In the Court of Appeal of Alberta

Citation: Rashid v Alberta (Securities Commission), 2023 ABCA 53

Date: 20230213
Docket: 2101-0254AC
Registry: Calgary

Between:

Zulfikar Hussein Rashid

Appellant

- and -

The Alberta Securities Commission

Respondent

The Court:

The Honourable Justice Peter Martin
The Honourable Justice Bernette Ho
The Honourable Justice Anne Kirker

Memorandum of Judgment

Appeal from the Decision of
The Alberta Securities Commission
Dated the 16th day of August, 2021

Memorandum of Judgment

The Court:

Introduction

[1] Zulfikar Hussein Rashid appeals an Alberta Securities Commission (the "ASC") sanctions decision ordering him to pay an administrative penalty of $75,000 and costs of $30,000.

[2] On February 2, 2021, the ASC found that Mr. Rashid, Ashmit Patel, and Kilimanjaro Capital Ltd. contravened the *Securities Act*, RSA 2000, c S-4, by engaging in what is referred to as a "pump and dump" market manipulation scheme: *Re Kilimanjaro Capital Ltd*, 2021 ABASC 14 (the *Merits Decision*). The ASC recognized that Mr. Rashid's role in the scheme was less overt and less involved than Mr. Patel's role; however, it found that Mr. Rashid, who acted as a nominee director and chief executive officer of Kilimanjaro, enabled the scheme in circumstances where he ought to have known of Mr. Patel's plan to manipulate Kilimanjaro's share price and that his own conduct would contribute to an artificial price for Kilimanjaro shares. The ASC also found that Mr. Rashid made untrue statements while under oath during the ASC investigation, and that his untrue statements were material. Ten days after Mr. Rashid made his false statements, he voluntarily disclosed and corrected them.

[3] In the result, the ASC held as follows:

(a) Mr. Patel contributed to a false or misleading appearance of trading in Kilimanjaro shares in contravention of section 93(a)(i) (as it then was);

(b) Mr. Patel, Mr. Rashid and Kilimanjaro contributed to an artificial price for Kilimanjaro shares in contravention of section 93(a)(ii) (as it then was);

(c) Mr. Patel and Kilimanjaro breached an ASC order in contravention of section 93.1; and

(d) Mr. Rashid made untrue statements to the ASC in contravention of section 221.1(2).

[4] Mr. Rashid did not appeal the *Merits Decision*.

[5] On August 16, 2021, the ASC released its sanctions decision based upon written submissions it received from Mr. Rashid and ASC staff. The parties were given the opportunity to present evidence and make oral argument but declined: *Re Kilimanjaro Capital Ltd*, 2021

ABASC 131 (the *Sanctions Decision*). In addition to certain market access restrictions for both Mr. Patel and Mr. Rashid, the ASC ordered Mr. Patel to pay an administrative penalty of $450,000, disgorgement of $117,400, and $120,000 in costs, which included any costs attributed to Kilimanjaro. Mr. Rashid was ordered to pay an administrative penalty of $75,000 and costs of $30,000.

[6] Mr. Rashid appeals the *Sanctions Decision* and asks that the administrative penalty and costs award be reduced. He argues he played a minor role in the scheme and that his actions were akin to the respondents in *Sulja Bros Building Supplies, Ltd et al*, 2011 ONSEC 19, who were ordered to pay $5,000 as an administrative penalty. Mr. Rashid submits that the ASC erred in basing his administrative penalty on the $70,000 settlement of a former co-respondent, Mr. Zang, without reasonably considering their relative culpability. Mr. Rashid also argues that his proportionate share of costs relative to the corporate entity and Mr. Patel should be less than what he was ordered by the ASC to pay.

Standard of Review

[7] Where, as here, the legislature has provided for a statutory appeal mechanism from an administrative decision to a court, appellate standards of review apply: *Securities Act*, s. 38; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 36-37. Absent an extricable question of law, which is reviewed for correctness, the ASC's *Sanctions Decision* is owed deference on appeal. This means that the appellant must establish that it is unreasonable: *Mema v Chartered Professional Accountants of Alberta (Complaints Inquiry Committee)*, 2022 ABCA 4 at paras 36 and 38; *Zuk v Alberta Dental Association and College*, 2020 ABCA 162 at paras 15-16, leave to appeal to SCC refused, 39237 (26 November 2020).

Decision

[8] Upon review of the record and the reasons for decision, we do not accept that the administrative penalty and costs awarded against Mr. Rashid are unreasonable. The ASC found that it was in the public interest to impose administrative penalties in this case and in determining the sanction imposed, considered the applicable sanctioning principles.

[9] The ASC weighed the seriousness of Mr. Rashid's misconduct, noting that:

(a) "[m]arket manipulation is a serious contravention of Alberta securities law, adversely affecting those who lost money as a result while also undermining the credibility and integrity of the capital market": *Sanctions Decision* at para 22; and,

(b) untrue statements during an investigation are of concern because "[a]ny attempt to hinder or frustrate an investigation into capital market misconduct potentially impairs the ASC's ability to protect the public interest": *Sanctions Decision* at

para 30, citing *Wilder v Ontario Securities Commission* (2001), 53 OR (3d) 519 (CA) at para 22, where the Ontario Court of Appeal made the following observation also applicable here:

> The OSC is charged with the statutory obligation to do its best to ensure that those involved in the securities industry provide fair and accurate information so that public confidence in the integrity of capital markets is maintained. It is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisers, provide full and accurate information to the OSC.

[10] While Mr. Rashid contends that his role in the market manipulation scheme was minimal, the ASC concluded otherwise finding that he enabled Mr. Patel to covertly control "virtually all aspects of the scheme": *Sanctions Decision* at para 23. Among other things, Mr. Rashid authorized Mr. Patel to use his electronic signature on company documents (which empowered Mr. Patel to implement the scheme without publicly disclosing his *de facto* control) and allowed his name to be associated with misleading statements in Kilimanjaro press releases. In its *Merits Decision*, the ASC points out that "[i]n allowing himself to be appointed president and CEO of Kilimanjaro, [Mr.] Rashid cannot disavow the responsibilities that come with those offices by delegating unsupervised authority over all of the company's affairs to others": at para 283.

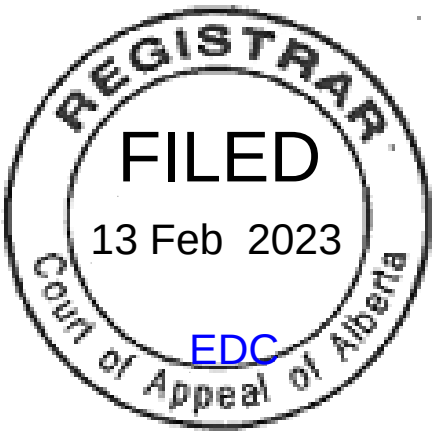
[11] In crafting the sanction imposed, the ASC did consider Mr. Rashid's characteristics and history, the benefit he sought from his misconduct as well as the lack thereof obtained, and the mitigating effect of Mr. Rashid's voluntary admission and correction of false statements. The ASC reviewed the sanctions imposed in other market manipulation cases, including *Sulja*, and examined Mr. Rashid's role in the market manipulation scheme relative to Mr. Patel, and the co-respondents with whom settlement agreements had been reached. With respect to the costs award, the ASC considered Mr. Rashid's conduct relative to Mr. Patel's both in relation to the market manipulation scheme and the efficiency of the hearing.

[12] Mr. Rashid asks this Court to re-weigh the evidence and reach a different result with respect to the quantum of the administrative penalty and costs ordered against him. We decline to do so because we are not satisfied the ASC made any reviewable error that warrants this Court's intervention.

[13] The appeal is dismissed.

Appeal heard on February 7, 2023

Memorandum filed at Calgary, Alberta
this 13th day of February, 2023



Martin J.A.

Ho J.A.

Kirker J.A.

Appearances:

R.C. Steele
R. Rouault (no appearance)
for the Appellant

P.A. Verschoote (no appearance)
C. Pillar
for the Respondent