



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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Citation: *Tobin (Re)*, 2022 ONCMT 20
Date: 2022-07-19
File No. 2022-2

**IN THE MATTER OF
MORRIE TOBIN**

REASONS AND DECISION

(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Adjudicator: Cathy Singer

Hearing: In writing; final written submissions received July 14, 2022

Appearances: Sarah McLeod For Staff of the Ontario Securities
Commission

No submissions were made on behalf of Morrie Tobin

REASONS AND DECISION

1. OVERVIEW

- [1] Staff of the Ontario Securities Commission (**Staff**) seek an inter-jurisdictional enforcement order based on a conviction by the United States District Court for the District of Massachusetts (the **District Court**) and finding of the Securities and Exchange Commission (**SEC**) that Morrie Tobin committed securities fraud by pumping and dumping shares of publicly traded companies.
- [2] Paragraph 1 of s. 127(10) of the Ontario *Securities Act*¹ (the **Act**) authorizes the Capital Markets Tribunal (the **Tribunal**) to make orders in the public interest under s. 127(1) where a person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.
- [3] For the reasons that follow, I find that Tobin's conviction arose from a course of conduct related to securities and that it is in the public interest to permanently prohibit Tobin from participating in Ontario's capital markets by issuing the order requested by Staff.

2. SERVICE AND PARTICIPATION

- [4] Staff elected to proceed with a hearing in writing using the expedited procedure for inter-jurisdictional enforcement proceedings set out in Rule 11(3) of the *Rules of Procedure and Forms* (the **Rules**).
- [5] Staff served Tobin on February 22, 2022 with the Notice of Hearing, Statement of Allegations and Staff's hearing brief,² written submissions and book of authorities, by courier at the US correctional facility where Tobin was incarcerated.³ Staff later obtained confirmation from a representative of the US correctional facility that Tobin personally received these materials on or around that date.⁴

¹ RSO 1990, c S.5

² Exhibit 1, Staff's Hearing Brief dated February 9, 2022

³ Exhibit 2, Affidavit of Service of Michelle Spain, sworn February 23, 2022

⁴ Exhibit 3, Supplementary Affidavit of Service of Michelle Spain, sworn March 10, 2022

- [6] I find that service was properly effected on Tobin on or around February 22, 2022.
- [7] As stated on the Notice of Hearing, Tobin had 21 days from the date of service to file a request for an oral hearing, and 28 days from the date of service to file a hearing brief and written submissions. The deadlines for Tobin to request an oral hearing and to serve and file written submissions have passed. No request for an oral hearing was made and no materials were filed by or on behalf of Tobin.
- [8] Pursuant to the *Statutory Powers Procedure Act*⁵ and the Rules,⁶ the Tribunal may proceed in the absence of a party where that party has been provided with adequate notice of a proceeding. I am satisfied that Tobin was provided with adequate notice of this proceeding and that I may proceed in his absence.

3. BACKGROUND FACTS

3.1 US District Court Conviction

- [9] The US Department of Justice (**DOJ**) filed an Information against Tobin, a Canadian and former registrant⁷ residing in Los Angeles, California, in the District Court in November 2018. The Information alleged that between 2013 and 2018, Tobin and others committed securities fraud by pumping and dumping shares of publicly traded companies.
- [10] More particularly, the Information alleged that Tobin, along with his co-defendant, committed securities fraud by knowingly and willfully:
- a. employing devices, schemes and artifices to defraud;
 - b. making untrue statements of material facts and omitting to state material facts necessary to make the statements not misleading;
 - c. engaging in acts, practices, and courses of business which would and did operate as a fraud and deceit upon any person in connection with the

⁵ RSO 1990, c S.22, s 7(2)

⁶ Rules, r 21(3)

⁷ Tobin was previously registered with the Commission as a Trading Officer under the category of Limited Market Dealer with Powerone Capital Markets Limited from January 2004 to September 23, 2005.

purchase and sale of securities in violation of Title 18, United States Code, Section 371; and

- d. by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of a national securities exchange, directly or indirectly using and employing manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities by engaging in the above, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.⁸

[11] Tobin signed a plea agreement, in which he admitted to the facts as set out in the Information, which was filed with the District Court on December 3, 2018 (the **Plea Agreement**).⁹

[12] On February 27, 2019, Tobin pleaded guilty to conspiracy to commit securities fraud in violation of Title 18 of the United States Code, Section 371 and securities fraud in violation of Title 15 of the United States Code, Section 78j(b) and 78ff before the District Court. The Plea Agreement was accepted by the District Court on that date.

[13] On August 18, 2020, Tobin was sentenced to 12 months and one day of imprisonment and ordered to forfeit US\$4 million to the United States, with conditions upon release.¹⁰ On December 18, 2020, an Amended Judgment was issued, ordering Tobin to, in addition, pay restitution of approx. \$1.9 million.¹¹

[14] On October 1, 2021, a further Amended Judgment was issued, reducing Tobin's sentence to four months incarceration followed by a term of eight months home confinement and two years of supervised release.¹²

⁸ Exhibit 1, Staff's Hearing Brief, Information, Tab 1 (**Information**) at para 29

⁹ Exhibit 1, Staff's Hearing Brief, Plea Agreement filed December 3, 2018, Tab 6 (**Plea Agreement**)

¹⁰ Exhibit 1, Staff's Hearing Brief, Judgment-August 2020, Tab 7

¹¹ Exhibit 1, Staff's Hearing Brief, Amended Judgment dated December 18, 2020, Tab 8

¹² Exhibit 1, Staff's Hearing Brief, Amended Judgment dated October 1, 2021, Tab 9

[15] As a result of the pandemic and confidential assistance efforts, Tobin sought and was granted a number of extensions to self surrender, the final of which was December 30, 2021.¹³

3.2 SEC Judgment

[16] The SEC filed a complaint against Tobin and others on November 27, 2018 (amended on August 29, 2019) alleging that Tobin and others engaged in securities fraud and engaged in a deceptive scheme to sell publicly traded stock to investors. According to the complaint, “what appeared to be ordinary trading by unaffiliated investors was actually a massive dump of shares by a company insider and his team seeking to profit at the expense of defrauded investors”.¹⁴ The complaint was later amended, adding defendants, additional details and increasing the number of claims for relief.¹⁵

[17] The DOJ’s Information and the SEC’s complaint are founded on the same facts involving the same individuals.

[18] On April 16, 2021, a Final Judgment was issued in the SEC proceeding permanently prohibiting Tobin from violating fraud provisions of the US *Securities Exchange Act*. Tobin is further permanently barred from “participating in an offering of penny stock, including engaging in activities with a broker, dealer or issuer for purposes of issuing, trading or inducing or attempting to induce the purchase or sale of any penny stock”.¹⁶

4. LAW AND ANALYSIS

[19] Subsection 127(10) of the Act provides that an order may be made under s. 127(1) where a person has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives. If that precondition is met, the Tribunal must consider whether it should exercise its jurisdiction to make a protective order in the public interest.

¹³ Exhibit 1, Staff’s Hearing Brief, Assented-To Motions to Continue Self-Surrender Date, Tab 10; Amended Judgment, Tab 9

¹⁴ Exhibit 1, Staff’s Hearing Brief, SEC Complaint dated November 27, 2018, Tab 12

¹⁵ Exhibit 1, Staff’s Hearing Brief, Amended Complaint filed August 29, 2019, Tab 15

¹⁶ Exhibit 1, Staff’s Hearing Brief, Tobin SEC Judgment, Tab 16

- [20] Tobin pleaded guilty to, and was convicted of, conspiracy to commit securities fraud in violation of Title 18 of the United States Code, Section 371 and securities fraud in violation of Title 15 United States Code, Section 78j(b) and 78ff. Tobin's conviction arose from a course of conduct related to securities.
- [21] Accordingly, the Tribunal may make a protective order in the public interest under s. 127(1) of the Act.
- [22] Staff submits that it is in the public interest to protect Ontario investors from Tobin by preventing his participation in Ontario's capital markets.
- [23] In determining the appropriate sanctions, the Tribunal may consider, among other factors, the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.¹⁷ Staff asks that I give significant weight to the serious nature of the misconduct in this case, Tobin's status as a former registrant, and the amount of harm to investors.
- [24] As part of his Plea Agreement, Tobin admitted to committing securities fraud by disguising his ownership and control of various securities, and employing paid promotional campaigns and manipulative trading techniques to artificially inflate the price and trading volume of those stocks so that he and others could secretly sell their shares of those stocks at a substantial profit.¹⁸ In doing so, Tobin also concealed his actions from regulators, law enforcement and other investors.¹⁹
- [25] Tobin pleaded guilty to, and was convicted of, conspiracy to commit securities fraud and securities fraud in the US. For that, he received a sentence including payment of restitution of approximately \$1.9 million and forfeiture to the United States of US\$4 million. Tobin also received a custodial sentence of 12 months and a day, followed by two years of supervised release, which was ultimately reduced as a result of the pandemic to four months incarceration followed by eight months home confinement and two years of supervised release.²⁰ Nevertheless, this reduced sentence is still a significant penalty.

¹⁷ *Reeve (Re)*, 2018 ONSEC 55 at para 27

¹⁸ See Plea Agreement and Information at para 12

¹⁹ Information at para 14

²⁰ Exhibit 1, Staff's Hearing Brief, Amended Judgment-Sentence, Tab 9 at 3

[26] Previous panels have consistently held that fraud is one of the most egregious securities regulatory violations. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.²¹ Serious fraudulent conduct warrants permanent removal from the capital markets to protect investors and to deliver a deterrent message to others who might contemplate similar misconduct.²² I also consider Tobin's status as a former registrant to be an important consideration in coming to this conclusion.

[27] Though the SEC limited Tobin's ban to dealings with penny stocks, there is no requirement in a reciprocal proceeding for the Tribunal to mirror the sanctions ordered by another regulator. In any event, Ontario securities law offers no definition of "penny stocks" and there is no precedent for barring a respondent in Ontario from only trading in penny stocks. After considering the determinations of fact made by the foreign jurisdiction, it is up to the Tribunal to impose terms in Ontario that are in the public interest. Based on the facts before me, permanent prohibitions from participating in Ontario's capital markets, including a permanent trading ban in any securities or derivatives, are appropriate.

5. CONCLUSION

[28] I find that it is in the public interest to permanently prohibit Tobin from participating in Ontario's capital markets by imposing the sanctions requested by Staff. Such sanctions will protect Ontario investors and act as a general deterrent to other like-minded persons. I therefore order that:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Tobin shall cease permanently;
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Tobin shall be prohibited permanently;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Tobin permanently;

²¹ *Black Panther Trading Corp (Re)*, 2017 ONSEC 8 (***Black Panther***) at para 48; *Paolucci (Re)*, 2020 ONSEC 32 at para 25

²² *Black Panther* at para 68

- d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Tobin shall resign any positions that he holds as a director or officer of any issuer or registrant;
- e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Tobin is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Tobin is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 19th day of July, 2022

"Cathy Singer"

Cathy Singer