CITATION: Valentine v. Ontario Securities Commission, 2025 ONSC 4395
DIVISIONAL COURT FILE NO.: 684/24
DATE: 20250729

2025 ONSC 4395 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, Faieta and McSweeney JJ.

BETWEEN:	
Mark Edward Valentine Appellant	*Scott Fenton* and *Andrew Guaglio*, for the Appellant
– and –	
Chief Executive Officer of the Ontario Securities Commission Respondent	*Andrew Faith, Ryan Lapensee* and *Sean Grouhi*, for the Respondent
	HEARD at Toronto: June 17, 2025

H. SACHS J.

Overview

[1] In 2004 the Appellant, Mark Valentine, was banned by the Ontario Securities Commission (the "Commission") from participating in Ontario's capital markets. That ban precluded him from acting as an officer or director of an issuer and from trading in securities for 15 years (the "Trading Ban").

[2] On March 20, 2024, the Capital Markets Tribunal (the "Tribunal") decided that Mr. Valentine had breached the Trading Ban in three ways (the "Merits Decision"). Before the Tribunal Mr. Valentine admitted that he had acted as the director and/or officer of over 30 issuers, and that he breached the Trading Ban by engaging in the sale of shares of an issuer known as "Flyp".

[3] This appeal is restricted to the third of the three breaches, known as the "Stock Secured Financings", the only one of the breaches that was not conceded at the hearing below.

[4] The Stock Secured Financings all shared the same general structure: the borrower would borrow money from the lender; as security the borrower would pledge publicly listed Hong Kong securities; and the loans were satisfied by the sale of the pledged shares. The loans were "non-recourse" loans, which meant that the borrowers were free to walk away from the loans whenever they wanted. The lenders sold the pledged shares before default in the case of some Stock Secured Financings and after default in others. In 11 of the 16 Stock Secured Financings at issue, the borrower was noted in default before the borrower ever made a single payment on the loan.

[5] Mr. Valentine's role in the Stock Secured Financings included sourcing the financing for the transactions and analyzing the value of the pledged equities, which the Tribunal found Mr. Valentine knew the lenders intended to sell. Mr. Valentine's considerable compensation for his role was based on the profits realized by the lenders when they sold the pledged securities.

[6] The Tribunal found that when the lenders sold the pledged securities to third parties these were "trades". It found that Mr. Valentine committed acts in furtherance of those trades. Thus, his participation in the Stock Secured Financings constituted a breach of the Trading Ban.

[7] Mr. Valentine appeals this finding and the penalty that flowed from it, arguing in his written material that the Tribunal erred in holding that the realization by the lenders on the securities pledged as collateral for a good faith loan were "trades" within the meaning of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Act"*).

[8] The definition of "trades" in the *Act* contains a "carve-out" for "a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith." However, during oral argument, Mr. Valentine's counsel conceded that when the lenders sold the pledged securities to third parties, these acts were independent trades that were not part of the initial good faith loans and were not covered by the "carve-out". Since all of the Stock Secured Financings involved sales by the lender of the pledged securities to third parties, this concession is essentially a concession that the Tribunal was correct when it found that the Stock Secured Financings were "trades" with the meaning of the *Act.*

[9] Mr. Valentine also submits that the Tribunal erred when it found that he committed acts in furtherance of those trades. In order to succeed on this issue Mr. Valentine must establish that the Tribunal committed a palpable and overriding error. For the reasons that follow, I find that he has failed to meet this threshold. Therefore, his appeal must be dismissed.

[10] The lenders involved in the Stock Secured Financings were known as "Jendens" and "Bretonnia". They obtained funding to back the Stock Secured Financings from international sources, two of which were referred to as "PGP Fund" and "UK Financier". The principal of the Jendens and PGP Fund was Sam Halim.

[11] An entity known as "Great Wealth "was responsible for finding and identifying the borrowers.

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[12] The Tribunal found that Mr. Valentine "sat in the middle [of the Stock Secured Financings] as an intermediary between PGP Fund and the UK Financier, on the one hand, and Great Wealth and the borrowers on the other."

[13] As noted above, the borrowers would borrow money from the lender, and as security for their loans the borrowers would pledge publicly listed Hong Kong securities (the "Pledged Securities").

[14] SP, a former business associate of Mr. Valentine's, testified that he was a consultant at Great Wealth. His role was to find lenders who would lend money to the borrowers sourced by Great Wealth. He testified that he often approached Mr. Valentine to help facilitate these introductions.

[15] Mr. Valentine admitted in his written closing submissions filed with the Tribunal that his role in the Stock Secured Financings "included sourcing financing from parties [i.e. lenders] including PGP Fund and the UK Financier, analyzing pledged equities [ie., the Pledged Securities] and assessing the parameters of the loans for the providers of the funds; and facilitating communication among the parties."

[16] The Tribunal found that Mr. Valentine conducted financial analysis "not … of the borrowers, but rather of the [Pledged Securities] which Valentine knew the lenders intended to sell."

[17] The Tribunal found that in practice, "all the intermediaries and funding sources involved in the Stock Secured Financings … anticipated that the loan would be satisfied by the sale of the [Pledged Securities]." SP testified that he understood the loans to be "non-recourse", which meant that the borrowers were free to "walk away whenever they want for whatever reasons they want." He testified that the borrowers found this attractive and that the lenders understood this as well.

[18] Great Wealth created a document called the "Deal Summary", which provided details about sixteen Stock Secured Financings. This document was an important exhibit at the Tribunal hearing.

[19] All of the Stock Secured Financings listed in the Deal Summary were in default. In fact, the Deal Summary stated that eleven had "defaulted" before the borrower ever made a single payment on the loan.

[20] On March 2, 2016, one of the lenders, the UK Financier, emailed Mr. Valentine an Excel document referred to as the "Sales Spreadsheet". The email had the subject line "Trades". Each tab of the Sales Spreadsheet, which became an exhibit at the hearing, corresponded to one of the Stock Secured Financings listed in the Deal Summary. SP testified that Mr Valentine was involved in most of those transactions.

[21] Each transaction in the Sales Spreadsheet was identified not by the name of the borrowers, but by the Hong Kong stock codes related to the Pledged Securities. The Sales Spreadsheet recorded: the number of Pledged Securities bought by each borrower, the net proceeds realized

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from the Pledged Securities that were sold, any Pledged Securities that remained unsold, and the "profit" realized from each Stock Secured Financing. That "profit" was calculated by taking the net proceeds realized from the sale of the Pledged Securities, adding that to the market value of the remaining Pledged Securities and then deducting the loan amount.

[22] In a compelled interview with the Commission, Mr. Valentine was asked about the Sales Spreadsheet and, in particular, (i) why certain shares were being sold, (ii) whether there were other ways for the borrower to pay down the loan, and (iii) whether it was only in the case of default that the Pledged Shares could be sold. Mr. Valentine explained that "the lender would lend money with the understanding that they were going to be selling shares to pay down the loan" and that "the shares could be sold at any time as per the lender's instructions."

[23] The Tribunal found that during his compelled interview with the Commission, Mr. Valentine stated that his compensation was based on "the net spread available after costs and agents from acquisition, disposition and funding" and it was his "expectation and the fact [was] that he would be paid compensation if, as and when the lenders traded Pledged Shares for a profit." He also "stated that he generally received a percentage amount of the profit, which he estimated to be in the range of 25% to 35%." According to the Tribunal, there was no evidence that Mr. Valentine's compensation was in any way tied to the interest received or the fees paid in respect to the loan itself.

[24] Unchallenged banking records established that Great Wealth (from the borrowers' side) paid $3,257,639.75 and U.S. $807,696.00 to Mr. Valentine's corporations. Mr. Valentine confirmed in his testimony that all the funds received from Great Wealth were compensation for his role in the Stock Secured Financings.

[25] The banking records also established that PGP Fund (from the lenders' side) paid Mr. Valentine's corporation, named "PGP", a total of US $11,294,805 through 13 wire transfers over the period from December 2015 to December 2016. Mr. Valentine denied that these payments were in relation to the Stock Secured Financings. The Tribunal rejected his denial and found that all of this money, except for $1,370,000.00 (which Mr. Valentine stated was for the purpose of purchasing a property for the PGP Fund) was compensation paid to Mr. Valentine in respect of his involvement in the Stock Secured Financings. This finding is not being challenged on the appeal.

[26] As already noted, the Tribunal found that when the lenders sold the Pledged Securities to third parties, this was a "clear 'trade'". During oral argument, Mr Valentine's counsel conceded that this finding was a correct one.

[27] The Tribunal further concluded that Mr. Valentine acted in furtherance of these trades. According to the Tribunal, this conclusion was supported by three undisputed facts:

A. Mr. Valentine's admission that he was compensated "based on the 'profit' realized by the lenders when they proceeded to sell the [Pledged Securities]" and not "based on the entering into of the loan agreements, nor on the lenders' receipt of fees or any other metric grounded in the loan itself."

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B. Part of the work that Mr. Valentine did for the lenders focused on financial analyses focused on the sale value of the Pledged Securities, not on the borrowers' abilities to pay down the loan; and

C. Mr. Valentine's "clear understanding of how the loans would work in practice, including that any compensation for himself would likely depend on a profitable sale of [the Pledged Securities]."

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[28] In the Tribunal's decision sanctioning him for the three breaches of the 2004 Order, Mr. Valentine received permanent capital markets access prohibitions, administrative penalties totalling $1 million and disgorgement in the amounts of $3,257,639.75 and US $10,732,503. The Tribunal also ordered Mr. Valentine to pay $300,000 for the costs of the investigation and hearing.

[29] Mr. Valentine submits that the Tribunal erred in law by relying on irrelevant factors to conclude that he acted in furtherance of the lenders' trades of the Pledged Securities. According to Mr Valentine, all of the evidence that the Tribunal relied upon either did not relate to the relevant trades or was insufficiently proximate to them.

[30] First, Mr. Valentine's assessment of the value of the Pledged Securities related solely to the loan agreements and not to the lenders subsequent sales of those securities to third parties. There was no evidence that Mr. Valentine was in any way involved in the introduction of the lenders to the third parties who purchased the Pledged Securities and no evidence that Mr. Valentine facilitated those sales in any way. In fact, SP testified that to his knowledge, Mr. Valentine was not involved in the disposition of the Pledged Securities by the lenders.

[31] Second, Mr. Valentine's analysis of the value of the Pledged Securities was done before the shares were pledged. Moreover, he conducted no further analysis of their value at the time that the lenders decided to sell the shares.

[32] Third, while Mr. Valentine may have expected that the lenders would sell the Pledged Securities to pay down the loans, that expectation does not mean that he furthered, promoted, or undertook acts in furtherance of those trades. If this were the case, then in all cases any advice given to a lender regarding the value of their securities accepted as a collateral for a loan would constitute an act in furtherance of a subsequent trade, as there is always an expectation that a lender will realize on the collateral in the event of a default.

[33] Fourth, in relation to the lenders' sales of the Pledged Securities to third parties, Mr. Valentine argued that there was no evidence of any conduct on his part that has been previously found by any court or tribunal as being in furtherance of a trade. In particular, there was no evidence that Mr. Valentine gave advice to the lenders on whether and/or when they should sell the Pledged Securities; there was no evidence that he introduced the lenders to the people who purchased the Pledged Securities; there was no evidence that he assisted the lenders in finding potential purchasers for the shares; there was no evidence that Mr. Valentine promoted the sale of the Pledged Securities to third parties; there was no evidence that Mr. Valentine

facilitated the sale of the Pledged Securities by the lenders to third parties; there was no evidence that Mr Valentine met with or knew any of the potential third party purchasers of the shares; and there was no evidence that Mr. Valentine had any communication with the lenders regarding their independent decisions to sell the Pledged Securities to third parties.

[34] Fifth, according to Mr Valentine, the fact that his compensation that was tied to the sale of the Pledged Securities does not prove that his conduct was in furtherance of those trades. The key determinant is what conduct Mr. Valentine engaged in to earn that compensation. In his case, all of the conduct he engaged in occurred before the loans were made and the shares were pledged.

[35] As put by Mr. Valentine in his factum:

> It cannot be that an individual's conduct in furtherance of a transfer, pledge or encumbrance of a security as collateral for a debt in good faith can be exempt from the application of the *Act's* trading regulations but that the very same conduct can then be used against that individual because of subsequent trading in which they had no involvement. This would result in unfairness and uncertainty because no one could safely rely on the statutory carve-out for fear that a lender receiving a pledged security would subsequently dispose of that collateral, thereby making the early participants in the original collateral transfer transaction liable to trading-related violations. This is particularly concerning where, as in this case, the party had no direct or indirect involvement in the trading of the pledged securities.

[36] As Mr. Valentine acknowledged, the definition of "trading" is broad and, under s. 1 of the Act, includes "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance" of any of the defined acts of trading in clauses (a) to (d) of the definition of "trade" or "trading".

[37] In the Merits Decision the Tribunal summarized the law in this way:

> [112] The Tribunal has adopted a contextual approach when determining whether acts are in furtherance of a trade, examining "the totality of the conduct, including the surrounding circumstances, the impact of the conduct and the proximity of the acts to actual or potential trades in securities."
>
> [113] Acts in furtherance of a trade do not require a completed sale of a security. The Tribunal has found that "there must be at a minimum something done for the purpose of furthering or promoting the sale or disposition." While not necessary, the "receipt of consideration or some other direct or indirect benefit" can be a "strong indication" of an act in furtherance of a trade. [Citations omitted.]

[38] Mr. Valentine does not challenge the Tribunal's summary of the law. He also acknowledges that there is no "bright line" that separates acts that are indirectly in furtherance of a trade from acts that are not. However, he highlights a decision from the Ontario Court of

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Justice where the court does identify numerous acts as being acts in furtherance of trading – *R. v. Lowman*, 2017 ONCJ 433. At para. 72 of that decision the following acts are itemized:

- Creating and maintaining a website designed to “excite the interest” of investors;
- Issuing and signing share certificates;
- Distributing promotional materials concerning potential investments;
- Accepting money from investors and depositing investor cheques for the purchase of shares in a bank account;
- Providing potential investors with subscription agreements to execute;
- Paying referral fees to existing investors who referred new investors;
- Preparing and disseminating forms of agreements for signatures by investors;
- Preparing and disseminating of materials describing investment programs;
- Conducting information sessions with groups of investors; and
- Meeting with individual investors.

[39] Mr. Valentine emphasized that he did not engage in any of the listed activities. While this may be true, Mr. Valentine also agreed that the above list is not exhaustive. In other words, it was not an error of law for the Tribunal to rely on factors that were not itemized in the *Lowman* decision.

[40] As Mr. Valentine has acknowledged, there is no hard and fast rule as to what acts constitute acts in furtherance of a trade. Making this determination is a contextual exercise that turns on the facts of each case. What Mr. Valentine is challenging are the Tribunal’s factual findings or, at best, its findings of mixed fact and law. This requires establishing a palpable and overriding error.

[41] Mr. Valentine argues that the Tribunal erred in failing to consider that he only provided his financial analyses of the value of the Pledged Securities before the loan agreements were signed, which was too far removed from the actual sale of the shares by the lenders. This argument ignores the fact that, as the Tribunal found, the lenders often sold the Pledged Securities within days or weeks of the loan agreement’s execution. As such, the execution of the loan agreements and the sale of the Pledged Securities were closely intertwined.

[42] Further, the evidence indicated that the lenders frequently sold the Pledged Securities immediately after signing the loan agreements and before the borrowers defaulted. The Tribunal relied on this evidence to find that Mr. Valentine’s role was “entirely consistent with

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his understanding of the transactions … that the lender would be lending in the expectation that it was effectively acquiring the pledged shares for resale, to make a profit." This is very different from the usual situation where a borrower pledges shares as collateral on the understanding that the shares will only be sold if the borrower defaults. In that situation, the expectation that the shares will be sold is a much more remote one. Lenders do not normally sell shares pledged as collateral until there has been a default and lenders do not normally lend money to borrowers in the expectation that they will default. Ordinarily lenders profit from the interest they earn on the loans they make, not from the money they make when they sell pledged securities.

[43] The Tribunal also considered the evidence that the UK Financier sent Mr. Valentine updates about the lenders' sales of the Pledged Securities in the form of the Sales Spreadsheet. This document used the term "bought" in relation to the acquisition of the shares and set out the profit that was earned when the shares were sold.

[44] Mr. Valentine's compensation for the services he provided in relation to the Stock Secured Financing transactions was directly tied to the profit earned from the sale of the shares. The Tribunal relied on its own jurisprudence to find that "the 'receipt of consideration or some other direct or indirect benefit' can be a 'strong indication' of an act in furtherance of a trade": *Anderson (Re)*, 2004 ONSEC 13, at para. 34. See also *York Rio Resources Inc. et al*, 2013 ONSEC 10, 36 O.S.C.B. 3499, at para. 90; *Merax Resources Management Ltd. (Crown Capital Partners) et al*, 2011 ONSEC 35, at para. 78; *Limelight Entertainment Inc. et al*, 2008 ONSEC 4, 31 O.S.C.B. 1727, at para. 131; *Momentas Corporation et al,* 2006 ONSEC 15, 29 O.S.C.B. 7408, at para. 87.

[45] Given this jurisprudence, there can be no suggestion that the Tribunal committed a palpable and overriding error when it concluded that the fact that Mr. Valentine, either personally or through his corporations, received millions of dollars in compensation from the services he provided in analyzing the value of the Pledged Securities, which compensation was directly tied to the profit realized on the sale of those securities. In turn, that compensation was strong evidence that the services Mr. Valentine rendered furthered the trades of those securities.

[46] Mr. Valentine suggests that the Tribunal erred in failing to consider that he took no part in introducing the lenders to the buyers of the Pledged Securities. While this may be a relevant consideration in some cases, in this case the lenders sold the Pledge Securities on the public market, which means that not even the lenders would have known the identity of the buyers.

[47] Mr. Valentine's reliance on the *Lowman* decision is also misplaced. The factors listed in that decision were relevant ones to consider on the facts of that case where the defendants were unregistered traders who were being prosecuted for their acts in creating websites for two companies which contained information about the potential for investors to buy shares in those companies. The websites did not offer the shares for sale. However, several unknown foreign sales representatives fraudulently sold shares in the companies based on the website. There was no direct evidence linking the defendants to the foreign sales representatives, nor was there any evidence to establish that the defendants knew the shares were being sold to investors. In

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this case not only did Mr. Valentine know that the Pledges Securities were going to be sold, but he also received a significant portion of the profits realized from those sales.

[48] The court in *Lowman* noted that if there had been any evidence connecting the defendants to the sellers, that would be sufficient to prove that they had acted in furtherance of a trade, at para. 124:

> If there had been any evidence connecting or demonstrating a link between [the defendants] and these purported sales representatives, in my view the OSC Staff would be able to prove beyond a reasonable doubt [the defendants] were engaging in acts in furtherance of trading without being registered and without a prospectus. However, there is no evidence to support such a finding.

[49] In this case, the Tribunal had ample evidence of Mr. Valentine's connection to the lenders who sold the Pledged Securities and ample evidence of the connection between Mr. Valentine's compensation and the sale of the Pledged Securities.

[50] As there was no error of law or palpable and overriding error of fact in the Tribunal's findings that Mr. Valentine acted in furtherance of a trade, the appeal should be dismissed.

[51] In accordance with the agreement of the parties, the Commission is entitled to its costs of the appeal, fixed in the amount of $15,000, all inclusive.

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Sachs J

I agree ___________________________

Faieta J

I agree ___________________________

McSweeney J

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Released: July 29, 2025

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Appellant

– and –

Chief Executive Officer of the Ontario Securities Commission

Respondent

REASONS FOR JUDGMENT

SACHS J

Released: July 29, 2025