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

Citation: Re Oei, 2019 BCSECCOM 255 Date: 20190722

**Paul Se Hui Oei,**
**Canadian Manu Immigration & Financial Services Inc.,**
**0863220 B.C. Ltd. and 0905701 B.C. Ltd.**

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| **Panel** | Nigel P. Cave | Vice Chair |
| | Audrey T. Ho | Commissioner |
| | Suzanne K. Wiltshire | Commissioner |
| **Hearing Date** | March 6, 2019 | |
| **Submissions Completed** | March 6, 2019 | |
| **Decision Date** | July 22, 2019 | |

**Appearing**

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| Mila Pivnenko<br>Nicholas Isaac | For the Executive Director |
| Paul Se Hui Oei | For himself,<br>Canadian Manu Immigration & Financial Services Inc.,<br>0863220 B.C. Ltd. and 0905701 B.C. Ltd. |

## Decision

### I. Introduction

[1] On August 31, 2018, Paul Se Hui Oei, Canadian Manu Immigration & Financial Services Inc., 0863220 B.C. Ltd. and 0905701 B.C. Ltd. (Applicants) applied under section 171 of the *Securities Act*, RSBC 1996, c. 418 for a hearing and review of both the Commission's findings, dated December 12, 2017 (2017 BCSECCOM 365) and decision, dated August 8, 2018 (2018 BCSECCOM 231).

[2] Our findings set out that each of Oei, Canadian Manu, 0863 and 0905 contravened section 57(b) of the Act in the following manner:

a) Oei committed 63 contraventions of section 57(b) of the Act in the aggregate amount of $5,003,088;

b) Canadian Manu committed 63 contraventions of section 57(b) of the Act in the aggregate amount of $5,003,088;

c) 0863 committed 33 contraventions of section 57(b) of the Act in the aggregate amount of $3,001,853; and

d) 0905 committed 30 contraventions of section 57(b) of the Act in the aggregate amount of $2,001,235.

[3] In our decision, pursuant to sections 161 and 162 of the Act, we made the following orders:

***Oei***

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

(b) Oei 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 (including RRSP accounts, TFSA accounts and RESP accounts) 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) Oei pay to the Commission $3,087,977.41 pursuant to section 161(1)(g) of the Act; and

(d) Oei pay to the Commission an administrative penalty of $4.5 million under section 162 of the Act.

***Canadian Manu Immigration & Financial Services Inc.***

(e) Canadian Manu 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)(iii), from becoming or acting as a registrant or promoter;

(iv) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

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

(f) Canadian Manu pay to the Commission $3,087,977.41 pursuant to section 161(1)(g) of the Act; and

(g) Canadian Manu pay to the Commission an administrative penalty of $1.0 million under section 162 of the Act.

***0863220 B.C. Ltd.***

(h) 0863 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)(iii), from becoming or acting as a registrant or promoter;

(iv) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

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

***0905701 B.C. Ltd.***

(i) 0905 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)(iii), from becoming or acting as a registrant or promoter;

(iv) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

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

(j) the obligations to pay the amount set out in subparagraphs (c) and (f) above are joint and several as between Oei and Canadian Manu, such that the total payments to be made under the orders in those subparagraphs shall not exceed $3,087,977.41.

[4] Oei testified during the hearing of this application, on behalf of himself and the other Applicants, tendered documentary evidence and made written and oral submissions. The executive director made written and oral submissions.

[5] At the conclusion of the hearing of this application, we reserved our decision. This is our decision with respect to the Applicants' application and our reasons therefore.

## II. Background Facts

### *Summary of key findings*

[6] As set out in our findings, the Applicants raised funds on behalf two companies, Cascade Renewable Carbon Corp. (CRC) and Cascade Renewable Organic Fertilizer Corp. (CROF) (together, Cascade), through an indirect investment structure.

[7] Central to our findings was that the Applicants raised approximately $13 million from investors. We found that the Applicants represented to investors that their invested funds would be used for "start-up" expenses for the Cascade businesses. We found that, of the $13 million raised, only approximately $8 million was advanced by the Applicants to Cascade or expended by the Applicants on behalf of Cascade (for its "start-up" expenses). The remainder of the amount raised was retained by Oei and Canadian Manu and spent on other matters. This was the amount of the fraud that we found.

### *Evidence in this application*

[8] During the oral hearing of this application, Oei testified. The material aspects of Oei's testimony can be summarized as follows:

- Oei has decided to leave the financial industry completely following our findings and decision;

- Oei and his wife had a history of contributing to various charitable causes and political organizations;

- that the Applicants' former legal counsel understood that:

a) one or more of the Applicants would be purchasing shares from CRC and CROF for resale to investors;

b) investors would be acquiring shares of CRC and/or CROF from one or more of the Applicants and that the Applicants would be selling those shares at a price that would allow the Applicants to retain a profit and/or commissions from such sales; and

c) the Applicants were therefore not obliged to forward all of the investors' funds to the Cascade companies;

- following the decision, there has been a significant change in Oei's financial circumstances in that he has exhausted his savings and is currently unemployed and has no income; and

- the findings and decision have caused significant reputational damage to him and his wife, and significant hardship to them and their children.

[9] The Applicants tendered 59 documents for admission as exhibits in this application. Those documents included:

- excerpts of an examination for discovery of the Applicants' former lawyer;

- excerpts of the share register of a company called Organic Management Solutions Inc. (OMSI) showing the issue of shares of that company to one or more of the Applicants and Oei's wife;

- affidavits from five investors saying that, at the time of their investments in Cascade, they were aware that Oei was not a "volunteer" in connection with those transactions and that he would be making a profit and/or a commission from the transactions;

- an affidavit from an investor indicating that a payment of $1.5 million (that, in our findings, we held to be an investment in Cascade) was made as a personal loan to Oei;

- documents associated with other proceedings with respect to certain investors who testified in our original hearing;

- excerpts of a transcript of an interview of the former CEO of the Cascade entities about his fundraising arrangements with Oei; and

- copies of various cheques, bank drafts and agreements.

[10] We note that some of these documents were previously entered as exhibits during the original hearing of this matter.

## III. Analysis

### *Positions of the parties*

[11] The Applicants submitted that there had been the following changes in circumstances since our findings and decision and/or that they had the following new evidence that should lead us to revoke or vary (in whole or in part) either or both of our findings or decision:

- the Applicants received a copy of the transcript of the examination for discovery of the Applicants' former lawyer in another proceeding after our findings were issued, and that evidence should lead us to conclude that the Applicants did not have the *mens rea* of fraud in connection with their dealings with the investors in Cascade;

- the share register of OMSI which the Applicants submitted provided evidence that Oei and his wife acquired shares of that entity;

- evidence that the former CEO of Cascade knew that one or more of the Applicants might receive commissions on the sale of securities in CRC and/or CROF;

- copies of cheques from an investor totaling US$344,840, which the Applicants say were payments made by the investor directly to Cascade for which the Applicants should receive credit (thereby lessening the amount of misappropriation of investors' funds by the Applicants in contravention of section 57(b) of the Act);

- the affidavits from the investors should lead us to conclude that those investors were aware, at the time of making their investments in Cascade, that the Applicants were selling their shares in CRC or CROF, as applicable, and would be earning a profit or a commission on such transaction (if considered as commissions, that the Applicants should be entitled to $2,336,100.72 in additional commissions);

- that the affidavit from one investor and copies of two loan agreements between that investor (and her daughter) and Oei should lead us to reclassify one payment made by that investor in the amount of $1.5 million from an investment in Cascade to a personal loan to Oei;

- that the panel's treatment of CRC and CROF as one investment entity (i.e. Cascade) was in error, with the result that the number of contraventions of section 57(b) would be reduced;

- that there were a further $260,625.34 of Canadian Manu overhead expenses (ie. leasehold expenses, etc.) and expenses of operating Oei's Bentley car that we should have considered as "start-up" expenses of Cascade;

- that there was a further $150,000 paid by the Applicants to a third party as commissions on the sale of shares in Cascade and that we should have considered this amount as part of the "start-up" expenses of Cascade that the Applicants expended on behalf of Cascade;

- that we should reconsider a determination made in our decision and find that there was a further $460,000 repaid by Oei to one investor through a property transaction and reduce our orders under section 161(1)(g) against Oei and Canadian Manu by this amount;

- as a result of the documents filed by the Applicants, the credibility of several of the investors who testified during the hearing should now be reconsidered by the panel; and

- that Oei's personal financial circumstances have been significantly impaired as a result of the findings and the decision and that we should vary our sanctions against him accordingly.

[12] The executive director submitted that neither Oei's testimony nor the documents filed by the Applicants in connection with this application constitute new evidence or demonstrates a change in circumstances that would have resulted in a different decision or that should lead us to revoke or vary any of our findings or our decision.

[13] The executive director further submitted that this application amounted to an attempt by the Applicants to reopen and re-litigate the findings and the decision based upon evidence that was either already before the panel (at the time of the findings and/or the decision, as applicable), available to the Applicants at the time of the hearing (but not filed at that time) or not relevant.

***Section 171***

[14] Section 171 of the Act sets out that the Commission may revoke or vary, in whole or in part, a decision that it has previously made where it considers that to do so would not be prejudicial to the public interest.

[15] Importantly, section 171 is not the mechanism through which Commission decisions can be and are appealed. Commission decisions must be appealed to the British Columbia Court of Appeal.

[16] Commission Policy 15-601 *Hearings* and a host of decisions on applications made under section 171 by this Commission make clear that an applicant under section 171 must establish that they have new and compelling evidence, that there has been a significant change in circumstances since the decision or that for some other reason it would not be

prejudicial to the public interest for the Commission to revoke or vary its previous decision.

[17] We will address each of the specific issues raised by the Applicants in this application below, but, in general, we agree with the submissions of the executive director that this application largely represents an attempt by the Applicants to re-litigate the findings and the decision that we have already reached. On that basis alone, the vast majority of this application would fail as it really constitutes an attempt to appeal our findings and decision. As stated above, section 171 is not the mechanism through which Commission decisions can be appealed. Oei and Canadian Manu each made applications for leave to appeal the findings and decision from the British Columbia Court of Appeal, which were dismissed prior to the hearing of this application. The one area of evidence that is clearly new relates to Oei's personal financial circumstances and we address that evidence below.

[18] The original hearing of this matter took place over 12 days and included the filing of over 3500 exhibits. The Applicants were represented by counsel throughout the hearing. Almost all of the issues raised by the Applicants in this application were issues that were raised by the Applicants during the hearing and were considered by us in our findings and decision.

[19] Central to our findings was that the Applicants represented to the investors in Cascade that their invested funds would be used for "start-up" expenses for the Cascade businesses and that, in fact, a substantial portion of the investors' funds were retained by Oei and Canadian Manu and spent on other matters. The evidence filed by the Applicants in this application does not cause us to take a different view on that central finding, nor on any of the specific findings or on our decision.

a) Witness credibility

[20] In this application, the Applicants filed a number of documents from other proceedings, involving certain witnesses who testified at the hearing, and made submissions that these documents demonstrated there were inconsistencies in the testimony of four investors who testified during the hearing, and that we should reconsider the credibility of these four investors.

[21] These four investors testified during the hearing and were subject to significant cross examination by counsel for the Applicants. The credibility of all of the investor witnesses was an issue that was specifically raised by the Applicants during the hearing. In our findings, we determined that we found the investor witnesses to be credible, notwithstanding minor inconsistencies in their testimony.

[22] Neither the specific documents filed by the Applicants in connection with this application nor the information contained therein was put to the investor witnesses in cross examination during the hearing. None of the documents nor the information contained therein are relevant to the evidence given by those witnesses during the hearing that was material to the allegations against the Applicants. As a result, there is no basis for us to

reach a different conclusion on the credibility of any of the four witnesses in relation to the testimony at the hearing that the Applicants seek to impugn during this application.

b) Evidence related to a finding of the *mens rea* of fraud

[23] The Applicants submitted excerpts from an examination for discovery that occurred in an unrelated proceeding of the lawyer who provided advice to the Applicants in connection with the investment structure ultimately used by the Applicants to sell securities in Cascade.

[24] The Applicants submit that those excerpts show that that lawyer understood:

- that investors would indirectly acquire their interest in Cascade;
- that investors would be buying shares already owned by Oei and Canadian Manu;
- that Oei and Canadian Manu could retain a profit or commission on the resale of the CRC or CROF shares, as applicable; and
- that investor funds received by Oei and Canadian Manu could be utilized as they determined.

[25] Although the Applicants did not explicitly state this in their submissions, the inferred submission was that because the Applicants' lawyer knew these things and the Applicants were relying on the legal advice provided by this lawyer, they could not have had the requisite mental intent to defraud investors. A further implied submission was that if the lawyer had ensured that the investment documents properly reflected the Applicants' right to use investor funds as they determined, there would be no fraud. Put simply, solicitor negligence was responsible for any failure to disclose the actual use of investor funds and not the conduct of the Applicants.

[26] Again, one of the submissions made by the Applicants during the hearing was that the disclosure provided to investors about the use of their invested funds was deficient due to solicitor negligence. We rejected that submission on the basis that while the evidence during the hearing established that the Applicants' lawyer provided advice on an indirect investment structure, the mere existence or creation of an indirect legal structure did not explain why investor funds that were invested into the indirect investment structure did not flow through that structure to Cascade as investors were promised and were, instead, misappropriated by Oei and Canadian Manu. With respect to whether there was solicitor negligence in preparing the investment documents, there was no evidence in the hearing about what instructions were provided to the lawyer, who was responsible for preparing what documentation or whether any disclosure documentation was reviewed or commented upon by the lawyer.

[27] The excerpts from the examination for discovery do not change any of our views on this issue. At best, the answers given by the lawyer set out her understanding of the investment structure and flow of funds. However, the Applicants have not provided any

evidence sufficient to establish either solicitor negligence or that the Applicants were not responsible for the disclosure provided to investors. The excerpts in no way address our finding that, in fact, investors were not told that a significant portion of their funds would simply be kept by the Applicants.

[28] We have found that investors were deceived when they were not told that some or all of their invested funds would be retained by the Applicants and would not be used for start-up costs associated with the Cascade projects and that the Applicants had the requisite knowledge of this deceit. Nothing in the excerpts would change any of those findings.

c) Evidence related to finding (or the quantum) of the *actus reus* of fraud

[29] A significant portion of the documents filed by the Applicants in connection with the application are connected to submissions that they made that are directed, in one form or another, at contesting our findings with respect to the *actus reus* of fraud or the amount of the fraud.

[30] In particular, the following evidence was tendered in furtherance of submissions made by the Applicants that Oei and Canadian Manu were, in general, entitled to a profit and/or a commission on the resale of the CRC and CROF shares and that investors were not deceived about this:

- the affidavits from five of the investors that they knew, at the time of making their investments in Cascade, that Oei was not a "volunteer" in connection with fundraising for Cascade and that the Applicants would be earning a profit or a commission on such transactions; and

- evidence that the former CEO of Cascade knew that one or more of the Applicants might receive commissions on the sale of securities in CRC and/or CROF.

[31] During the hearing, the Applicants made submissions that they were entitled to a profit and/or commissions on the sale of shares of CRC and/or CROF to investors. We rejected those submissions on the basis that investors were not told this and were told that their invested funds would be used on the start-up expenses associated with the Cascade businesses. We accepted that the concept of "start-up expenses" could include the payment of commissions and we credited the Applicants with having paid over $1,000,000 in commissions. We rejected the submissions that the Applicants were entitled to the profits from the sale of the CRC and CROF shares on the basis that this was completely inconsistent with the representations as to use of investor funds that the Applicants made to investors.

[32] During the hearing, the transcript of the interview of the former CEO of the Cascade companies was entered as one of the exhibits. We already considered that evidence in reaching the findings set out above.

[33] The affidavits from the five investor witnesses all contain the same statements. They say that these investors knew that Oei was not a "volunteer" and that he would be making a commission on the sale of shares of CRC or CROF, as the case may be. The first issue with these affidavits is that four of the five investors testified during the hearing. This was not the position that they took during the hearing. These witnesses were cross examined by the Applicants. The cross examination did not lead to the affiants making the statements that they do now. The statements in the affidavits are imprecise but they do not say that these five investors knew that the Applicants would be keeping a substantial portion of the investors' funds. The second issue is that although the Applicants provided a detailed explanation of the use of investor funds during the hearing, they did not claim during the hearing this additional amount of $2.3 million in commissions. We do not find the five investor affidavits to be sufficient to support the Applicants' current submissions that they were entitled to an additional $2.3 million in commissions.

[34] We do not find that any of this evidence should make us change our basic findings with respect to the representations made to investors regarding the use of their invested funds by the Applicants and the deceit that occurred when the Applicants failed to use those funds in the manner represented to investors.

[35] The following evidence was submitted by the Applicants in furtherance of their submissions that the amount received by the Applicants from investors (in connection with the investors' investments in Cascade) were less than as set out in our findings:

- an affidavit from one investor which says that one payment in the amount of $1.5 million to Oei was actually a personal loan to Oei; and

- what purports to be loan agreements between Oei and that investor.

[36] The specific issue of how to characterize this $1.5 million amount arose in both our findings and in our decision.

[37] The contemporaneous evidence (i.e. at the time of the payment) relating to that payment suggests that the $1.5 million amount was paid by way of a cheque totaling $3.0 million which indicated on the cheque that it was a payment in respect of an investment in Cascade. Notwithstanding this notation, in an interview with Commission investigators, Oei stated that only $1.5 million of the $3.0 million was an investment in Cascade and the remaining $1.5 million was a gift to him and his wife. Accordingly, in our findings we determined that only $1.5 million of the $3.0 million should be considered an investment in Cascade. The remaining $1.5 million was never included in the funds raised from investors that formed part of the allegations of fraud against the Applicants.

[38] During the sanctions phase of this proceeding, the Applicants submitted that certain payments that they made to Las Vegas casinos represented a repayment of a portion of that $1.5 million investment from that investor. For the reasons set out in our decision, we did not agree with the submissions of the Applicants on this point. However, it is

clear that, at that stage of these proceedings, the Applicants were still taking the position that this amount was an investment in Cascade.

[39] All of this directly contradicts the position now taken by the Applicants that this $1.5 million amount was never an investment in Cascade.

[40] The loan agreements were never tendered into evidence by the Applicants during the hearing, notwithstanding that Oei was purportedly a party to these agreements. His explanation in this application was that he did not have a signed copy of these documents in his possession. The loan agreements contradict Oei's own previous evidence and the position taken by the Applicants at each stage of the earlier proceedings. We do not find the loan agreements to be credible evidence that the $1.5 million was a personal loan to Oei rather than an investment in Cascade.

[41] We do not find any reason to vary our findings with respect to the amount of funds raised from investors by the Applicants in respect of investments in Cascade.

[42] The following evidence was submitted by the Applicants in furtherance of their submissions that the Applicants forwarded more of the investors' funds to Cascade or had expended more of those funds on behalf of Cascade on "start-up" expenses in connection with the Cascade projects than we found (thereby lowering the amount of the fraudulent conduct):

- copies of cheques from an individual totaling US$344,840 to the Applicants' lawyer, which the Applicants say were really payments made by that individual, on the Applicants' behalf, to Cascade (for which the Applicants should receive credit); and

- copies of the OMSI share register and documents related to the acquisition of OMSI shares by Oei and his wife.

[43] The issue of the amount of the investors' funds that the Applicants actually provided to Cascade was also an issue that was contested during the hearing. During the hearing, the Applicants made multiple submissions that they had provided more of the investors' funds to Cascade than was alleged by the executive director. We did not agree with those submissions. Commission investigators obtained records of the bank accounts of the Cascade companies and we found that there was no evidence of further deposits by the Applicants (over and above those amounts which were alleged by the executive director). Again, the Applicants are trying to re-litigate this issue.

[44] The evidence of the share register of OMSI respecting the issue of OMSI shares to Oei and his wife and the submissions respecting the consideration for these shares are irrelevant to the question of how much of the investors' funds were forwarded to Cascade. The evidence submitted by the Applicants related to acquisitions of shares in OMSI by the Applicants is not evidence of further payments by the Applicants of funds raised from investors to the Cascade companies. Given that Oei and his wife received

consideration for these payments in the form of OMSI shares, these payments (to the extent made) also could not be characterized as sums advanced by them to fund Cascade's start-up expenses such that investor funds could be used to repay them for these advances.

[45] The evidence relating to the payments from an investor totaling US$344,840 does not suggest that the Applicants forwarded additional funds raised from investors to Cascade. The evidence during the hearing was that this US$344,840 went directly from the investor to Cascade (and never went to the Applicants). As a result, this amount never formed part of the allegations of fraud against the Applicants (as the funds never went through their accounts).

[46] We do not find there to be any reason to vary our findings with respect to the amount of investor funds forwarded by the Applicants to Cascade.

[47] The Applicants made submissions that:

- they incurred a further $260,625.34 of expenses of operation relating to Canadian Manu's overhead and Oei's Bentley car that we should have considered as "start-up" expenses of Cascade (and thereby reduced the quantum of the fraudulent misconduct); and

- they paid a further $150,000 of commissions to an entity in connection with the sale of shares in CRC and/or CROF that we should have considered as "start-up" expenses of Cascade (and thereby reduced the quantum of the fraudulent misconduct).

[48] Again, the issue of the amount of investor funds expended by the Applicants on behalf of Cascade (on start-up expenses of Cascade) was one of the central issues contested during the hearing. This is yet another attempt to re-litigate that issue.

[49] In our findings, we gave the Applicants credit for lease payments made by the Applicants on a Bentley car used by Oei. The Applicants now submit that they should be entitled to a further credit of approximately $8,207 in operating expenses related to that vehicle. This amount was not raised by the Applicants during the hearing, even though the question of vehicle costs were clearly at issue in the hearing.

[50] As for the approximately $252,418 now claimed by the Applicants for Canadian Manu overhead expenses, setting aside the question of whether this type of expenditure could reasonably be viewed as a start-up cost of Cascade (which is questionable), this amount was not raised by the Applicants during the hearing.

[51] We dismiss these submissions relating to additional vehicle and overhead expenditures on the grounds that the Applicants had an opportunity to raise such expenditures during the hearing (and failed to do so). The evidence of these expenditures was available to the Applicants prior to the hearing. As such, this evidence was not "new" and represents yet

another attempt by the Applicants to re-litigate the issue of expenditures from a different perspective than at the hearing. That is not in the public interest.

[52] The Applicants' submission that they paid a further $150,000 in commissions in connection with the sale of shares in CRC and/or CROF was a submission they made previously during the hearing. We did not agree with those submissions then (as the submission was contradicted by evidence given by Oei in an interview with Commission investigators) and no new evidence was tendered in connection with this application. We also dismiss this submission.

d) Distinguishing between CRC and CROF investments

[53] The Applicants submitted that our findings were in error when we aggregated the total amounts raised from investors in both CRC and CROF into one pool of investor funds, allocable to the Cascade projects in general.

[54] The Applicants submitted that this error resulted in our finding a larger number of contraventions of section 57(b) of the Act than would have resulted from a separation of the fundraising and use of proceeds as between the two corporate entities.

[55] The purpose of this submission was not clear to us as the Applicants did not submit that the aggregate amount of the fraudulent misconduct would be different if their approach was the one followed.

[56] However, regardless of the import of this submission, this too was an issue that we specifically addressed in our findings. The allegations were clearly brought by the executive director on the basis that investor funds needed to be considered on an aggregated basis. We agreed with that approach. The evidence was clear that investor funds paid to the Applicants in respect of investments in CRC and CROF were co-mingled by the Applicants in their bank accounts. Further, the evidence did not establish any distinction between investor funds expended by the Applicants on behalf of CRC versus CROF – the investor funds expended by the Applicants were simply expended on Cascade related matters. The Applicants themselves are responsible for an investment structure and a flow of funds which made it impossible to connect the use of funds from a particular investor to a particular corporate entity. Further, the evidence at the hearing is that CROF did not commence business activities. The totality of the evidence made clear that funds were raised for the Cascade projects and that there was no real distinction between funds raised for CRC versus CROF.

[57] We find no reason to vary our findings with respect to the number of contraventions of section 57(b) of the Act.

e) Repayment of one investor and our section 161(1)(g) orders

[58] The Applicants submitted that our orders against Oei and Canadian Manu should be varied because they had further evidence of payments that Oei made to a company (S) (purportedly owned by Oei's daughter and a third party, although there was no actual evidence of this ownership structure) to purchase a condominium and that S subsequently

transferred that condominium at below market value to one of the investors, as a way of repaying that investor for losses associated with their investment in Cascade.

[59] In our decisions on sanction, we did reduce the quantum of our orders under section 161(1)(g) against the Applicants by the amount that they were able to prove they had repaid to investors. In that decision, we held that the onus of establishing that an amount had been repaid to investors was on the Applicants.

[60] The issue of whether and to what extent the transfer of the condominium described above should be included in those calculations was squarely at issue at that stage of the proceedings. Again, this is an attempt by the Applicants to re-litigate an issue that we have previously decided.

[61] In our decision on this issue, we found that there was evidence from the investor acknowledging that the transfer of the condominium to them by S amounted to a form of restitution of their losses related to their investment in Cascade. However, we declined to give the Applicants any credit in our section 161(1)(g) orders for any amounts associated with this transaction. We declined to do so because the evidence was that the condominium was transferred by S (not any of the Applicants) and that, even if we accepted that S transferred the condominium for the benefit of satisfying the repayment obligations of the Applicants, there was no evidence to suggest that the Applicants had given up some of the benefit of their misconduct to S. In fact, at that stage of the proceedings the Applicants submitted that they owed S a debt equal to the amount of the restitution to the investor.

[62] Now the Applicants submit that they had previously made cash payments to S to acquire the condominium and that the condominium had increased in value since its acquisition. All of which, the Applicants now say, we should view as the "benefit" that the Applicants had given up to S, for which they should get credit in our section 161(1)(g) orders.

[63] The Applicants' submissions on this point ignore basic legal principles of corporate law and ignore the basic fact that S was the owner of the condominium and not the Applicants. Any appreciation in the value of the condominium since its acquisition accrued to S. The Applicants may have given money to S to assist S in its acquisition of the condominium. However, whether one or more of the Applicants did so does not change the fact that the money given to S in that manner was then S' and not the Applicants'. Nor do we have any evidence of why such money was given to S or if S gave any consideration for such payments.

[64] We do not find the evidence sufficient to change our decision with respect to the quantum of our orders under section 161(1)(g).

f) Oei's current financial circumstances

[65] Oei testified in connection with this application under section 171. He testified that he was not working and that his reputation had been significantly impaired as a consequence

of our findings and decision. His submission indicated that he had exhausted his life savings but there was no other evidence tendered in support of these submissions.

[66] This is the one aspect of the application filed by the Applicants that could be considered to be new evidence or a change in circumstances since our decision.

[67] However, we do not consider this to be sufficient grounds to vary or revoke our orders against Oei or any of the other Applicants.

[68] In our decision, we set out our reasons why the orders that we made were in the public interest. We will not recite all of them here. We do not consider Oei's current financial circumstances to be a reason to vary or revoke any of those orders. This change of circumstances is not a surprising consequence to flow from sanctions for such significant misconduct under the Act and the new evidence relating to Oei's current financial circumstances was not compelling. It would be prejudicial to the public interest to vary or revoke any of the orders in light of the Applicants' significant misconduct.

## IV. Conclusion

[69] For all of the reasons set out above, we dismiss the Applicants' application to vary or revoke any of our findings or any of our orders against them pursuant to section 171 of the Act. It would be prejudicial to the public interest to do so.

July 22, 2019

**For the Commission**

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Suzanne K. Wiltshire
Commissioner