

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re LaFramboise, 2020 ABASC 12

Date: 20200128

Marie Louise LaFramboise

Panel: Tom Cotter
Kari Horn

Representation: Yasifina Somji
for Commission Staff

Submissions Completed: October 30, 2019

Decision: January 28, 2020

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I. INTRODUCTION

[1] Alberta Securities Commission staff (**Staff**) seek orders against Marie Louise LaFramboise (**LaFramboise**) under sections 198.1(2)(a) and 198(1) of the *Securities Act* (Alberta) (the **Act**) in relation to LaFramboise's conviction of one count of fraud over \$5,000, contrary to section 380(1)(a) of the *Criminal Code* of Canada.

[2] Affidavit evidence satisfies us that LaFramboise was served with notice of Staff's application. Although section 198.1(2) does not require that a respondent be provided with an opportunity to be heard, LaFramboise was afforded that opportunity, but elected not to present evidence or make submissions within the time stipulated in the notice of application. Staff provided affidavit evidence and written submissions.

II. BACKGROUND

[3] On June 5, 2018, LaFramboise was charged by indictment with 36 counts of fraud over \$5,000. The Crown amended the first count of the indictment on October 4, 2018 to include 24 victims (the **Complainants**), and on the same day LaFramboise signed an Agreed Statement of Facts (the **Statement**). LaFramboise pleaded guilty to the first count of the indictment and was sentenced in the Court of Queen's Bench of Alberta on January 7, 2019 to four years imprisonment and ordered to pay approximately \$1.2 million in restitution.

[4] Staff's application relied on the inter-jurisdictional enforcement provisions in section 198.1(2)(a) which authorize us to make an order under section 198(1)(a) to (h) in respect of a person who has been convicted of an offence arising from a transaction, business or course of conduct related to securities or derivatives. Staff seek permanent market-access bans against LaFramboise.

[5] The issues under consideration are: first, whether LaFramboise has been convicted of an offence arising from a transaction, business or course of conduct related to securities or derivatives, and second, whether we should exercise our jurisdiction to make a protective order in the public interest against LaFramboise.

[6] For the reasons that follow, we find that LaFramboise was convicted of an offence arising from a course of conduct related to securities, and that it is in the public interest to issue an order as requested by Staff.

III. FACTS

A. Statement

[7] In evidence before us was the Statement describing LaFramboise's admitted conduct, and we summarize the pertinent admissions.

[8] The Statement begins with a background section identifying some of the parties involved and their respective roles in certain transactions that provided the foundation for LaFramboise's fraudulent scheme. Those transactions are distilled in Staff's submissions as follows:

In 2003, a company by the name of Cougar Rock Holdings Ltd. [**CRHL**] entered into an agreement with the Government of Alberta to lease 1200 acres of land (**leased lands**) in the Hinton-Jasper area

with the objective of building a commercial recreational property that included condominiums and a golf course.

In 2006, LaFramboise entered into an agreement with [WJ], the founder of [CRHL], by which she could develop condominiums on a portion of the leased lands. LaFramboise formed a company called Eagle Ridge Resort Group Inc. [ERRG] for this purpose.

...

In 2009, [WJ] sold all of his shares in [CRHL] to [ERRG].

[9] The Statement then describes three groups of transactions that were different in nature, albeit related insofar as they all involved LaFramboise's companies purportedly pursuing connected real estate developments. Those transactions are grouped under the headings: "The Condominium Fraud", "The Bond Fraud", and "The Folding Mountain Condo Fraud and the Share Fraud".

[10] Under "The Condominium Fraud", the Statement recounts that ERRG, at LaFramboise's direction, sold rights to purchase resort condominium units and accepted deposits totalling \$872,009 from 22 of the 24 Complainants. LaFramboise's website falsely claimed that the resort offered fee simple ownership, and she also misrepresented the progress of development to prospective purchasers. She sold reservations for future phases of development at the resort and for golf memberships when almost no development had occurred.

[11] LaFramboise contravened the *Condominium Property Act* (Alberta) by not placing the condominium deposits into a trust account. Instead she deposited the funds in an ERRG bank account and used the funds for business and development expenses, for the purchase of the Folding Mountain Campground and for personal expenditures. Some of the purchasers received refunds for their deposits, but many did not.

[12] The "Bond Fraud" section explains that LaFramboise formed another company – ELFM Finance Corp. (ELFM) – through which she sold bonds to three of the Complainants, two of whom were victims of the Condominium Fraud, for proceeds of \$110,100. The bonds were sold for the ostensible purpose of financing improvements to the aforementioned Folding Mountain property; however, LaFramboise kept the proceeds for herself.

[13] In the last section, "The Folding Mountain Condo Fraud and the Share Fraud", the Statement describes LaFramboise accepting a \$182,337.50 deposit from one of the Complainants for a non-existent condominium development at the Folding Mountain property and using \$59,460 of amounts owed to that Complainant for a purported share subscription in CRHL. LaFramboise falsely claimed that CRHL owned the leases referred to in paragraph 8 above, when in fact the leases had been cancelled. Moreover, the CRHL shares were never transferred to the purchaser.

B. Sentencing

[14] In the course of the sentencing hearing the Court heard several victim impact statements, relating significant financial, emotional and relationship harms suffered by LaFramboise's victims. The sentencing judge made note of the "multiple layers to this fraud which added to the aura of respectability and legitimacy, which when added to [LaFramboise's] sterling reputation, made it

readily understandable that people would . . . take a chance and make what they thought was a good investment." It was the apparent legitimacy of the scheme, coupled with LaFramboise's previous good character, that made the fraud "particularly odious".

[15] As mentioned, LaFramboise was sentenced to four years imprisonment and ordered to pay approximately \$1.2 million in restitution. The Court acknowledged that the prospects of the victims receiving their restitution was remote.

C. Staff Affidavit

[16] An affidavit sworn by a Staff investigator included searches from Alberta Corporate Registry for both ELFM and ERRG confirming that both companies had Alberta registered and records addresses. The affidavit also referred to other searches which indicated that LaFramboise was an Alberta resident for some of the relevant time and that over half of the victims had Alberta addresses.

IV. ANALYSIS

A. Transaction, Business or Course of Conduct Related to Securities

[17] The Statement set out a series of transactions which gave rise to LaFramboise's conviction on a single count of fraud in an indictment that included 24 victims. We are satisfied from the admissions made in the Statement that these transactions constituted a course of conduct spanning several years. We now turn to consider whether these transactions related to securities or derivatives within the meaning of s. 198.1(2)(a)(i) of the Act.

[18] Even though the Statement did not use the term "security", it was clear that at least two aspects of the fraudulent scheme involved securities within the meaning of the Act. The definition of security in section 1(ggg) of the Act includes: "any *bond*, debenture, note or other evidence of indebtedness, *share*, stock, unit, unit certificate, participation certificate, certificate of share or interest . . ." [emphasis added]. As mentioned, LaFramboise admitted to selling bonds through ELFM to three individuals and shares of CRHL to one individual, as part of the fraud to which she pled guilty. We therefore find that LaFramboise was convicted of an offence arising from a course of conduct related to securities.

B. Public Interest

[19] Our finding that the necessary conditions of s. 198.1(2)(a) are met is not by itself sufficient to warrant the imposition of protective orders – we must also be persuaded that it is in the public interest to make such orders: see for example, *Re Leemhuis*, 2008 ABASC 585 at para. 12. In a prior decision reciprocating a criminal conviction – *Re Braun*, 2007 ABASC 694 – the panel applied the reasoning from decisions reciprocating orders from another securities regulatory authority in assessing the relevant public interest consideration (at para. 17, citing *Re O'Connor*, 2005 ABASC 987 at para. 26): "' . . . we believe that it is appropriate to rely on the provision only when doing so would provide protection to Alberta investors and the Alberta capital market.'"

[20] We are also mindful of the several decisions cited by Staff in which securities commissions from other jurisdictions have issued protective orders in relation to criminal convictions for securities-related fraud; see for example, *Re DiNardo* (2016), 39 OSCB 953; *Re Reeve*, 2018 ONSEC 55; and *ReChieduch*, 2019 BCSECCOM 29. Invariably the commissions in those

cases noted the seriousness of fraud, consistent with our prior decisions. For example, the Ontario Securities Commission panel in *Reeve* said at para. 28:

... fraud is one of the most egregious violations of securities law. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.

[21] While a connection to Alberta is not necessarily determinative of whether we ought to exercise our authority to reciprocate a criminal conviction, in this case the real and substantial connection of the fraud to Alberta and its residents persuades us that it is in the public interest to issue protective orders. LaFramboise committed the fraud while a resident of Alberta for some of the relevant time and used Alberta corporations in doing so, the fraud was centred around real estate in Alberta, and over half of the victims were Alberta residents. We therefore are of the view that orders under s. 198 of the Act are required to protect Alberta investors and our capital markets.

C. Orders Sought

[22] Staff seek an array of orders under s. 198 with permanent effect. In assessing the measure of deterrence and protection warranted in the circumstances, we do not think it appropriate to look at the securities aspect of the fraud in isolation. Instead, we consider the impugned conduct as a whole to be inextricably connected, and accordingly we ought to take into account what the Statement referred to as the "Condominium Fraud" in measuring the extent to which LaFramboise should be precluded from participating in the Alberta capital markets in the future.

[23] We make the following observations in concluding that all aspects of LaFramboise's fraud should be seen as one integrated scheme, rather than three distinct frauds as might be suggested by the manner in which the Statement's narration is organized. First, the amended indictment on which LaFramboise was convicted included all aspects of the fraud in a single count. Second, there were clear connections and overlap among the victims and between the condominium deposits and the sale of the bonds and CRHL shares. Third, and most importantly, LaFramboise demonstrated a willingness to use corporate vehicles and the issuance of their securities in furtherance of a larger fraudulent scheme. We therefore do not think we can justify parsing LaFramboise's fraud into its constituent elements and considering only the strictly securities aspect in isolation from the related misconduct in deciding appropriate protective orders in the public interest.

[24] We have taken into account the sanctioning factors that we have applied in our prior decisions, including the seriousness of the misconduct, the respondent's pertinent characteristics and history, any benefit sought or obtained by the respondent, and any mitigating or aggravating circumstances: *Re Homerun International Inc.*, 2016 ABASC 95 at para. 20. We have already mentioned the seriousness with which we view fraud and its deleterious effects on investors and our capital markets. We note that the sentencing judge regarded LaFramboise's lack of a prior criminal record and her "good character" as essentially a neutral factor, in that she used those ordinarily creditable traits to beguile her victims. As also mentioned, the scheme was multifaceted, continued for several years, affected at least 24 individuals, and the quantum of the overall fraud exceeded \$1 million, of which substantial amounts were misappropriated for personal use. We were particularly disturbed by one victim impact statement that related that LaFramboise knowingly defrauded a terminally ill man of savings which he intended to leave for his wife and three young children.

[25] The sentencing judge noted LaFramboise's guilty plea, her agreement to a restitution order, her age, and the support of her family as mitigating factors. We have also taken into account LaFramboise's expression of remorse in a brief statement she made at the sentencing hearing.

[26] In light of the sanctioning factors considered above, we are persuaded that the orders sought by Staff are reasonable and proportionate to the seriousness of LaFramboise's misconduct and the degree of harm suffered by investors, and are thus necessary to protect the public interest.

D. Sanctions Ordered

[27] Accordingly, we order in the public interest with permanent effect:

- under ss. 198(1)(b) and (c) of the Act, LaFramboise must cease trading in securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to LaFramboise;
- under ss. 198(1)(d) and (e), LaFramboise must resign all positions she holds as a director or officer of any issuer, and she is prohibited from becoming or acting as a director or officer (or both) of any issuer or other person or company that is authorized to issue securities; and
- under s. 198(1)(c.1), (e.1), (e.2) and (e.3), LaFramboise is prohibited from engaging in investor relations activities, from advising in securities or derivatives, from becoming or acting as a registrant, investment fund manager or promoter, and from acting in a management or consultative capacity in connection with activities in the securities market.

[28] This proceeding is concluded.

January 28, 2020

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Kari Horn