(1)(d) of the Act, the Respondent shall cease trading in any securities or exchange contracts in Saskatchewan, permanently;

- (c) pursuant to clause 134(1)(d.1) of the Act, the Respondent shall cease acquiring securities for and on behalf of residents of Saskatchewan, permanently;
- (d) pursuant to clause 134(1)(e) of the Act, the Respondent shall cease giving advice respecting securities, trades or exchange contracts in Saskatchewan;
- (e) pursuant to clause 134(1)(h)(i) of the Act, the Respondent shall resign any position that he holds as a director or officer of any issuer, registrant or investment fund manager;
- (f) pursuant to clause 134(1)(h)(ii) of the Act, the Respondent is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, permanently;
- (g) pursuant to clause 134(1)(h)(iii) of the Act, the Respondent 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;
- (h) pursuant to clause 134(1)(h.1) of the Act, the Respondent is 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 Respondent shall pay an administrative penalty to Financial and Consumer Affairs Authority of Saskatchewan, in the amount of \$75,000; and
- (j) pursuant to section 161 of the Act, the Respondent shall pay costs of and related to the hearing in this matter in the amount of \$4,513.48.

[7] Three years after the Order regarding the Merits Decision was issued, on November 14, 2018, the Director made a request that the Authority issue an order pursuant to section 135.6 of the Act that the Respondent pay financial compensation to the Estate of [REDACTED] in the amount of \$47,000 (the “**Director’s Request for a Financial Compensation Order**”).

[8] A single-person Panel was appointed pursuant to section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act* to hear the Director’s Request for a Financial Compensation Order.

[9] The Financial Compensation Hearing was held on March 11, 2019. In support of the Director’s Request for a Financial Compensation Order, Staff filed the Affidavit of Harvey White, sworn November 7, 2018, a draft Order and an Affidavit of Service, sworn December 5, 2018. Staff appeared at the Financial Compensation Hearing and made oral submissions in support of the Director’s Request for a Financial Compensation order.

III. ANALYSIS

The Legal Framework

[10] Subsection 135.6 of the Act provides that, if requested by the Director to do so, the Authority may order the person or company to pay the claimant compensation for the claimant's financial loss, if, after the hearing, the Commission:

(a) determines that the person or company has contravened or failed to comply with:

(i) Saskatchewan securities laws;

(ii) a written undertaking made by the person or company to the Commission or the Director; or

(iii) a term or condition of the person's or company's registration;

(b) is able to determine the amount of the financial loss on the evidence; and

(c) finds that the person's or company's contravention or failure caused the financial loss in whole or in part.

[11] As recently noted by the Court of Appeal for Saskatchewan in *C2 Ventures Inc. v. Saskatchewan* (Financial and Consumer Affairs Authority) 2019 SKCA 53, (June 14, 2019) ("**C2 Ventures Inc.**"), before a Panel may order compensation, it must be satisfied on the evidence that a contravention or failure under the Act has caused financial loss to a claimant in whole or in part.

Saskatchewan Policy Statement 12-602 Procedure for Hearing and Reviews

[12] *Saskatchewan Policy Statement 12-602 Procedure for Hearing and Reviews (Local Policy)* ("**Policy 12-602**") sets out procedures for hearings before FCAA Panels. At the time the Merits Decision was rendered on July 23, 2015, Part 13 of Policy 12-602 provided as follows:

Part 13 – Financial Compensation Orders

13.1 Procedure Where Request for Orders under Section 135.6

13.1 The procedures set out in this Part apply when a Statement of Allegations by Staff on an application pursuant to section 134 of the Act includes a request for financial compensation orders pursuant to section 135.6 of the Act.

13.2 Hearing on the Statement of Allegations

13.2(1) The Panel will conduct a hearing on the Statement of Allegations by the Staff against the respondents.

(2) Where the Panel issues a decision that includes a finding that a respondent has contravened Saskatchewan securities laws, the Panel will set a date in the decision by which the Director must apply for orders pursuant to section 135.6 of the Act.

13.3 Request by Director for Financial Compensation Orders

13.3(1) Before the date set by the Panel in subsection 13.2(2), Staff will file a Request by the Director that the Panel make orders pursuant to section 135.6 of the Act that a respondent pay financial compensation to claimants for the financial loss caused by the respondent's contravention of Saskatchewan securities laws.

(2) The Request by the Director will include:

- (a) the names of each claimant;
- (b) the amounts of each claimant's financial loss with documents to show that loss; and
- (c) a submission on how the claimant's financial loss was caused by the respondent's contravention of Saskatchewan securities laws.

13.4 Notice of Hearing on the Request

13.4 When a Request by the Director has been filed by Staff, the Secretary will issue a Notice of Hearing on the Request forthwith.

[13] Although subsection 13(2) of Policy 12-602 was subsequently amended on July 13, 2017, the requirement for the Panel to set a date in its decision was not removed until almost two years after the Merits Decision was rendered.

[14] The application of subsection 13(2) of Policy 12-602, as it read before it was amended, was recently considered by the Saskatchewan Court of Appeal in *C2Ventures Inc.* In that case, the appellants argued that the Panel's failure to follow its own procedures as set in Policy 12-602 was fatal to the Director's request for a financial compensation order. The Court found that the issue raised by the appellants invoked procedural fairness or natural justice concerns and that Policy 12-602 shaped the duty of procedural fairness owed by the FCAA to the appellants.

[15] At para 20 of that decision, the Court of Appeal concluded as follows:

[20] On the facts of this matter and notwithstanding the opposing view of the FCAA, I find the jurisdictional issue raised by the appellants perforce invokes procedural fairness or natural justice concerns. First, I note that s. 1.2(2) of Policy 12-602 provides, “[t]his Policy should be construed to achieve the most expeditious and least expensive determination of every proceeding before a Panel, consistent with the requirements of natural justice” (emphasis added). Second, the courts have historically treated procedural fairness and natural justice as matters of jurisdiction (*Université du Québec à Trois-Rivières v Larocque*, [1993] 1 SCR 471. In *Canada (Attorney General) v Public Service Alliance of Canada*, [1993] 1 SCR 941 at 961, the Court said, in undertaking a judicial review, “courts must ensure first that the board has acted within its jurisdiction by following the rules of procedural fairness” (see also: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 27–33, [2008] 1 SCR 190 [*Dunsmuir*]; *Cardinal v Kent Institution*, [1985] 2 SCR 643; *May v Ferndale Institution*, 2005 SCC 82, [2005] 3 SCR 809; *Service Employees’ International Union, Local No. 333 v Nipawin District Staff Nurses Association*, [1975] 1 SCR 382 at 389; and *R v Electricity Commissioners*, [1924] 1 KB 171 at 204–205 per Lord Atkin).

[16] In *C2 Ventures Inc.*, the Court of Appeal concluded that the appellants had a legitimate expectation that the Panel would follow the clear, unambiguous and unqualified procedure set out in Policy 12-602 and that the Panel should have set out a date by which the Director had to issue the Request for Orders. The Court found that the fact that the decision did not set out a date was inconsistent the appellants’ legitimate expectations as well as the principles of natural justice, namely, the principle of finality and the right to a timely hearing. Accordingly, the Court of Appeal held that the Panel erred in law when it determined it had jurisdiction to proceed with the hearing for financial compensation in the circumstances.


IV. CONCLUSION

[17] In this case, the Merits Decision included a finding that the Respondent contravened Saskatchewan securities laws, but did not include a date in the decision by which the Director was required to apply for orders pursuant to section 135.6 of the Act.

[18] Based on the reasoning set out in *C2 Ventures Inc.*, I find that, for the reasons stated above, the Respondent had a legitimate expectation that the procedure set out in Policy 12-602 would be followed and a right to a timely hearing. In the circumstances, I find that I have no jurisdiction to proceed with the issuance of an order pursuant to section 135.6 of the Act that the Respondent pay financial compensation to the Estate of [REDACTED].

[19] For these reasons, I hereby order that the Director's Request for an order that the Respondent pay financial compensation to the Estate of [REDACTED] pursuant to section 135.6 of the Act be dismissed.

Dated at Regina, Saskatchewan this 14th day of November, 2019.

A handwritten signature in black ink, consisting of a stylized 'P' and 'C' followed by a long horizontal line extending to the right.

Peter Carton (Chairperson)