ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Cadman, 2015 ABASC 836 **Date: 20150819**

Ronald William Cadman and Travis Alfred Cadman

Panel:	Tom Cotter Stephen Murison
Representation:	Natasha Didur for Commission Staff Matthew Epp Gavin Price for the Respondents
Submissions Completed:	21 July 2015
Decision:	19 August 2015

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I. INTRODUCTION

[1] Ronald William Cadman (**Ronald**) and Travis Alfred Cadman (**Travis**) were alleged by staff (**Staff**) of the Alberta Securities Commission (the **ASC**) to have acted contrary to the *Securities Act* (the **Act**) and the public interest "by failing to comply with a written undertaking given to the Executive Director" of the ASC as part of a July 2008 settlement agreement (the **2008 Settlement**).

[2] At the hearing into these allegations we received documentary evidence, including a Statement of Admissions signed by Ronald and Travis (the **Cadmans**) on 17 July 2015 (the **Admissions**) and a copy of the 2008 Settlement. We also heard the testimony of Travis, and received submissions by counsel for the Cadmans and for Staff. The parties agreed on the merits of Staff's allegations and had reached partial (but not complete) agreement on what consequences should follow. This decision addresses both issues.

[3] For the reasons explained below, we find that the Cadmans contravened the Act as alleged, and we are therefore ordering that they each pay a $110,000 administrative penalty; banning each of them for not less than five years from advising in securities or derivatives; banning each of them for not less than ten years (subject to limited carve-outs) from acting as registrants, investment fund managers, promoters, directors or officers of a range of entities, and from acting in a management or consultative capacity in connection with activities in the securities market; and ordering that they jointly and severally pay $12,500 of the investigation costs.

II. FACTUAL BACKGROUND AND FINDINGS

A. Background to the 2008 Settlement

[4] The pertinent factual background was, for the most part, not in dispute. We derived the following from the Admissions, the 2008 Settlement and Travis's testimony.

[5] The Cadmans are brothers, resident in Alberta. They have been engaged together for several years in multiple aspects of the real estate business in Canada and the United States, primarily involving residential development, construction, acquisition and renovation projects for resale or rental. They have conducted this activity through numerous entities, many financed by the sale of securities to the investing public. Over the years, the Cadmans raised (according to Travis) a total of $73,457,000 from some 2600 investors.

[6] The Cadmans' capital-raising activity in (or before) 2006 and 2007 led to a Staff investigation, resolved by the 2008 Settlement. In the 2008 Settlement the Cadmans and one of their companies admitted to having engaged in or permitted unregistered advising in securities, and to misrepresentations in advertising material. In addition, the Cadmans admitted to misrepresentations in and false certifications of offering memoranda, and to certain filing failures. In consequence, among other things under the 2008 Settlement, the Cadmans each undertook to the ASC's Executive Director to "refrain from . . . acting as a director or officer (or both) of any issuer" for two years – until 22 July 2010 (the **Undertaking**).

[7] The Cadmans had the benefit of legal counsel when negotiating and signing the 2008 Settlement (which included the Undertaking), and the Undertaking itself was clearly worded and unambiguous in meaning.

B. July 2008 to July 2010 – The Undertaking Period

[8] Troubled at the Cadmans' apparent continuing roles in their businesses despite the Undertaking, Staff wrote a 2 October 2008 letter to new counsel for the Cadmans expressing concern about a possible breach of the 2008 Settlement. In a 17 October 2008 response letter (the **October 2008 Response**) the Cadmans (through their counsel) acknowledged that "[o]bviously they cannot act as directors or officers" and explained that although "it has taken time for all employees to adjust to the changes", the transition to replacement directors and officers was "essentially complete". The October 2008 Response implied that the Cadmans might maintain some managerial functions, but only in roles subordinate to replacement directors and officers. To ensure that all involved understood this, all replacement directors and officers would be informed in writing of the Undertaking and that the Cadmans would "refrain from acting" as directors or officers during the two-year Undertaking period, their remaining involvement to be "in reduced capacities and, in all cases, the lines of authority and reporting flow to you [their replacements], as directors or officers".

[9] The comforting picture painted by the October 2008 Response was not matched by reality. Although the Cadmans formally resigned as directors and officers of the various companies and, according to the October 2008 Response, intended not to act in those roles during the Undertaking period, they each – as they now admit – "continued to act as *de facto* directors and officers of the CBI Group of Companies [20 companies identified in the Admissions] throughout the 2 year period set out in the Undertaking". They thus breached the Undertaking. It is clear that their breaches persisted through the remainder of the Undertaking period.

[10] Travis testified that (in essence) the replacement directors or officers proved inadequate: "They needed our guidance and, you know, we ended up creeping back into the damn chairs we left, honestly." The evidence also showed that during the Undertaking period the Cadmans were forming, and acting as officers and directors of, new entities to operate projects for which they were raising new capital from investors.

C. Findings of Misconduct

[11] Section 93.2 of the Act requires compliance with any "written undertaking" given to the Executive Director.

[12] The Undertaking, as part of the written 2008 Settlement, clearly fell within the scope of this provision. Equally clearly, the Cadmans did not comply with the Undertaking. It follows (as they admitted) that the Cadmans each contravened section 93.2 of the Act. We so find.

[13] Given this finding, we need not make a separate finding concerning the public interest allegation.

D. After the Undertaking Period

[14] After the Undertaking period ended in July 2010, the Cadmans remained – as they remain today – in charge of multiple business ventures, acting as directors and officers of numerous other entities.

[15] Some Cadman-led projects foundered, owing (Travis indicated) partly to the 2008 financial crisis. Litigation that enveloped some of those projects is now apparently nearing an end; Travis testified to anticipating court approval of settlement agreements. Travis indicated that he and his brother lost considerable money of their own in some of the projects. Despite challenges, others of the Cadman ventures – the majority, we were told – have been more successful.

[16] According to Travis, the Cadmans have not raised capital from the investing public since 2012 or 2013 and do not plan to do so in future. He portrayed their remaining projects as essentially either in operating mode (for example, generating rental income from which payments are being made to investors) or dormant (pending municipal decisions, for example), but all still requiring his and his brother's close attention, management and direction.

III. APPROPRIATE ORDERS

A. Sanctions and Costs – The Law

[17] Sections 198 and 199 of the Act contemplate numerous possible sanctions for capital-market misconduct. These are to be ordered, as appropriate in the public interest, not for punishment but rather with a prospective view to protection and prevention (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). Sanctions are intended to further the goals of specific deterrence (discouraging further misconduct by a respondent) and general deterrence (discouraging similar misconduct by others) (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17). *Re Hagerty*, 2014 ABASC 348 (at para. 11) set out a non-exhaustive list of relevant sanctioning factors:

- the seriousness of the respondent's misconduct and the respondent's recognition of that;
- the respondent's characteristics and history, such as capital-market experience and any prior sanctions;
- any benefit sought or obtained by the respondent, and any harm to which the capital market generally or investors were exposed by the misconduct;
- the risk to investors and the capital market if the respondent were to go unsanctioned or if others were to emulate the respondent's misconduct; and
- any mitigating considerations.

[18] We also note the direction in *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 154: ". . . at the end of the day the sanction must be proportionate and reasonable for each [respondent]. The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual [respondent]."

[19] Section 202 of the Act contemplates orders for the recovery of costs of an investigation or hearing (or both). The rationale for cost-recovery orders was discussed in *Re Marcotte*, 2011 ABASC 287 at para. 20:

> A costs order is not a sanction, but rather a means of recovering, from a respondent found to have engaged in capital-market misconduct, certain investigation and hearing costs that would otherwise be borne indirectly by law-abiding market participants whose fees fund the [ASC's] operations. It is generally appropriate that a respondent pay at least some portion of the relevant costs. Determination of the appropriate portion may involve assessing parties' contributions to the efficient conduct and ultimate resolution of the proceeding.

B. Positions of the Parties

[20] The parties agreed that the Cadmans' misconduct warrants substantial sanctions in the form of orders that each of Ronald and Travis pay $110,000 and be barred from advising in securities or derivatives, acting in a management or consultative capacity in connection with activities in the securities market, or acting as registrants, investment fund managers, promoters, or directors or officers of any of an array of entity types. There was no dispute that the bans should endure for either five years (advising) or ten years (all the others). Staff sought a linkage between the durations of the bans and payment by the relevant respondent of his administrative penalty. Although the Cadmans' position was somewhat ambiguous, there seemed to be no dispute on this point.

[21] However, the parties differed on the proper scope of the bans they suggested (other than the advising bans). Staff asserted that the public interest warranted bans of broad scope. The Cadmans urged that the scope of the non-advising bans be limited (such limitations are commonly termed "carve-outs") to apply only where either of them "intends to rely on any of the prospectus and registration exemptions contained in Alberta securities laws".

[22] To order sanctions without the proposed carve-outs, the Cadmans suggested, would be unwarranted – the application of "a sledgehammer to a nail" – and "so crushing as to be punitive". Travis asserted the Cadmans' indispensability to their various projects and to the resolution of the outstanding litigation (although not every example he cited was compelling). He suggested that, with "[n]ot a chance" of finding other directors and officers as replacements, the unmoderated bans sought by Staff would ruin the businesses – "some companies will fail" – and "[i]nvestors' money will be lost". Travis also stated: "[W]hat am I supposed to do for a living. I've never been an employee in my life."

[23] The parties agreed that it would be appropriate also to order the Cadmans together to bear responsibility for paying $12,500 toward the costs of Staff's investigation.

C. Analysis – Sanctions

1. Factors Considered

(a) Seriousness of the Misconduct

[24] The Undertaking was the only conduct restriction under the 2008 Settlement, and a significant one. As such, it was obviously a crucial element of the 2008 Settlement, and the Cadmans' breach undermined the effectiveness of the 2008 Settlement.

[25] We discern broader implications. The potential for resolution of Staff allegations through agreement is important to the enforcement of Alberta securities laws. Where misconduct is acknowledged, settlement may offer a practical route to appropriate outcomes – these often include undertakings to modify or constrain a respondent's future behaviour to avoid a recurrence of the misconduct – without the time and expense of a full contested hearing. Settlement can thus offer economy, expedition and certainty of outcome. This can benefit the parties (respondents and Staff). There is also a public benefit in the expedited freeing of Staff enforcement resources for redirection to other matters, and the associated faster communication to other market participants of the potential consequences of the acknowledged misconduct.

[26] However, a respondent's breach of terms of a settlement can foreseeably diminish Staff's openness to future settlement proposals. Moreover, in undermining the effectiveness of a particular settlement, such a breach can jeopardize public confidence in the settlement process or the overall enforcement of securities laws, and thus impair investor confidence in the fairness of the capital market.

[27] Given all these considerations, the Cadmans' breach of the Undertaking (and thus of section 93.2 of the Act) constituted serious misconduct.

[28] This seriousness was aggravated. Despite being alerted in October 2008 to Staff's concerns about non-compliance and setting out a plan in the October 2008 Response, the Cadmans either continued or soon resumed acting as directors and officers of multiple issuers. In reality the Cadmans seem simply to have rejected any practical restraint on their activities.

[29] In short, the Cadmans' misconduct was serious, and aggravated. This factor argues for sanctions delivering strong protective messages of specific and general deterrence.

(b) Recognition of Seriousness

[30] The Cadmans claimed to fully recognize the seriousness of their misconduct. Certainly the content of the Admissions was consistent with this. So, too, was their agreement (apart from the dispute about carve-outs) to some significant sanctions.

[31] However, aspects of this case – Travis's testimony, notably – tended to diminish our reliance on these indicia of the Cadmans' current state of mind. There was little indication that the Cadmans appreciate the aggravating factors just discussed. Travis’s testimony left the impression that he viewed himself, his brother and their businesses as victims, their bad business luck compounded by ASC regulation and enforcement. Whether or not that impression was correct, we find in Travis's testimony no assurance that the Cadmans have acquired the sort of respect for Alberta securities laws and regulatory objectives appropriate to those claiming the privilege of participation in the Alberta capital market.

[32] In the result, while this factor offers ground for some moderation in sanction, the effect is modest.

(c) The Cadmans' Characteristics and History

[33] We accept Travis's testimony to the effect that he and his brother are essentially self-made businessmen, without formal training or qualifications in finance or securities matters.

[34] However, the Cadmans were not and are not capital-market novices. By the time of the Undertaking, the Cadmans had been heavily engaged in the capital market, raising money from investors in reliance on exemptions and (according to the 2008 Settlement) purporting to advise on securities matters for a time, at least. They ought to have – and we consider on the balance of probabilities that throughout the Undertaking period they did – appreciate the existence and purposes of securities regulation and the importance of compliance with securities laws.

[35] On balance, therefore, the Cadmans' background does not argue for moderation in sanction.

(d) Benefit and Harm from Misconduct

[36] There was no evidence of direct financial harm to identifiable investors by reason of the Cadmans' breach of the Undertaking. However, as discussed, there was foreseeable harm (albeit difficult to quantify) to the enforcement process and to public confidence.

[37] It is apparent that the Cadmans meant to benefit personally by continuing to act as directors and officers during the Undertaking period. Even if motivated in part by a wish to sustain existing businesses for the benefit of existing investors, they also (as noted) were responsible for forming new entities which raised capital from investors. We conclude from this that their intention was not merely to preserve, but to expand their businesses, to their benefit, with careless or deliberate disregard for their Undertaking.

[38] In the circumstances, these factors reinforce the appropriateness of strong protective sanctions.

(e) Risk Posed

[39] The nature of the Cadmans' misconduct, coupled with our doubts as to the Cadmans' recognition of the aggravating aspects mentioned above, lead us to perceive a real risk of them further contravening Alberta securities laws unless strong protective measures are in place. We also perceive a serious risk that, without such measures, others might see little risk in breaching undertakings of their own, with foreseeable harm to the enforcement process and public confidence.

(f) Mitigation

[40] As the Cadmans noted, there was no fraud here. The evidence was that the Cadmans operated, and operate today, genuine businesses with some success, and with returns currently being paid to some investors. While an absence of fraud or sham is not strictly a mitigating factor, we do appreciate that the extent of sanctions that might be necessary to protect against those sorts of misconduct is not appropriate here.

[41] There appeared to have been a suggestion that a degree of naiveté may have been at play in this case. For example, Travis acknowledged that the Cadmans never sought a variation of

their Undertaking, claiming in explanation that he "didn't know it was possible" and had not discussed it with their legal counsel. However, the Cadmans gave the Undertaking and thereby, through the 2008 Settlement, avoided an enforcement hearing that might have resulted in a less favourable outcome for them. The Undertaking was unambiguous, as were its implications. Their breach of the Undertaking was blatant and persistent. No sophistication or familiarity with securities laws or litigation was necessary to understand any of this. The October 2008 Response from the Cadmans' legal counsel further showed the Cadmans' awareness of the Undertaking's scope and significance, as well as their willingness to seek legal counsel as needed. No mitigation lies here on grounds of naiveté.

[42] The Cadmans cooperated with the investigation into their breaches of the Undertaking. Their Admissions facilitated the efficient resolution of the current allegations. These actions are to their credit. We do not discount this as a mitigating factor, but in all the circumstances consider it more relevant to the issue of appropriate cost recovery, rather than as a factor in determining appropriate protective sanctions.

[43] On balance, this factor is neutral on the question of appropriate sanctions.

(g) Other Cases

[44] In addition to the factors just discussed, we considered outcomes of other cases (decisions and settlements) to which the parties directed us. For the most part these reinforced our appreciation of the principles and purposes of sanctions and the potential importance of various factors. In general these other cases confirmed the obvious: the appropriateness of any sanction depends heavily on – and the terms will vary widely with – the circumstances of the particular case. The cases did, however, tend to confirm that the types and extents of the orders agreed by the parties here appear to fall within a reasonable range. The cases also confirmed that carve-outs – sometimes broad ones – can be appropriate (again, depending on the circumstances). In one instance (*Re McCool*, 2014 ABASC 356, at para. 23(b)(ii)), a settlement agreement included an undertaking to refrain from acting as a director or officer subject to a carve-out similar to that proposed here by the Cadmans.

[45] In sum, we conclude that sanctions of the type and extent proposed by the parties fall within a range of reasonable outcomes here, and that carve-outs of some sort are not ruled out.

2. Appropriate Sanctions

(a) Nature and Extent of Sanctions Appropriate

[46] The evidence persuades us that the Cadmans would pose a real and significant danger to investors and the Alberta capital market were their admitted misconduct to go unsanctioned. The sanctioning factors considered above lead us to conclude that this case warrants significant sanctions delivering substantial specific and general deterrence.

[47] We concur with the parties that the appropriate sanctions must include both a significant, direct monetary element, and an array of prohibitions that would bar or constrain the Cadmans' access to investors and the capital market in capacities pertinent to their past activities.

[48] We are satisfied that the packages of sanctions jointly proposed by the parties (leaving aside for the moment their differences concerning carve-outs) would, in nature and extent, deliver sufficient protection in this case. Such sanctions would serve the public interest.

(b) Carve-Outs

[49] There remains the key issue in dispute: the appropriateness of carve-outs (those sought by the Cadmans, or any alternatives).

[50] Staff rightly noted (pointing to authority) that there is no entitlement to a carve-out from a sanction otherwise warranted; any carve-out must be justified. Staff asserted that no such justification was established here. In this connection, we note that the Cadmans first abused the privilege of access to our capital market by illegal dealings with investors, then abused the settlement process (through which they negotiated an outcome and avoided the uncertainties of an enforcement hearing) by flouting the Undertaking. As stated, they present a continuing risk if not firmly sanctioned. In all, we consider that the Cadmans face a considerable burden to justify carve-outs.

[51] That said, the purposes and principles of sanctioning – future-oriented protection and prevention, not punishment – compel us to focus on the sorts of harm that must be deterred, and the sanctioning terms that would appropriately deliver such deterrence here in light of the circumstances prevailing today, not some years past.

[52] The circumstances differ markedly now from those prevailing when the 2008 Settlement was signed or in the succeeding two years of the Undertaking period. Notably, the evidence (not disputed) was that the Cadmans (directly or through their various businesses) are no longer raising or intending to raise capital from investors. Resolution of certain outstanding litigation may perhaps require some sort of official involvement by the Cadmans. Numerous enterprises continue to operate under the Cadmans' direct and hands-on management, none apparently requiring additional money from investors and some apparently now paying investors. Whether or not the Cadmans are truly indispensable and irreplaceable as directors and officers, their mandatory replacement (under the proposed sanctions in the absence of carve-outs) would inevitably compel dramatic change and associated dislocation in numerous enterprises.

[53] Is such dislocation necessary to protect our capital market? Would the benefit outweigh the potential harm to investors (in that capacity, or as litigants)? In the changed circumstances – above all, the apparent end of the Cadmans' reliance on and recourse to our capital market – we consider that the bans sought by Staff, if unmoderated by carve-outs, could be disproportionate. We conclude that some carve-outs are justified in this case. They must not, however, undermine the necessary protective purpose.

[54] The carve-outs sought by the Cadmans are too broad. We must ensure that any carve-outs selectively and effectively constrain the Cadmans' access to the investing public, in key capacities, for the appropriate periods.

[55] In the result, we are satisfied that the public interest will be served by a package of sanctions, directed against each of the Cadmans, comprised of the $110,000 administrative

penalty, the five-year advising ban and the ten-year director-and-officer and capital-market management-and-consulting bans on which the parties agreed, but moderated by tailored carve-outs. Such carve-outs would apply to certain of the ten-year bans in respect of issuers and promoters (but not other types of entity), but only where there is no raising of capital (or intention to raise capital) – with or without reliance on exemptions – from any source other than close family members of the Cadmans or an arm's-length financial institution. A separate carve-out would clarify that the bans on acting in a securities-market management or consultative capacity would not preclude specified normal-course dealings with existing investors.

(c) Conclusion on Sanctions

[56] Orders on the terms just discussed would appropriately respond to the Cadmans' misconduct, delivering suitable protection through adequate deterrence of future breaches of undertakings given to the Executive Director (by the Cadmans or others) without unduly constraining the Cadmans in their pursuit of livelihoods outside our capital market.

D. Analysis – Cost-Recovery

[57] Although no evidence was tendered, there was no dispute that Staff incurred costs in their investigation of at least $12,500; recovery of hearing costs was not sought. The parties concurred concerning recovery of investigation costs. There was no reason to consider this an exceptional case in which the Cadmans should bear none of those costs.

[58] There was no dispute that the Cadmans cooperated with Staff in the investigation. In tendering the Admissions and agreeing on some sanctions, the Cadmans certainly contributed significantly to the efficiency of the hearing and the resolution of this matter. We are satisfied that the suggested cost-recovery figure reflects appropriate recognition of these factors.

[59] We conclude that a cost-recovery order on the terms agreed by the parties is appropriate here.

IV. CONCLUSION

[60] For the reasons given, we order in the public interest that each of Ronald and Travis:

- under section 199, must pay an administrative penalty of $110,000;

- under section 198(1)(e.1) of the Act, is prohibited from advising in securities or derivatives until the later of the date (if any) on which Ronald or Travis (as the case may be) has fully paid his administrative penalty (the **Payment Date**) and 19 August 2020;

- under sections 198(1)(d) and (e), must resign all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer until the later of the Payment Date and 19 August 2025, except that these orders will not preclude either Ronald or Travis from continuing, becoming or acting as a director or officer (or both) of an issuer that neither raises nor intends to raise capital from any **Non-Permitted Source** (that being a person or company other than (i) a financial institution at arm's

length from both Cadmans; or (ii) a close family member of either Ronald or Travis);

- under sections 198(1)(d) and (e), must resign all positions he holds as a director or officer of any registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, and he is prohibited from becoming or acting as a director or officer (or both) of any such entity until the later of the Payment Date and 19 August 2025;

- under section 198(1)(e.2), is prohibited from becoming or acting as a registrant, investment fund manager or promoter until the later of the Payment Date and 19 August 2025, except that these orders will not preclude either Ronald or Travis from continuing, becoming or acting as a promoter that neither raises nor intends to raise capital from any Non-Permitted Source; and

- under section 198(1)(e.3), is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, until the later of the Payment Date and 19 August 2025, except that these orders will not preclude either Ronald or Travis from communicating with existing investors about the status of their investments or effecting payments to such investors in respect of their investments.

[61] We further order under section 202 of the Act that the Cadmans must pay, jointly and severally, $12,500 of the costs of the investigation.

[62] This proceeding is concluded.

19 August 2015

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Stephen Murison