

**IN THE DISTRICT COURT  
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE  
KI ŌKAHUKURA**

**CRI-2023-044-000830  
[2024] NZDC 6864**

**COMMERCE COMMISSION**  
Prosecutor

v

**SHELLEY ROSE CULLEN**  
Defendant

Hearing: 27 March 2024  
Appearances: J Barry and L Dittrich for the Prosecutor  
No appearance by or for the defendant  
Judgment: 12 April 2024

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**RESERVED JUDGMENT OF JUDGE A M SKELLERN**

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**The Charges**

[1] Shelley Rose Cullen (Ms Cullen) faces five representative charges of promoting a pyramid selling scheme pursuant to s 24 of the Fair Trading Act 1986 (FTA).

[2] On 6 April 2023, the Court directed that Ms Cullen be served by e mail with all proceedings.

[3] Ms Cullen did not attend the Judge Alone Trial on 27 March 2024 and neither did she arrange representation. Given that these are category 1 offences, the hearing proceeded by way of formal proof on 27 March 2024.

[4] The Commerce Commission (the Commission) alleges that the scheme known as “Lion’s Share” (the scheme) was a pyramid scheme and that Ms Cullen and others promoted the scheme between 11 July 2020 and 28 November 2020.

[5] The Law relating to these charges is as follows:

### **Relevant statutory provisions**

#### **24 Pyramid selling schemes**

- (1) No person shall promote or operate a pyramid selling scheme.
- (2) For the purposes of this section, the term **pyramid selling scheme** means—
  - (a) a scheme—
    - (i) that provides for the supply of goods or services or both for reward; and
    - (ii) that, to many participants in the scheme, constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services; and
    - (iii) that is or is likely to be unfair to many of the participants in the scheme in that—
      - (A) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and
      - (B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme:
  - (b) a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that—
    - (i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and
    - (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

**40 Contraventions of provisions of Parts 1 to 4A an offence**

- (1) Every person who contravenes a provision of Part 1 (except sections 9, 14(2), 23, or 24), Part 3, or Part 4 commits an offence and is liable on conviction, —
- (a) in the case of an individual, to a fine not exceeding \$200,000; and
  - (b) in the case of a body corporate, to a fine not exceeding \$600,000.
- (1A) Every person who contravenes section 24 commits an offence and is liable on conviction to a fine not exceeding \$600,000.
- (1B) Every person who contravenes a provision of Part 2 or Part 4A commits an offence and is liable on conviction, —
- (a) in the case of an individual, to a fine not exceeding \$10,000; and
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.
- (2) Where a person is convicted, whether in the same or separate proceedings, of 2 or more offences in respect of contraventions of the same provisions of this Act and those contraventions are of the same or a substantially similar nature and occurred at or about the same time, the aggregate amount of any fines imposed on that person in respect of those convictions shall not exceed the amount of the maximum fine that may be imposed in respect of a conviction for a single offence.
- (3) *[Repealed]*

**44 Defences**

- (1) Subject to this section, it is a defence to a prosecution for an offence against section 40 if the defendant proves—
- (a) that the contravention was due to a reasonable mistake; or
  - (ab) that, in the case of an offence under section 40(1) in relation to a contravention of section 21C(1), the defendant reasonably believed that there was a right to payment or other consideration; or
  - (b) that the contravention was due to reasonable reliance on information supplied by another person; or
  - (c) that—
    - (i) the contravention was due to the act or default of another person, or to an accident or to some other cause beyond the defendant's control; and
    - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

- (2) For the purposes of subsection (1)(b) and (c), the term **another person** does not include—
- (a) a servant or agent of the defendant; or
  - (b) where the defendant is a body corporate, a director, servant or agent of the defendant.
- (3) A defendant is not, without the leave of the District Court, entitled to rely on the defence provided by subsection (1)(b) that the contravention was due to reasonable reliance on information supplied by another person, or by subsection (1)(c)(i) that the contravention was due to the act or default of another person, unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served on the prosecutor a notice in writing identifying that person.
- (4) It is a defence to a prosecution for an offence against section 40, or to any other proceedings under this Part, in relation to a contravention of a provision of this Act committed by the publication of an advertisement, if the defendant proves—
- (a) that the defendant's business is publishing or arranging for the publication of advertisements; and
  - (b) that the defendant received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.
- (5) Subject to subsection (6), it is a defence to a prosecution for an offence against section 40, or to any other proceedings under this Part, in relation to a contravention of section 28, if the defendant proves—
- (a) that the goods to which the proceedings relate were acquired by the defendant for the purpose of resupply from a person (not being an agent of a person outside New Zealand) who carried on in New Zealand the business of supplying such goods; and
  - (b) that the defendant did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with the consumer information standard or that the defendant had not complied with that standard in relation to the goods, as the case may be, or that the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that a consumer information standard had not been prescribed for those goods.
- (6) A defendant is not, without the leave of the District Court, entitled to rely on any defence provided by subsection (5) unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served, in the case of proceedings for an offence, on the prosecutor, and in the case of any other proceedings, on

the person commencing those proceedings, a notice in writing identifying the person by whom the goods were supplied.

- (7) It is a defence to a prosecution of an offence under section 40, or to any other proceedings under this Part, in relation to a contravention of section 36RA, if the defendant proves that—
- (a) the person who gave the direction under section 36RA(2) or (3), or with whose actual or apparent authority it was given, no longer resided at the premises at the time of the contravening conduct; or
  - (b) the contravening conduct was with the permission (given after the direction under section 36RA(2) or (3) but before the conduct) of someone who—
    - (i) resided at the premises; or
    - (ii) was acting with the actual or apparent authority of someone residing at the premises.

[6] I am satisfied Ms Cullen has been served with all relevant documents by way of her email address — [REDACTED].

### **The Background**

[7] As a result of a number of complaints, the Commission contacted Ms Cullen on 18 November 2020 and advised her that it had opened an investigation into the scheme which the Commission believed at that time was operated by Ms Cullen. The Commission invited Ms Cullen to a voluntary interview with it on 24 November 2020 and requested that Ms Cullen supply the Commission with the following documentation in respect of the scheme:

- (a) The name of any company or entity established;
- (b) Any brochures or marketing materials in relation to the scheme, cryptocurrency, or any other related scheme;
- (c) Information about products if any being sold and/or marketed;
- (d) Copies of all contracts;

- (e) Copies of any rules or documents that apply to or govern the scheme, diagrams outlining the structure of the scheme and details of how a participant may participate or profit from the scheme or enterprise;
- (f) The names of any financial brokers, intermediaries, banks, or accounts used to hold or trade monies, cryptocurrency or investments including details of account numbers;
- (g) A list of the names and contact details of all clients and/or participants in the Lion's Share scheme or enterprise including details of the amounts invested and a copy of any document recording their investment;
- (h) Copies of marketing lists providing names and contact details of potential participants or those marketed to; and
- (i) Records of the total investments made, and profits gained for each participant.

[8] On 18 November 2020 Ms Cullen responded to the Commission from the email address [REDACTED] noting that she was happy to attend the meeting. She also answered a number of the queries.

[9] The information she provided was;

- (a) A copy of the Lion's Share smart contract. She noted she was simply a participant and that the owner is anonymous just like bitcoin. She explained all details are provided via blockchain, and she provided the contract number. She then provided further information setting out that Lion's Share is not a company. She attached the presentation about the scheme, provided copies of educational products, and copies of the Ethereum and Tron smart contracts. She said all rules are stipulated in the smart contract. There are no entities and no records of names, or any list of participants as they are in the form Ethereum addresses.

Records are public, but there are no marketing lists. She suggested everything is transparent. All wallets that participate are available publicly. She attached a power point file containing a presentation for the Tron platform of the scheme. The presenter was noted as a Ms Funaki.

[10] Ms Cullen advised the Commission that she planned to have two people attend the interview with her as support. When asked for any further information or the names of the people she planned to bring to the interview, she did not respond.

[11] Although there was a transcript of Ms Cullen's interview available to me, I watched the video of the interview. I considered this particularly important in terms of fairness as Ms Cullen was not present and this was the only opportunity I would have to hear her version.

[12] At the interview Ms Cullen stated that the scheme was not an investment scheme but rather a gifting/crowd funding programme where everyone gifts into the smart contract and the smart contract pays people out. She said that it was all about joining people up into the smart contract. If they join up it costs a certain amount of crypto to open up a money tree. She explained it was all about inviting people into the programme. In short, she said if you do nothing you make absolutely nothing.

[13] Ms Cullen also stated the scheme offered educational materials in relation to cryptocurrencies. However, the Commission's witness Mr Matthan discovered these courses were available as both free and paid courses elsewhere. They were not connected to the scheme.

[14] Ms Cullen in a number of presentations claimed to have expertise in programming and encouraged participants to join only under knowledgeable leaders in the scheme. However, in her interview she stated she did not fully understand the smart contract herself or how the participants get "free money" through the scheme other than that "the smart contract just pays out as per the code in the smart contract."

[15] When asked how when you put money into the scheme, does it make more money, she declined to answer and suggested the Commission talk to James (the alleged creator of the Scheme.). However, when asked for his contact details, Ms Cullen failed to respond.

[16] The Commission forwarded the video recording of her interview to Ms Cullen at her request.

[17] On 21 December 2020 the Commission issued a "stop now" letter to Ms Cullen at her email address and requested that she cease promotion of the scheme and other alleged pyramid schemes she appeared to be involved in, remove any content from Facebook, You Tube and other social media channels that promote such schemes and to make a proposal for compensating and returning money to those who had paid money into the scheme.

[18] On 24 December 2020, Ms Cullen confirmed she had stopped her promotion of the scheme but did not propose plans for compensation.

[19] On 18 January 2021 Ms Cullen emailed the Commission to advise that she had a new lawyer. The Commission issued a media release in an effort to publish its "stop now" letter issued to Ms Cullen to dissuade further promotion of the scheme. The Commission emailed Ms Cullen's new lawyer on 19 January 2021 to notify him of the Commission's media release.

[20] On 19 January 2021 Ms Cullen posted a Facebook live video which formed part of the evidence in which she stated:

- (a) "I am going to make history as one of the biggest scammers in NZ";
- (b) "I can't do any other projects at the moment, my lawyers got to pass everything I do";
- (c) "Fuck the consequences I ain't scared";



- (d) “I jump scam to scam because I can. What’s the consequences \$600,000 slap on the hand”;
- (e) “The biggest penalty I will get... I don’t mind if I go to jail;
- (f) “I don’t have a bank account and I will say you aren’t getting my password you can lock me up.

[21] Ms Cullen refused to have a further interview with the Commission.

[22] On 22 April 2022 Ms Cullen forwarded correspondence to the Commission the purpose of which is unclear but appears to suggest that the Commission is making a fraudulent claim for unjust enrichment.

[23] On 27 April 2022 Ms Cullen’s lawyer advised he no longer acted for her. Significant efforts were attempted to contact Ms Cullen directly. She was next spoken to on 20 September 2022, confirmed her email address but then disconnected the call with the Commission.

[24] No further contact was had with Ms Cullen after 20 September 2022. She has apparently left the country and not returned.

[25] The hearing proceeded in her absence.

### **The evidence**

[26] The Commission produced evidence from Roy Dilip Matthan and David Saunders. Mr Matthan is a senior investigator of the Commerce Commission and Mr Saunders an expert in software development and cryptocurrency. Mr Matthan provided a formal written statement to the Court and gave oral evidence. Mr Saunders provided two expert reports and also gave oral evidence.

## **Onus on the prosecutor**

[27] The onus of proving the charges lies on the prosecutor. The elements of each charge must be proved to the standard of proof beyond reasonable doubt.

[28] There are five charges. Common to each of the charges is the question as to whether Ms Cullen is a person as defined by s 2 of the FTA.

[29] Clearly Ms Cullen is a natural person, evident from social networking platforms and videos and the interview she had with the Commission in person.

### **Charge 1**

#### *The first element*

*Did Ms Cullen promote the scheme between 11 July 2020 and 31 July 2020?*

[30] Evidence of multiple examples of Ms Cullen promoting the scheme was adduced at the hearing by the prosecutor. For example,

- (a) From 11 July 2020 to 31 July 2020, she made a Facebook live video where she promoted the Ethereum platform of the scheme. This was a recorded Zoom session in which she introduced the scheme to viewers, explained how the scheme functioned and encouraged viewers to invite others to see the presentation. As at 3 December 2020 this video attracted 2,100 views on Facebook.
- (b) On 31 July 2020 Ms Cullen published an instructional video on YouTube where she demonstrated how to find the ID number for a Lion's Share participant. She instructed the viewer to access the smart contract from the Lion's Share website and run a query using an individual's cryptocurrency wallet address to find the ID number. As at 17 November 2020, this video attracted 2,843 views on YouTube.

- (c) In a 28 July 2020 Facebook post, Ms Cullen referred to having daily presentations and on that particular day at 7pm and 10pm.
- (d) There were also a total of 13 Facebook posts in July 2020 referred to at paragraph 3.9 of Mr Matthan's formal statement.

## **Charge 2**

### *The first element*

#### *Did Ms Cullen promote the scheme between 1 August 2020 and 31 August 2020?*

[31] Again, multiple examples of Ms Cullen promoting the scheme were adduced by the prosecutor. For example,

- (a) In a You Tube video on 1 August 2020 Ms Cullen introduced herself as the leader of a group of participants in the scheme called Team Lion Kings based in Australia and New Zealand. She noted there was no guarantee of earnings but promoted the scheme as scam free and helping our third world country in the fact she had earned over \$150,000 in 11 days. As of 13 November 2020, this video had attracted 51,377 views on You Tube.
- (b) She recorded a Zoom presentation on 26 August 2020 beginning by noting there was no guarantee of returns however the Lion's Share scheme income generating potential was alongside her hundreds and thousands of others New Zealand all on the payroll of the scheme.
- (c) She also posted 16 Facebook posts from 3 August 2020 until 31 August 2020 exhibited in the Commission's Bundle of Documents at Tab seven.
- (d) There were Zoom sessions almost daily during August 2020.

### **Charge 3**

#### *The first element*

*Did Ms Cullen promote the scheme between 1 September 2020 and 30 September 2020?*

[32] Evidence of multiple examples of Ms Cullen promoting the scheme was adduced at the hearing by the prosecutor. For example,

- (a) Ms Cullen recorded an online Zoom presentation on 8 September 2020. She appeared as a guest speaker speaking of the scheme's apparent success by noting it had paid out \$10 million from the Ethereum platform and that she had made \$204,026 from the scheme within five weeks.
- (b) She published an instructional video on 28 September 2020 entitled "How to Sign Up With Tron Lion's Share". This video attracted 9,018 views on You Tube.
- (c) She made seven Facebook posts from 1 September 2020 to 28 September 2020.

### **Charge 4**

#### *The first element*

*Did Ms Cullen promote the scheme between 1 October 2020 and 31 October 2020?*

[33] Evidence of multiple examples of Ms Cullen promoting the scheme was adduced at the hearing by the prosecutor. For example,

- (a) On 10 October 2020 Ms Cullen published a video message from a Mr Ward the alleged creator of the scheme where he congratulated

Ms Cullen for being the top leader in the Ethereum smart contract and Tron smart contract.

- (b) On 21 October 2020 Ms Cullen published a video on You Tube where she promoted the Tron platform of the scheme and introduced the new Lion's Three platform. She noted the scheme had paid out \$15 million from the Ethereum platform and \$12 million from the Tron platform. She explained how the scheme functioned and claimed that although participants do not have to recruit others, they should invite people to watch the scheme presentations. As of 17 November 2020, this video attracted 5,656 viewers on You Tube.
- (c) Between 6 October 2020 and 29 October 2020 Ms Cullen made eight Facebook posts promoting the scheme referred to at Tab Nine of the exhibit bundle.

#### **Charge 5**

##### ***The first element***

*Did Ms Cullen promote the scheme between 1 November 2020 and 28 November 2020?*

[34] Evidence of multiple examples of Ms Cullen promoting the scheme was adduced at the hearing by the prosecutor. For example,

- (a) On 28 November 2020 Ms Cullen posted two live videos to her Facebook page from a meet and greet event held for the scheme participants at Shakespeare Beach in Whangaparaoa. The video refers to the attendees as lions with people of all ages including children present. Ms Cullen refers to herself and another woman as scammers.
- (b) Ms Cullen advertised a meeting entitled "Crypto Workshop" to be held at the Mt Albert campus of Unitech on 7 November 2020. However, that venue was changed to a Clendon Park primary school at

which the Commission attended. Ms Cullen live streamed this event on her Facebook profile.

- (c) Between 3 November and 28 November 2020 Ms Cullen posted nine Facebook posts promoting the scheme.

**Is the evidence sufficient to satisfy the Court beyond a reasonable doubt that Ms Cullen promoted the scheme?**

[35] The answer is clearly yes. The examples provide ample evidence to prove beyond a reasonable doubt that Ms Cullen was promoting this scheme enthusiastically during the dates specified in each of the charges.

**All charges**

*The second element -contains three parts*

*Was the scheme a “pyramid selling scheme”?*

*The first part*

*Did the scheme provide for the supply of goods or services or both for reward?*

[36] Access to claimed financial benefits has been held to be sufficient to amount to the supply of services for reward.<sup>1</sup> The Courts have also held that provision to the rights of membership is in and of itself capable of being a service.<sup>2</sup>

[37] The Commission submits that the Lion’s Share falls into both these categories in that the scheme through the Smart Contracts provided an opportunity to access claimed financial benefits for reward and that this was also a form of membership.

[38] The Commission refers to Mr Matthan’s description of the scheme at Part 2 from 2.1 to 2.16 and Part 4 of his Formal Written Statement. and further, Mr Saunders

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<sup>1</sup> *Commerce Commission v Wall* DC Auckland, 13 October 2000 at [47] to [49].

<sup>2</sup> *Commerce Commission v Alpha club NZ Limited* (2002) 10 TCLR 569 at [43].

description of the scheme at [13] to [53] of his First Report in support of this submission.

[39] Put simply, Mr Matthan's analysis is that the scheme provided for the supply of services being an opportunity to participate in a scheme in order to sell an investment opportunity to new participants for reward. In other words, a participant who introduced a new recruit, acted as an agent for the scheme in the supply (provision) by the scheme of services (being the right of membership).

[40] Mr Sanders explains that there is nothing gained in return for payments made in terms of value or an item received, other than the potential to recruit people below you. All payments simply fund an address of someone above you in the money tree. The only way a user can get their initial money back or make additional money is for further people in the tree below them to sign up, or for existing users below them to make additional payments.

[41] All of the evidence provided to the Court supports the Commission's submission that this element of the charges is proven beyond a reasonable doubt. The scheme falls squarely into the analysis of both experts.

[42] Accordingly, I am satisfied beyond reasonable doubt that the scheme does provide for the supply of goods or services or both for reward

*The second part*

*Was this a scheme that to many participants constituted primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services?*

[43] The Commission submits that the various promotions that form part of the charges indicate it was a scheme that primarily represented an opportunity to buy into and then sell on, an investment opportunity. Ms Cullen's promotion focussed solely on the financial benefits available to participants who were able to recruit more people

into the scheme. She advertised the scheme as a source of income and participants viewed the scheme as an investment opportunity.

[44] The claimed education benefits provided were all part of selling the investment opportunity.

[45] The Courts have found that this element uses terminology that is expressed in less than absolute terms such as “primarily” or “many but not all participants” and as a result the Court should take a common sense not overly analytical approach.<sup>34</sup>

[46] The answer to this question is clearly yes, the prosecution has proven beyond a reasonable doubt that the scheme constituted primarily an opportunity to buy or sell investment opportunities rather than an opportunity to buy or sell goods or services.

*The third part*

*Was the scheme, or was the scheme likely to be, unfair to many of the participants in the scheme because:*

*(A) The financial rewards of many participants are dependent on the recruitment of additional participants;*

[47] I am satisfied beyond a reasonable doubt on the evidence given by both deponents that the participants in the scheme could only make money by recruiting a sufficient number of new participants into the scheme or through further payments from existing participants that they directly or indirectly recruited.<sup>5</sup>

*(B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards is not likely to be attainable by many participants.*

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<sup>3</sup> Ibid at [44].

<sup>4</sup> Ibid at [46].

<sup>5</sup> Mr Matthan at [2.4] Mr Saunders [36] to [53.].



The evidence of the Commission in terms of this element is as set out in Mr Saunders winners and losers' analysis of the scheme. Specifically, that:

- (a) Ethereum (without fees):
  - (i) 12.3 per cent were winners, 4.5 per cent were neutral and 83.2 per cent were losers based on 92,756 total participants;
  - (ii) The top one per cent of users made 92.1 per cent of the profit; and
  - (iii) The winners made \$NZD6,327,068 while the losers lost the same amount;
- (b) Ethereum (with fees):
  - (i) 9.7 per cent were winners, 90.3 per cent were losers based on 92,756 total participants;
  - (ii) The winners made \$NZD6,122,306 while the losers lost \$NZD7,540,658.
- (c) Tron;
  - (i) 12.4 per cent were winners, 4 per cent neutral and 83.6 per cent were losers based on 116,383 total participants;
  - (ii) The top 1 per cent of users made 92.2 per cent of the profit; and
  - (iii) The winners made \$NZD10,363,621 while the losers lost \$NZD10,509,547.

[48] The answer to this question is the Commission has proven beyond a reasonable doubt that only a small proportion of participants were "winners" and reasonable financial rewards are attained by very few participants.

## Decision

[49] I am satisfied that each element of the five representative charges is proven beyond a reasonable doubt.

[50] None of the section 44 defences are advanced by Ms Cullen and neither do they appear to apply.

[51] Ms Cullen is found guilty in respect of each charge.

[52] Pursuant to s 40(1A) of the FTA, Ms Cullen is liable to a maximum fine on each charge of \$600,000.

[53] A sentencing date is to be allocated in consultation with the prosecutor and Ms Cullen is invited to make submissions as to sentence should she wish to do so.

[54] The prosecution and any defence submissions are to be filed at least 7 days prior to sentencing.

\_\_\_\_\_  
Judge A Skellern

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 12/04/2024

Reserved Decision of

*Judge A. Skellern.*

Delivered this *16th day April 2024.*

  
Deputy Registrar

North Shore District Court

Christine Brand  
Deputy Registrar  
North Shore District Court