



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen ouest
Toronto ON M5H 3S8

Citation: *Gong (Re)*, 2024 ONCMT 24
Date: 2024-10-30
File No. 2022-14

IN THE MATTER OF XIAO HUA (EDWARD) GONG

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

Adjudicator: Timothy Moseley

Hearing: By videoconference, October 30, 2024

Appearances: Mark Bailey For the Ontario Securities Commission
Sean Grouhi
Shahzad Siddiqui For Xiao Hua (Edward) Gong
Rikin Morzaria

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

- [1] The respondent Edward Gong is the sole director, officer and shareholder of Edward Enterprise International Group Inc., also known as the Edward Group. In 2021, the Edward Group pled guilty in the Ontario Court of Justice to charges of using forged documents and operating a pyramid scheme.
- [2] In this proceeding before the Capital Markets Tribunal, the Ontario Securities Commission alleges that Mr. Gong violated Ontario securities law by engaging in and directing the activity, through his company, that led to the guilty plea and conviction.
- [3] The Commission and Mr. Gong have agreed to resolve those allegations, and they now seek approval of their settlement agreement. I have decided that it is in the public interest to approve that agreement and to order the sanctions to which the Commission and Mr. Gong have agreed.
- [4] The factual background is set out in detail in the settlement agreement, but I will summarize it here.
- [5] Mr. Gong ran an operation that promoted products sold by O24 Pharma PLC, as well as shares of that company. Through the Edward Group, Mr. Gong and others recruited investors, who would in turn benefit by recruiting other investors. The Edward Group promised large returns once O24 Pharma went public, but that was essentially an empty promise, since O24 Pharma had been dissolved years earlier.
- [6] Between 2012 and 2017, about 40,000 people invested hundreds of millions of dollars.
- [7] The sentence that the Ontario Court of Justice imposed included a fine of approximately \$1 million (including the victim fine surcharge) and the forfeiture

of a number of properties in Canada and the United States, as well as cash and other assets.

- [8] For the purposes of this proceeding, Mr. Gong admits that his conduct contravened two cornerstone provisions of the *Securities Act*:
- a. s. 25(1), which requires anyone who engages in the business of trading in securities to be registered in accordance with Ontario securities law, unless an exemption applies; and
 - b. s. 126.1(1)(b), which prohibits anyone from engaging in a course of conduct relating to securities that they knew or ought to have known perpetrated a fraud.
- [9] The Commission and Mr. Gong have agreed to settle this proceeding on the following terms:
- a. Mr. Gong is to be permanently prohibited from trading in any securities or derivatives, and from acquiring any securities, except in specified registered accounts of which only he, his spouse or his children are the owners, as more particularly set out in the settlement agreement;
 - b. the exemptions contained in Ontario securities law shall not apply to Mr. Gong permanently;
 - c. Mr. Gong shall resign any position he holds as a director or officer of issuers or registrants operating in Canada, and he is permanently prohibited from becoming a director or officer of an issuer or registrant in Canada, subject to five exceptions specified in the settlement agreement, all of which exceptions are small private companies in which Mr. Gong is involved; and
 - d. Mr. Gong is to be permanently prohibited from being a registrant or promoter.
- [10] These terms effectively deny Mr. Gong the privilege of participating in the capital markets. Unlike many respondents who are found to have contravened the fraud-related prohibition in the *Securities Act*, Mr. Gong will have the benefit of some exceptions to a total ban, as the parties have agreed. I accept the Commission's submission that the exceptions in this case do not pose any risk to

investors or the capital markets, given the limited scope of the business activities allowed, and the strict constraints on capital raising.

- [11] In addition, Mr. Gong will not pay any financial sanctions in this proceeding. As the Commission has correctly noted, the Court has already sentenced the Edward Group to pay a substantial fine and to forfeit significant assets.
- [12] I conducted several confidential conferences in this proceeding, working with the parties as they reached this settlement. I am presiding over this settlement approval hearing with their consent, as required by the Tribunal's rules. My role at this hearing is to decide whether the negotiated settlement falls within a range of reasonable outcomes. In deciding whether to approve settlements, this Tribunal respects the negotiation process and accords significant deference to the resolution that the parties reach. I do the same today.
- [13] My decision to approve this settlement takes into account some mitigating factors, including that Mr. Gong has not been the subject of any other proceedings before securities regulatory authorities in Canada, that Mr. Gong has co-operated with the Commission during this proceeding, and that by entering into this settlement, Mr. Gong has accepted responsibility and is conserving Commission and Tribunal resources.
- [14] Mr. Gong wishes to rely on two additional circumstances that he submits are mitigating factors. I will comment on them briefly.
- [15] First, Mr. Gong submits that the affected investors resided outside Ontario. I agree with the Commission that this is not a mitigating factor. Effective securities regulation requires global co-operation among regulatory authorities, and confidence in Ontario's capital markets would be undermined by a failure of the Commission or of this Tribunal to respond properly to securities-related misconduct that occurs in Ontario, no matter where the victims may be.
- [16] Second, Mr. Gong submits that he retained a consultant with respect to the shares of O24 Pharma and that he paid the consultant almost US\$1 million. Again, I agree with the Commission that this is not a mitigating factor in this case. Soliciting investments from the public brings with it significant obligations, and those who engage in that activity must be accountable for those obligations. In limited instances, reliance on professional advisors can be a mitigating factor,

e.g., where someone follows, in good faith, specific advice given by a properly qualified and instructed lawyer. Mr. Gong's assertion about the consultant in this case does not approach that standard, and I do not find the amount of fees paid to the consultant to be persuasive.

[17] Even though I do not give Mr. Gong credit for these two factors, I do find that the proposed settlement is reasonable and is in the public interest. It reflects the seriousness, scope and recurrent nature of Mr. Gong's misconduct, it effectively removes Mr. Gong from the capital markets permanently, and it operates as a significant deterrent for him and for others to engage in similar misconduct.

[18] I will therefore make an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 30th day of October, 2024

"Timothy Moseley"

Timothy Moseley