

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2024-004-010401
[2026] NZDC 5593**

FINANCIAL MARKETS AUTHORITY

Prosecutor

v

DAVID ELGAR McEWEN

Defendant

Hearing: 4 March 2026

Appearances: S McMullan for the Prosecutor
K Trotter for the Defendant

Judgment: 4 March 2026

NOTES OF JUDGE S J LANCE ON SENTENCING

[1] This is the case of David Elgar McEwen, who has been prosecuted by the Financial Markets Authority and who has pleaded guilty to four charges of failing to comply with an order of the Financial Markets Authority. That is a charge laid pursuant to s 479(2) of the Financial Markets Conducts Act 2013. The maximum penalty is a fine not exceeding \$300,000.

[2] There is a relatively lengthy summary of facts on the file that has been agreed, which I will attach to this judgment (as opposed to reading it all out). The synopsis of the offending is as follows, this is extracted from the submissions:

The Financial Markets Authority is the entity charged with regulating New Zealand's financial markets. Its main objective is to promote and facilitate the development of fair, efficient and transparent financial markets.

The Financial Markets Conducts Act 2013 is an enactment for which the FMA is responsible. It also provides the FMA with a number of regulatory tools to enable it to discharge its main objective.

In 2023, Mr McEwen was a financial advisor. Because of concerns about the substance of representations he was making about financial products he was offering to clients, in December 2023, the FMA made a stop order under the FMC Act in respect of him and associated entities to prevent them causing harm to New Zealand's financial markets from doing a range of actions in respect of certain financial products.

Over the following eight months, while overseas, Mr McEwen breached the clear terms of the stop order by:

- (a) making offers issuing and selling (or otherwise disposing of) financial products; and
- (b) distributing restricted communications relating to financial products.

The offers, sales and communications were to his former clients in New Zealand. As a consequence, Mr McEwen is now for sentence on those four charges of failing to comply with the stop order.

The details that Mr McEwen breached the terms of the stop order in three main ways:

- (a) Offering and issuing financial products and associated restricted communications in relation to Cosmopolitan Holdings 2024 Pty Ltd, an entity Mr McEwen incorporated in Singapore on 11 November 2023 after the FMA had begun investigating him but before making the stop order. These offers were made to Graeme Black, Thomas Nottingham and Phillip McDermott, who made payments totalling \$173,000.
- (b) Offering and issuing financial products and associated restricted communications in relation to Agtech 3 Ltd, an entity incorporated before and captured by the stop order. This offer was made to Graeme Black.
- (c) Issuing units in the International Opportunities Partnership, an investment vehicle Mr McEwen created in July 2024 after the stop order was made.

These units purported through a place without invested consent, financial products that investors held in relation to other of Mr McEwen's entities. In return, Mr McEwen asked investors for an administration fee. These units were issued to an unknown number of investors, but at least 27 investors by 8 August 2024, 23 of whom had paid Mr McEwen the administration fee, which payments totalled \$17,046.49.

[3] The prosecution maintain the following aggravating features (which also go towards what we call the overall gravity of the offending), as follows:

- (a) Mr McEwen's offending being corrosive to the integrity of New Zealand's financial markets. The FMA made a stop order to prevent him from causing investor harm and undermine the integrity of the financial markets. In response, he left New Zealand and attempted to undertake the same conduct offshore.
- (b) Its scale. Mr McEwen's breaches related to multiple investors across multiple financial products between January-August 2024.
- (c) The vulnerability of his targets. Mr McEwen was a trusted financial advisor and knew of his investments' financial position. He could see amounts sitting in their investment accounts and asked them to invest those funds in breach of the stop order. Moreover, Mr McEwen was issued these products while providing investors, who saw him as a trusted advisor, with little information. The stop order was issued in part because he was promoting financial products through misstatement, and unsubstantiated in other false representations. In particular, he was making representations as to the value of assets which were unsupported by valuations. The theme continued in relation to the offers he made in breach of the stop order. For example, his request for an administration fee from investors in relation to the International Opportunities Partnership was unsubstantiated by any metric.
- (d) His offending was premeditated. He established Cosmopolitan Singapore after the FMA began investigating him, left New Zealand and then began making the offers, the subject of the charges from outside of New Zealand where the FMA's regulatory tools, like most regulators, are of more limited effect. He later established the International Opportunities Partnership to extract more money from investors.
- (e) His offending was motivated by personal gain. He personally benefited from all the funds extracted from investors, which totalled \$180,046.49.

[4] Mr McEwen makes an application for a discharge without conviction pursuant to s 106 of the Sentencing Act 2002. There is a three-step process that I need to undertake:

- (a) I need to assess the gravity of the offending.
- (b) I then need to assess the consequences of a potential conviction.
- (c) Then, undertake a proportionality test where I decide whether the consequences outweigh the gravity.

[5] So, firstly to the gravity of the offending, as I have set out, the Crown submit that the gravity of the offending is at least at a medium level.

[6] The defence say that the gravity of the offending is low. They note the offending is regulatory in nature, does not involve, in their submission, dishonesty charges, misappropriation or allegations of loss-making misconduct. The total of quantum involved is modest in the context of financial markets' enforcement.

[7] Then, considering other broader matters, that Mr McEwen has no previous conviction, that the principal investor effected, Mr Graeme Black, remains supportive, and that his offending, that is Mr McEwen's conduct, occurred during a period of acute personal and financial stress, which potentially impaired judgement and contributed to the offending. He has also pleaded guilty.

[8] There is a victim impact statement from a further party effected, and this is from Helen Sutherland, who says she is 62 years old, and that she invested with David McEwen Associates in 2021 with the expectation of above average returns as per the information received from his website: "We trusted his experience and knowledge within the financial sector." He was also, she says, a guest speaker on a breakfast radio show, where he promoted his Stockfox share advice APP launch.

[9] However, she says it quickly became apparent that they were losing money at an alarming rate: "It was at a time when we should've seen increases in our investments, not the losses. Our initial investment went from \$33,000 to \$15,000."

She says: “At that point, we should’ve pulled our money back and taking our losses instead of David reached out and offered the opportunity to invest in units in Stockfox with a 10 per cent return and repayment of \$20,000 over two years.”

[10] She says: “Foolishly, and still trusting him at this stage, we handed over another \$12,000, keeping back \$3,000 for ourselves. Within 12 months, the interest repayments stopped. Money completely disappeared.” That was money she says their children and grandchildren will never have, it was their retirement money, and to see it go in these circumstances, to quote her, was a “bitter pill to swallow. There has been no repayment of our funds, not a single dollar.”

[11] She is embarrassed by what occurred, so has not been able to share that with any of her family and her friends, the humiliation is enormous. She asks herself: “How could we have been so stupid.” Her trust in financial advisors has eroded and she is left with feelings of anxiety, constantly checking accounts to make sure other money she has is safe and protected.

[12] Then, she says: “Remorse, David, there is none. I recall very clearly our last conversation where I asked how the money had disappeared. The quickest reply ever, ‘oh yeah, sorry about that’.” She says: “I was left stunned by your pathetic response and no attempt at any explanation.” And she says: “At the first opportunity, despite the stop orders, you bombarded me with cold calls, trying to sell me more of your failed products.”

[13] That is just an extract from the victim impact statement, so clearly there are some disenchanted people who have invested their funds with Mr McEwen.

[14] I accept the submissions of the prosecution, that Mr McEwen’s submissions overlook the most significant aggravating factors, which is the impact on New Zealand’s financial markets and the scale of the breaches, notwithstanding the ultimate yield.

[15] Offending like this is corrosive of integrity in New Zealand’s financial markets, and the FMA is charged with preserving its integrity. One of those tools was the stop

order. However, such orders only work if they are complied with. Here, not only did Mr McEwen fail to comply with those, but he left New Zealand and attempted to undertake offending conduct offshore. So, I accept that the gravity of the offending can be described as of medium seriousness.

[16] The next step is to look at the consequences. I have information that has been supplied through Mr Trotter's submissions and in Mr McEwen's affidavit, and what he says under the heading "consequences already suffered", that he has had businesses that have now been struck off, unable to start new businesses, no longer have any savings or assets, an account with one of New Zealand's largest banks being closed, brokerage account with an international firm terminated, long-term personal relationship ended, lost the respect of friends, colleagues and family, and in poor health physical and mentally.

[17] The issue with those consequences, as he sets out himself in the affidavit, is that they have already been suffered. They are consequences of the offending, not consequences of a potential conviction.

[18] Moreover, Mr McEwen is under a misapprehension that a conviction will somehow make it difficult for him to "visit New Zealand" as set out in paragraph [14] of his affidavit. A conviction will not prevent him returning to New Zealand. Presumably, he is still travelling on a New Zealand passport. Any fine will be one for him to deal with as he sees fit.

[19] So, I find the consequences of a conviction low. Therefore, when I undertake the proportionality test, I am not convinced that, the consequences outweigh the gravity.

[20] I then need to move to the next stage, which is the appropriate sentence, given that there is no discharge available. It is fine only. After the last appearance, I had to adjourn the matter to obtain an affidavit from Mr McEwen as to his means. He has now provided that. The prosecution are sceptical. They say that the affidavit does not respond to claims that his own referees provide, that they are still providing him with

investments or money to invest, that there is a “opportunities partnership” and that there are ongoing financial services that he appears to be providing.

[21] I acknowledge what Mr McMullan says about those matters, but not sure what I can do about that given an affidavit has been provided. It is a sworn document, and I must, in my view, take what is in that document on face value. If sometime down the line, it proves to be inaccurate or untrue, then consequences may follow.

[22] I cannot see how I can meaningfully, as the prosecution suggest, interrogate the contents of the affidavit without further information and, of course, without Mr McEwen himself being here. That puts me in a difficult position when trying to assess what an appropriate fine might be.

[23] The prosecution say in their submissions that, before the affidavit was filed, a starting point of somewhere in the region of \$150,000-200,000 fine would have been appropriate, reducing that by no more than 20 per cent for the guilty pleas.

[24] Mr Trotter on behalf of Mr McEwen says that, given the information he had at the time, and now with further information contained in the affidavit material, any fine should be nominal, consistent with Mr McEwen’s lack of means and should avoid causing further hardship, and be consistent with the purposes of sentencing. He notes reparation is not sought.

[25] In Mr McEwen’s affidavit, he says that he earns approximately \$50,000 per annum before tax, that he is the consultant to a small firm in Europe, although does not name that firm, that he also produces the subscription newsletter, that he has no benefits in pensions, no commissions, no interest in dividends, no income from any rental property, does not own real estate, does not own a car or a vehicle, that he has some funds in KiwiSaver, and then some miscellaneous property such as computers, personal effects, a modest amount of cash, that he has debts, namely IRD arrears, IRD pending, bank overdrafts and loans.

[26] So, he is not, based on his affidavit, flush with funds. I must take that into account.

[27] So, today's sentencing is to a degree a 'nominal' exercise because of his poor financial position. And so, what I intend to do is fine Mr McEwen a total of \$15,000. That will be across the four charges.

[28] I note that Mr McEwen is eligible for a banning order under subset part 6 of part 8 of the Financial Markets Conduct Act 2013, and that I accept the prosecution's submissions that I should exercise my discretion and make that order given the extent of Mr McEwen's non-compliance with the FMA's own order.

[29] I do not want to canvas all the material in the prosecution's submissions about this matter because there are several cases noted which I read which would take some time to summarise in detail. I accept the prosecution's submissions in relation to this part of the sentencing exercise and will issue a banning order for a period of seven years.

[30] As discussed, I have imposed that sentence on the first CRN which ends 4690. On the other CRNs for the record, I have convicted and discharged.

Judge SJ Lance

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 26/03/2026