Court File No. CV-19-00628085-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

GRANT THORNTON LIMITED in its capacity as Court-appointed Receiver of MONEY GATE INVESTEMENT CORPORATION

Applicant

-and-

2450531 ONTARIO LTD.

Respondent

SUPPLEMENT TO THE FIRST REPORT TO THE COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF THE PROPERTY MUNICIPALLY KNOWN AS 293 EUCLID AVENUE, TORONTO, ONTARIO

April 1, 2020

Grant Thornton Limited
200 King Street, 11th Floor
Toronto, Ontario
M5H 3T4

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Appendix 5 – Ontario Securities Commission's Endorsement dated December 17, 2019

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April 1, 2020

INTRODUCTION

1. The purpose of this supplement (the "**Supplemental Report**") is to provide the Court with evidence in response to an email received from Adam Wygodny ("**Wygodny**") of Berkow Youd Lev-Farrell Das LLP, legal counsel to Payam Katebian ("**Payam**") principal of 245, regarding the proposed distribution outlined in the First Report of the Receiver dated March 26, 2020 (the "**First Report**"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the First Report.

RESTRICTIONS

2. In preparing this Supplemental Report, the Receiver has relied upon unaudited financial information, MGMIC's books and records, books and records of the Euclid Owner and discussions with other parties. The Receiver's work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

3. This Supplemental Report has been prepared for the use of this Court in support of the matters described herein. This Supplemental Report should not be relied on for any other purpose.

DISTRIBUTION

4. On April 1, 2020, counsel for the Receiver received an email from Wygodny wherein Wygodny, on behalf of Payam, stated that the Receiver failed to account for four payments totalling $68,874.64 allegedly made by the Euclid Owner to MGMIC in the payout statement attached as Appendix 12 to the First Report. In support of this allegation Wygodny referenced the Affidavit of Payam Katebian affirmed on November 22, 2019 ("**Payam's Affidavit**").

5. A copy of Wygodny's email is attached to this Report as **Appendix "1".** An excerpt from Payam's Affidavit with the relevant exhibit is attached to this Report as **Appendix "2"**. A copy of Payam's Affidavit without exhibits is attached as Appendix 3 to the First Report.

6. In support of Payam's allegation that 245 made principal payments to MGMIC, Payam's affidavit attached bank account statements of 245 for the time period commencing December 30, 2016 and ending January 31, 2017 (the "**Statements**"). The Statements disclose that payments totalling $68,874.64 were made in January 2017 by 245 to "Money Gate Corp. Mtg.", not MGMIC.

7. The Receiver reviewed MGMIC's books and records and notes that there is nothing in the books and records that supports Payam's position that the

payments were intended to reduce the principal amount of MGMIC's mortgage to 245.

8. Shortly after GTL was appointed as MGMIC Receiver, Payam provided the MGMIC Receiver with MGMIC's books and records, which included the loan renewal for MGMIC's loan to the Euclid Owner dated October 30, 2018, a copy of which was attached as Appendix 8 to the First Report (the "**Loan Renewal**"). In the Loan Renewal, MGMIC confirms that as at October 30, 2018, the entire principal balance of $282,500 was owing by 245 to MGMIC.

9. Following the appointment of GTL as MGMIC Receiver, 245 made interest payments in the amount of $2,825.00 per month, as required by the Loan Renewal between December 2018 and April 2019.

10. At 12:25 p.m. on April 1, 2020, Maya Poliak, counsel for the Receiver replied to Wygodny's email and brought to his attention the Renewal Letter. Attached hereto as **Appendix "3"** is Ms. Poliak's email.

11. At 3:48 p.m. on April 1, 2020, Wygodny replied to Ms. Poliak on behalf of Payam. In his email, amongst other things, Wygodny advised Ms. Poliak that apparently the Receiver had the wrong executed version of the Renewal Letter and that another version of the Renewal Letter which had a different loan amount was to be applied to MGMIC's loan to 245. Wygodny's email was "Without Prejudice" however, he has allowed the Receiver to attach the new version of the Renewal Letter provided to the Receiver this afternoon, which has been attached as **Appendix "4"**.

12. The Renewal Letter relied on by the Receiver was provided by Payam himself. The Renewal Letter was attached to the MGMIC Receiver's Application Record and the First Report both of which were served on Payam. It wasn't until 3:48 p.m. on April 1, 2020, that Payam for the first time provided to the Receiver a copy of this new Renewal Letter.

13. Based on the evidence presented, the Receiver believes that Payam's claims that the MGMIC Mortgage was paid down by 245 are unsubstantiated and no

amendment should be made to the MGMIC Claim as presented in the First Report.

14. Based on the Receiver's calculation, there is a shortfall of approximately $55,000 on the MGMIC Mortgage. If the Receiver's evidence is incomplete and the paydown as set out by Payam did in fact occur, there would be a surplus of approximately $11,000 available after satisfaction of the MGMIC Mortgage.

15. On December 17, 2019, the Ontario Securities Commission issued an Endorsement, wherein it made a number of findings of fraud as against, among others Payam. A copy of the Commission's Endorsement is attached as **Appendix "5"**. Pursuant to an Order of the Honourable Justice Penny dated March 29, 2019 made on a motion by the Commission, any surplus net proceeds should be deposited into Court and not be released without an order of this Court, or alternatively to be held, in-trust, by the Receiver and not be released without an Order. A copy of the Order is attached as **Appendix "6"**. In the event there is a Court order determining that there is a surplus of proceeds, any excess funds will be held by the Receiver pending the further direction of this Court.

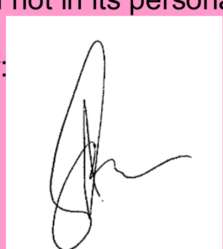
RECOMMENDATION

16. Based on the foregoing, the Receiver respectfully requests that the Court grant the relief requested in the First Report.

Respectfully submitted,

GRANT THORNTON LIMITED
In its capacity as court-appointed receiver of the Property
municipally known as 293 Euclid Avenue, Toronto, Ontario
and not in its personal or corporate capacity.

Per:



Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

APPENDIX 1

Kanji, Jason

From: Maya Poliak <Maya@chaitons.com>
Sent: Wednesday, April 01, 2020 12:25 PM
To: Adam Wygodny; Lynda Christodoulou
Cc: Nadine Christie; Kanji, Jason
Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL
Attachments: 026- 245 Ont Inc - Mortgage Renewal - Oct 30, 2018.pdf

Adam,

The payments referenced in your client's affidavit were made in 2017. Although it does appear that payments flowed to Money Gate Corp. and that Money Gate Corp. transferred money to Money Gate MIC, it appears that the funds were not applied by the MIC to reduce the principal amount owing by the Euclid Owner. On the contrary, when a renewal was prepared by Money Gate MIC and executed by 245 in October 2018, the principal amount on the renewal was $282,500.

Please let me know if you are available to speak further about this issue in the next hour.

Thank you,

Maya Poliak
Partner | Chaitons LLP | Tel: 416.218.1161

From: Adam Wygodny <awygodny@byldlaw.com>
Sent: Wednesday, April 1, 2020 11:17 AM
To: Maya Poliak <Maya@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Cc: Nadine Christie <nchristie@byldlaw.com>
Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

Yes, our client wants to ensure that the principal pay downs, totaling $68,874.64, are accounted for. These payments are evidenced in the Affidavit of Payam Katebian affirmed November 22, 2019, at para. 11 and Exhibit "A", which is filed in the Responding Application Record available online at the following address:

https://docs.grantthornton.ca/document-folder/viewer/docul8LWsxcWho7J/6681497681483411337_ga=2.256138699.1176635498.1585752498-1398801064.1585752498

The mortgage statement prepared by GrantThornton dated March 26, 2020, located at Appendix 12 to the First Report to the Court of Grant Thornton Limited in Its Capacity as Receiver of the Property Municipally Known as 293 Euclid Avenue, Toronto, Ontario (Motion Record, Tab 2) fails to recognize these payments.

Is there a reason why your client has failed to account for these payments in the mortgage statement it prepared?

Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
400-141 Adelaide Street West
Toronto, Ontario, M5H 3L5

PH: 416-364-4900 ext.220
FX: (416) 364-3865

awygodny@byldlaw.com
http://www.byldlaw.com

BYLD
BARRISTERS

From: Maya Poliak [mailto:Maya@chaitons.com]
Sent: April 1, 2020 10:44 AM
To: Adam Wygodny; Lynda Christodoulou
Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

Circulating them shortly. Do you expect to take a position?

Maya Poliak
Partner | Chaitons LLP | Tel: 416.218.1161

From: Adam Wygodny <awygodny@byldlaw.com>
Sent: Wednesday, April 1, 2020 10:43 AM
To: Lynda Christodoulou <LyndaC@chaitons.com>; Maya Poliak <Maya@chaitons.com>
Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

What are the dial-in details for the teleconference?

Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
400-141 Adelaide Street West
Toronto, Ontario, M5H 3L5

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BYLD
BARRISTERS

This e-mail is confidential and may contain information which is solicitor/client privileged. If this e-mail is not addressed to you, or if it appears that it has been received by you in error, you are hereby notified that retaining, forwarding or copying it is strictly prohibited. In such circumstances, please notify us immediately by telephone call (collect, if long distance) to the number above, and permanently delete this e-mail from your computer. Thank you for your co-operation.

From: Lynda Christodoulou [mailto:LyndaC@chaitons.com]
Sent: March 26, 2020 5:19 PM
To: Adam Richardson; Adam Wygodny; Amanda Jackson; Bradley George; Caleb Edwards; City of Toronto; Diane Winters; Dihim Emami; Harvey G. Chaiton; James Zibarras; Jason Kanji; Krieger, Jonathan; Kevin O'Hara; Maya Poliak; Pat Confalone; Renee Brosseau; Yigal Rifkind
Subject: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

Dear Sir/Madam

Please be advised that Grant Thornton Limited in its capacity as Court-appointed receiver over the property municipally known as 293 Euclid Avenue, Toronto, Ontario (the "**Euclid Property**") brings a motion to be heard via a teleconference at 10 am on April 2, 2020 for an order, among other things:

1) Approving the sale of the Euclid Property and vesting title in and to the Euclid Property in and to the purchaser free and clear of all claims and encumbrances, except for permitted encumbrances; and

2) authorizing distributions from the sale of the Euclid Property to the parties holding the first and the second mortgage against the property.

Enclosed please find the Receiver's Motion Record which is served upon you pursuant to the *Rules of Civil Procedure* and the E-Service Protocol of the Commercial List.

Regards,

Chaitons LLP

Lynda Christodoulou | Legal Assistant to Maya Poliak and Sam Rappos
T: 416.218.1783 E: LyndaC@chaitons.com

5000 Yonge St, 10th Floor, Toronto, ON, M2N 7E9
chaitons.com

APPENDIX 2

Court File No. CV-19-00628085-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

B E T W E E N:

GRANT THORNTON LIMITED in its capacity as Court-appointed Receiver of MONEY GATE MORTGAGE INVESTMENT CORPORATION

Applicant

- and –

2450531 ONTARIO LIMITED

Respondent

AFFIDAVIT OF PAYAM KATEBIAN
(affirmed November 22, 2019)

I, Payam Katebian, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am an authorized representative of the Respondent, 2450531 Ontario Limited (the **"Respondent"**), the owner of the subject property in the within proceeding, which property is municipally located at 293 Euclid Avenue, Toronto, Ontario (the **"Property"**), and as such have knowledge of the matters to which I hereinafter depose. Where I have stated facts based on information and belief, I have identified the source of the information and verily believe such facts to be true.

2. I have reviewed the Application Record of the Applicant, Grant Thornton Limited in its capacity as Court-appointed Receiver of Money Gate Mortgage Investment Corporation (the **"Applicant"**). I wish to respond.

3. The appointment of a receiver in this matter on November 25, 2019 (the **"Return Date"**) would be unfair and unjust in the circumstances because, as further deposed to hereinbelow, the Respondent has entered into an agreement of purchase and sale for the Property that would provide for all of the Property's encumbrances to be paid out in full.

THE MARKETING & SALE OF THE PROPERTY

4. I engaged Afshin Nabavi (the **"Agent"**), of TESA Real Estate Inc. Brokerage, to market and sell the Property.

5. On October 16, 2019, the Property was listed for sale on the Multiple Listing Service (**"MLS"**) with an asking price of $1,738,000.00 and an offer date of November 8, 2019. The offer date of November 8, 2019, was chosen to allow for there to be two weekends on which "open house" showings of the Property could occur. Although there were eleven showings, no offers were received.

6. On November 8, 2019, the Property was re-listed at $1,398,888.00 and an open house showing scheduled for the weekend of November 16, 2019, with the offer night scheduled for November 18, 2019. I am advised by the Agent and verily believe that between November 8 and November 16, 2019, there were approximately 40 showings of the Property.

7. On November 18, 2019, four offers, ranging from $1.4 million to $1.55 million, were received. After several days of negotiations, the Respondent entered into an OREA Form 100 Agreement of Purchase and Sale (the **"APS"**) with the person, who is an arm's length third party, who made the highest offer. The APS, in relevant part, provides for a purchase price of $1.56 million with a deposit of $70,000.00, conditional upon the purchaser being able to obtain financing by 6 p.m. on the fourth business day after acceptance of the offer (*i.e.* Monday, November 25, 2019), and a closing date of January 21, 2019 (the **"Closing Date"**).

8. Because the financing condition has not yet been waived and there are three other offers (the **"Other Offers"**) for the Property, I am not annexing a copy of the APS to my affidavit; however, I am advised by my lawyer, Adam J. Wygodny, and verily believe that a copy of the APS was provided to the lawyer for the applicant to the within proceeding along with copies of the other offers received.

NO PREJUDICE TO THE APPLICANT; PREJUDICE TO 245

9. In that the Property is the subject of the APS, and there are three other offers in hand—all of which would result in the Applicant being paid out in full—there is no need to further market or show the Property. Further, in light of the approximately 40 showings, the APS and the Other Offers, there is no reason to believe that a better price would be obtained if the instant receivership application is granted.

10. Moreover, in light of the APS and the Other Offers, there is no need for the Applicant to attempt to sell the Property under power of sale or by way of a privately

appointed receiver. The purchase price provided for in the APS and the Other Offers are each sufficient to pay out all registered encumbrances on the Property in full.

11. Finally, on January 30, 2017, 245 paid down the principal of the mortgage by way of four payments totalling $68,874.64. Attached hereto and marked as **Exhibit "A"** is a copy of the statement for the Respondent's bank account on which I highlighted the aforesaid transactions.

REQUEST FOR ADDITIONAL TIME

12. I have kept the Applicant's lawyer apprised of the sale process throughout.

13. On November 13, 2019, my lawyers wrote to the Applicants' lawyer and provided them with an update on the sale process and requested an adjournment of the within application to a date subsequent to the Closing Date. Attached as **Exhibit "B"** is a copy of the email from my lawyers to the Applicant's lawyers dated November 13, 2019.

14. On November 20, 2019, my lawyers provided the Applicant's lawyer with three of the four offers we received (including the APS) and requested that the within matter be adjourned to a date subsequent to the Closing Date. Attached as **Exhibit "C"** is a copy of the emails from my lawyers to the Applicant's lawyers dated November 20, 2019 (without the attached offers).

15. On November 22, 2019, my lawyers again follow-up with the Applicant's lawyer with respect to the request for an adjournment of the within application. Attached as **Exhibit "D"** is a copy of the email from my lawyers to the Applicant's lawyers dated November 22, 2019.

16. Finally, I attach as **Exhibit "E"** a copy of the listing progress report dated November 11, 2019, and the email from the Agent dated November 18, 2019, which provide details as to the number of showing and real estate agents that viewed the Property.

17. I swear this affidavit in opposition to the with application and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on November 22, 2019

Commissioner for Taking Affidavits

ADAM J. WYGODNY

PAYAM KATEBIAN

TAB A

This is **Exhibit "A"** to the Affidavit of Payam Katebian affirmed November 22, 2019

A Commissioner, etc.

TD Canada Trust

BEAVER CREEK CBC
220 COMMERCE VALLEY DR W U 100
MARKHAM, ON L3T 0A8

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA71400_6411032_004 E R 01085 09854

2450531 ONTARIO LIMITED
28 DALE PARK CRT
THORNHILL ON L3T 2A2

Statement of Account		Account Type	Statement From - To
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD EVERY DAY A	DEC 30/16 - JAN 31/17
1085	1085-5407624		Page 1 of 1

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			DEC30	480,868.53
FIRST INSURANCE LOAN	159.20		JAN03	
Home Trust Comp MTG	5,774.47		JAN03	474,934.86
MONEY GATE CORP MSP	937.50		JAN04	
MONEY GATE CORP MSP	2,825.00		JAN04	
MONEY GATE CORP MSP	2,849.32		JAN04	
MONEY GATE CORP MSP	3,419.18		JAN04	
MONEY GATE CORP MSP	4,875.00		JAN04	460,028.86
E TFR C2KFQsQY		1,019.00	JAN05	
TOR HYD ELEC Y6W6L6	325.82		JAN05	
GC 1284-DEPOSIT		4,700.00	JAN05	465,422.04
CAD DRAFT 80180030	8,644.10		JAN06	456,777.94
TORONTO HYDRO BPY	712.00		JAN11	456,065.94
CAD DRAFT 79148515	60,482.68		JAN16	395,583.26
CAD DRAFT 79148562	50,007.50		JAN25	
GC 1284-TRANSFER		140,000.00	JAN25	
CAD DRAFT 79148564	400,007.50		JAN25	
E TFR C07u4zUm	500.00		JAN25	
E-TRANSFER FEE	1.50		JAN25	85,066.76
Enbridge Gas BPY	98.00		JAN26	84,968.76
MONEY GATE CORP MTG	3,333.33		JAN27	
MONEY GATE CORP MTG	4,497.45		JAN27	
MONEY GATE CORP MTG	6,927.09		JAN27	
MONEY GATE CORP MTG	24,713.55		JAN27	
MONEY GATE CORP MTG	29,403.25		JAN27	16,094.09
GC 1284-TRANSFER		68,874.67	JAN30	
GC 0677-DEPOSIT		1,016.00	JAN30	85,984.76
FIRST INSURANCE LOAN	159.20		JAN31	
MONTHLY PLAN FEE	19.00		JAN31	
SERVICE CHARGE	7.50		JAN31	85,799.06

0 CHQS ENCLOSED NEXT STATEMENT DATE IS FEB 28/17
MONTHLY AVER. CR. BAL. $350,861.07
MONTHLY MIN. BAL. $16,094.09
DEP CONTENT- CASH 1,016 ITEMS 3 UNC BATCH 0

	No.	Amount
Credits	5	215,609.67
Debits	24	610,679.14

-
-
-

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error

Accounts issued by: THE TORONTO-DOMINION BANK

TDCDA71400_6411032_004 - 0039854 023686

APPENDIX 3

Kanji, Jason

From: Maya Poliak <Maya@chaitons.com>
Sent: Wednesday, April 01, 2020 12:25 PM
To: Adam Wygodny; Lynda Christodoulou
Cc: Nadine Christie; Kanji, Jason
Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL
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Partner | Chaitons LLP | Tel: 416.218.1161

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Sent: Wednesday, April 1, 2020 11:17 AM
To: Maya Poliak <Maya@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Cc: Nadine Christie <nchristie@byldlaw.com>
Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

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Toronto, Ontario, M5H 3L5

PH: 416-364-4900 ext.220
FX: (416) 364-3865

awygodny@byldlaw.com
http://www.byldlaw.com

BYLD BARRISTERS

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Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

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Partner | Chaitons LLP | Tel: 416.218.1161

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Subject: RE: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

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Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
400-141 Adelaide Street West
Toronto, Ontario, M5H 3L5

PH: 416-364-4900 ext.220
FX: (416) 364-3865

awygodny@byldlaw.com
http://www.byldlaw.com

BYLD BARRISTERS

This e-mail is confidential and may contain information which is solicitor/client privileged. If this e-mail is not addressed to you, or if it appears that it has been received by you in error, you are hereby notified that retaining, forwarding or copying it is strictly prohibited. In such circumstances, please notify us immediately by telephone call (collect, if long distance) to the number above, and permanently delete this e-mail from your computer. Thank you for your co-operation.

From: Lynda Christodoulou [mailto:LyndaC@chaitons.com]
Sent: March 26, 2020 5:19 PM
To: Adam Richardson; Adam Wygodny; Amanda Jackson; Bradley George; Caleb Edwards; City of Toronto; Diane Winters; Dihim Emami; Harvey G. Chaiton; James Zibarras; Jason Kanji; Krieger, Jonathan; Kevin O'Hara; Maya Poliak; Pat Confalone; Renee Brosseau; Yigal Rifkind
Subject: Grant Thornton v 2450531 Ontario Limited - Court File No: CV-19-00628085-00CL

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2) authorizing distributions from the sale of the Euclid Property to the parties holding the first and the second mortgage against the property.

Enclosed please find the Receiver's Motion Record which is served upon you pursuant to the *Rules of Civil Procedure* and the E-Service Protocol of the Commercial List.

Regards,

Chaitons LLP

Lynda Christodoulou | Legal Assistant to Maya Poliak and Sam Rappos
T: 416.218.1783 E: LyndaC@chaitons.com

5000 Yonge St, 10th Floor, Toronto, ON, M2N 7E9
chaitons.com

APPENDIX 4

Money Gate Corp. – License # 12290 – 25 Mallard Road, Toronto Ont. M3B 1S4 – T: 416 548 5959 – F: 416 913 0087

October 31, 2018

Residential SECOND Mortgage Renewal

Type of Mortgage: Residential Second Mortgage Renewal
Lender: Money Gate Mortgage Investment Corporation

Main Borrower: 2450531 Ontario Limited
Guarantor: Pantea Sahebdivani

Face Value: $282,500.00
Outstanding Loan Amount: $213,625.00
Property Address: 293 Euclid Ave. Toronto Ont. M6J 2K1

Maturity (Months)	Interest Rate	PMT	Funding Date	Amortization (Months)	Non Refundable Deposit
6	**12.00%**	**$2,825.00**	**N/A**	**Int. Only**	**N/A**

By signing this commitment, you are acknowledging that the interest adjustment date may change if the final funding date changes.

Payments due under this mortgage will be made by a pre-authorized payment debit system. This mortgage will be paid monthly unless otherwise indicated by the Borrower and authorized by the lender on the Schedule A attached in the original signed commitment letter at funding.

Additional Costs: TBD

Your acceptance of this Commitment will be your undertaking to pay these costs together with all legal costs and fees incurred, whether or not this Charge/Mortgage is advanced. Please reference registered Standard Charge Terms No. 200433(ON) which form part of this commitment.

Initials:

SOLICITOR – will be appointed to act on our behalf in this transaction. All documentation including, but not limited to, delivery of evidence confirming valid title insurance with applicable schedules from a title insurer approved by the lender and fire insurance must be acceptable to use prior to the advance of funds. Prior to closing, the solicitor is instructed to notify the lender or an agent approved by us, and the relevant underwriting department of the title insurer, of any concerns the solicitor may have regarding the identity of the borrower, the validity of prior registered instruments (particularly transfers and discharges), and any other matters that may affect the title of the subject property and/or the enforceability or priority of the lender's mortgage. In these circumstances, the solicitor may not proceed to complete the transaction until such time as the solicitor has obtained both the title insurer's and the lender's written authorization to proceed.

IN ALL MATTERS, TIME SHALL BE OF THE ESSENCE.
This commitment is open for your acceptance until the Commitment Acceptance Date after which time/date this Commitment will be null and void. This Commitment, if accepted is valid until the Final Funding Date after which time/date this Commitment will be null and void. If the Commitment becomes null and void and the Commitment Fee has already been paid, the non-refundable portion of the Commitment becomes null and void and the Commitment Fee has damages and the balance of the Commitment Fee, if any, returned to the Borrower(s). If the Commitment becomes null and void and the Commitment Fee has not already been paid, the non-refundable portion of the Commitment Fee set out above will be due by the Borrower(s) to Money Gate Corp. as liquidated damages.

Accepted this 31st **day of** October**, 2018**

X______________________
2450531 Ontario Limited

X______________________
Pantea Sahebdivani

APPENDIX 5

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue Queen Ouest, Toronto ON M5H 3S8

Citation: Money Gate Mortgage Investment Corporation (Re), 2019 ONSEC 40
Date: 2019-12-17
File No. 2017-79

IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION, MONEY GATE CORP., MORTEZA KATEBIAN and PAYAM KATEBIAN

REASONS AND DECISION
(Subsection 127(1) of the *Securities* Act, RSO 1990, c S.5)

Hearing:	January 7, 9, 10, 11, 14, 15, 16; February 25; March 4, 6, 7, 8; May 10, 14, 15; June 27, 28, 2019	
Decision:	December 17, 2019	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	M. Cecilia Williams	Commissioner
	Lawrence P. Haber	Commissioner
Appearances:	Jamie Gibson Dihim Emami	For Staff of the Commission
	James Camp Anisah Hassan	For Money Gate Corp., Morteza Katebian and Payam Katebian
	No one appearing for Money Gate Mortgage Investment Corporation	

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REASONS AND DECISION

I. OVERVIEW

[1] From August 2014 to December 2017 (the Material Time), Morteza ("Ben") Katebian (Ben) and his son Payam Katebian (Payam)[1] raised over $10 million from more than 150 investors, by continuously selling preferred shares in Money Gate Mortgage Investment Corporation (MGMIC).

[2] Staff of the Commission (Staff) alleges that through these activities, among other things:

a. MGMIC, Ben and Payam, along with Money Gate Corporation (MGC), a related mortgage brokerage firm, engaged in the business of trading in MGMIC's securities, without being registered to do so;

b. all four respondents (MGMIC, Ben, Payam and MGC) effected illegal distributions of those securities, since MGMIC did not file a prospectus, and MGMIC was not entitled to any exemption from the prospectus requirements; and

c. all four respondents defrauded MGMIC's investors, by knowingly deploying the raised funds in a manner that was inconsistent with the commitments MGMIC had made to those investors, and by diverting some of those funds instead to Ben, Payam, or entities controlled by or associated with them.

[3] For the reasons set out below, we find that MGMIC, Ben and Payam were engaged in the business of trading in securities, and that they effected illegal distributions of MGMIC's securities. We also find that all four respondents improperly put investors' funds at risk and ultimately caused investor losses by, among other things:

a. failing to disclose the considerable influence of two individuals over MGMIC's business;

b. failing to comply with promised procedures regarding the management of conflicts of interest;

c. failing to comply with promised lending criteria, and making lending decisions that were imprudent for other reasons; and

d. improperly diverting loan advances.

II. BACKGROUND

A. MGC

[4] MGC was founded by Bita Ghaffari, who is not a respondent in this proceeding and whom Staff called as a witness.

[5] MGC was federally incorporated in 2007. MGC was licensed as a mortgage brokerage firm in 2008. At that time, Ms. Ghaffari operated the brokerage on her own and acted as its principal broker.

[1] Throughout these reasons, we refer to Messrs. Katebian by their first names, solely for convenience in distinguishing between them. We mean no disrespect in doing so.

[6] The primary business of MGC was mortgage origination, which included soliciting borrowers and helping them obtain mortgages, usually from a financial institution such as a bank. MGC also brokered mortgages for its own pool of private lenders. Under this model, the private lender remained in control of their own funds and made their own investment and loan decisions with MGC's advice.

[7] In 2011, Ms. Ghaffari and Ben, who at the time was operating his own mortgage brokerage business, agreed to conduct business together, as co-brokerages. In 2012, they decided to merge the brokerages, operating the combined business under the MGC name. Ben became a director of MGC. Ms. Ghaffari remained the principal broker until she left MGC in 2016.

[8] MGC has never been registered with the Commission.

B. MGMIC

[9] MGMIC was incorporated in Ontario in May 2014 with Ben, Payam and Ms. Ghaffari as its directors. Ben was appointed as president, with Payam as secretary, and Ms. Ghaffari as treasurer.

[10] MGMIC has never been registered with the Commission and is not a reporting issuer.

[11] Beginning in August 2014, MGMIC acted as a private lender, using a pool of funds generated by sales of its preferred shares. MGMIC issued offering memoranda in which MGMIC committed to invest the funds in a portfolio of residential and commercial mortgage loans to borrowers in market segments that were typically underserviced by large financial institutions.

[12] MGMIC operated out of the same office space as MGC. MGC acted as the broker for every mortgage loan advanced by MGMIC, and it provided related services to MGMIC. MGC also paid most of MGMIC's operating expenses.

C. Ben Katebian

[13] Ben was present for portions of the merits hearing, but he did not testify.

[14] Ben became a director of MGC when the brokerages merged in 2012. In 2014, he became MGC's chief executive officer (CEO). He was a licensed mortgage broker of MGC. When Ms. Ghaffari left MGC in 2016, Ben became MGC's principal broker.

[15] When MGMIC was incorporated in 2014, Ben became one of its directors as well as its president and CEO. He was involved in investor relations, he met with potential investors and sources who could refer investors, he produced promotional materials for MGMIC, and he made lending decisions on behalf of MGMIC.

[16] MGMIC's offering memoranda stated that Ben was a member of MGMIC's Credit Committee and its Investment Committee throughout the Material Time.

[17] Apart from his involvement with MGC and MGMIC, Ben also owned 2399029 Ontario Inc. (**Ben's Numbered Company**).

[18] Ben has never been registered with the Commission.

D. Payam Katebian

[19] Payam is Ben's son. Payam graduated from York University's Business Administration program and Seneca College's Financial Services Underwriting program. He completed additional education in order to become a licensed mortgage agent.

[20] In the summer of 2012, Payam began working at MGC as Ms. Ghaffari's assistant. At the time, he had no experience in mortgage lending.

[21] When MGMIC was incorporated in 2014, Payam was appointed as its secretary and as a director. According to MGMIC's offering memoranda, he was also MGMIC's chief operating officer and operations manager for the administration division of MGC.

[22] By 2015, Payam was no longer acting as Ms. Ghaffari's assistant. By no later than May 2016, Payam was MGMIC's treasurer (according to a government filing) and a member of its Credit Committee and Investment Committee (according to MGMIC's offering memorandum).

[23] In addition to his roles at MGC and MGMIC, Payam was associated with two numbered companies:

a. 2450531 Ontario Ltd. (245 Ltd.), of which Payam was the manager and a 50% shareholder; and

b. 2546456 Ontario Inc. (254 Inc.), of which Payam was a director and the president, treasurer and secretary.

[24] Payam has never been registered with the Commission.

E. 1PLUS12 and Undisclosed Principals

[25] Staff alleges that over the Material Time, two individuals became undisclosed principals of MGMIC.

[26] The first is Arash Missaghi, whose connection to MGMIC originated as a result of Ben's prior business relationship with Mr. Missaghi's father beginning in 1989.

[27] Mr. Missaghi has been an undischarged bankrupt since April 2000. He is therefore disqualified from being a director of an Ontario corporation.[2] Notwithstanding that disqualification, Mr. Missaghi was a registered director of many corporations, including many of MGMIC's borrowers.

[28] Mr. Missaghi had office space in a building, some of which he sublet to MGC and MGMIC.

[29] The second alleged undisclosed principal is Mohamed Moshin Jiwani, who has used the alias Sai Mohammed since 2001, around the time that he became an undischarged bankrupt.

[30] Ben and Payam met Mr. Mohammed through an organization known as 1PLUS12. The formal structure of 1PLUS12, if it had one, was not clear, but the evidence establishes that 1PLUS12 brought together individuals who were interested in investing in real estate. The organization's name appears to derive from the fact that it was a collection of investment groups, each of which had twelve investors

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[2] *Business Corporations Act,* RSO 1990, c B.16, s 118(1)4

and one "influencer". Payam testified that about 75% of MGMIC's investors came from 1PLUS12.

III. PRELIMINARY MATTERS

[31] Before we begin our analysis of the issues in this proceeding, we address three preliminary matters:

a. a temporary order issued in April 2017;

b. the respondents' participation in the merits hearing; and

c. a motion brought by Ben, Payam and MGC for an adjournment of the merits hearing, which motion we dismissed with reasons to follow.

A. Temporary orders

[32] On April 27, 2017, the Commission issued a temporary order (the **Temporary Order**), which provided that all trading in securities of MGMIC cease, and that any exemptions contained in Ontario securities law would not apply to any of the four respondents, except that Ben and Payam could rely on exemptions in order to purchase securities in their personal capacities.

[33] The portion of the Temporary Order that denied the use of exemptions expired on July 4, 2017.

[34] The portion of the Temporary Order that cease traded securities of MGMIC was extended several times, with the last extension being on January 11, 2018, until the conclusion of the merits hearing. Staff did not seek a further extension. Therefore, as this decision and these reasons conclude the merits hearing, the Temporary Order expires on its own terms, effective the date of issuance of these reasons (*i.e.*, December 17, 2019).

B. The respondents' participation in this proceeding

[35] On November 6, 2018, while this proceeding was underway but before the merits hearing began, the Superior Court of Justice issued an order appointing a receiver over MGMIC. As of December 3, 2018, MGMIC withdrew from active participation in this proceeding. It did so having been advised by Staff that Staff did not intend to seek any monetary sanctions against MGMIC.

[36] The three remaining respondents (Ben, Payam and MGC) appeared at the merits hearing with counsel. We refer to them as the **Remaining Respondents**.

C. Motion for adjournment of the merits hearing

1. Overview of the adjournment motion

[37] The merits hearing was scheduled to begin on January 7, 2019. On January 3, 2019, two business days before the hearing, the Remaining Respondents filed a motion seeking an adjournment. They asked that the merits hearing begin on February 25, 2019, seven weeks after its scheduled start, because they had recently retained new counsel.

[38] After hearing submissions from Staff and from the Remaining Respondents, we dismissed the motion. We advised that our reasons for that decision would be included in our reasons at the conclusion of the merits hearing. The following are our reasons.

2. History of the proceeding

[39] Staff filed its original Statement of Allegations on December 19, 2017. A Notice of Hearing was issued on December 21, 2017, fixing January 11, 2018, as the date for the first attendance. At that hearing, and at second and third attendances on May 9 and July 6, 2018, counsel from the firm of Groia & Company appeared on behalf of all four respondents. At the third attendance, on consent of all parties the Commission ordered that the merits hearing would begin on November 15, 2018, and would conclude on January 11, 2019.

[40] On September 5, 2018, Mr. Richard of Groia & Company, counsel for the four respondents, wrote to the Registrar to advise that at the time the merits hearing dates were set, he had been unaware that one of the individual respondents would be out of the country in November. The respondents therefore requested that the merits hearing be adjourned to accommodate that absence. With Staff's consent, the Commission granted the requested adjournment. The revised schedule contemplated 23 hearing days, and called for the hearing to begin on December 3, 2018, and to conclude on January 30, 2019.

[41] The next preliminary attendance took place on October 16, 2018. At that time, Staff advised the Commission that the previous day it had served the respondents with proposed amendments to the Statement of Allegations. The Commission ordered that a motion be heard on October 31, 2018, at which time consideration would be given as to whether the proposed amendments would necessitate an adjournment of the merits hearing.

[42] At the hearing of the motion on October 31, 2018, the respondents did not object to Staff's proposed amendments to the Statement of Allegations. Staff advised, however, that:

a. it had obtained a direction under s. 126(1) of the *Securities Act*[3] (the Act), freezing the bank account held by MGMIC, and that Staff would apply to the Superior Court of Justice for a continuation of that freeze direction;

b. it had brought an application in the Superior Court of Justice for the appointment of a receiver over the respondent MGMIC; and

c. Staff had not yet provided full disclosure to the respondents, since Staff was still awaiting the production from a third party of banking documents that might be relevant to the new allegations, and Staff was uncertain as to when those documents would be produced.

[43] Counsel for the respondents advised that he had been planning to ask for an adjournment of the hearing on the merits from December 3, 2018, to January 7, 2019, as a result of Staff's amendments to the Statement of Allegations. As he correctly observed, though, he would be unlikely to continue as counsel for MGMIC if Staff were to be successful in having a receiver appointed. In his submission, the uncertainty regarding who would be able to speak on behalf of MGMIC, and the freezing of MGMIC's funds, also warranted an adjournment of the hearing.

[3] RSO 1990, c S.5

[44] After hearing submissions, the Commission ordered that the hearing take place over 25 hearing days beginning on January 7, 2019, and concluding on May 10, 2019. The Commission also ordered that an interlocutory attendance be held on December 3, 2018.

[45] At the interlocutory attendance on December 3, 2018, the parties advised that on November 6, 2018, the Superior Court of Justice had appointed a receiver over MGMIC. The receiver's counsel, who was present at the hearing, advised that in light of Staff's representation that Staff would not be seeking monetary sanctions or costs against MGMIC, the receiver would not further participate in the proceeding. The Remaining Respondents continued to be represented by Mr. Richard of Groia & Company.

[46] Staff confirmed at that time that it had completed disclosure, and that it was ready to proceed with the hearing on January 7, 2019, as scheduled.

[47] Staff also advised that on December 2, 2018, the day before the interlocutory attendance, Staff had received an email from Mr. Richard, advising that his firm may be withdrawing as counsel of record. In addressing this issue at the interlocutory attendance, Mr. Richard advised that "we are not retained to do the hearing." Mr. Richard identified several possible scenarios, one of which was that the Remaining Respondents would be self-represented during the hearing but that some counsel, possibly but not necessarily Mr. Richard's firm, would have a limited retainer to assist with part of the hearing.

[48] Staff acknowledged that it had no direct interest in the question of whether the Remaining Respondents would be represented, and if so, by whom. Staff's primary concern was that the hearing should proceed as scheduled.

[49] On December 5, 2018, two days following that attendance, the Remaining Respondents formally advised that they no longer had counsel and that they would be self-represented, with Ben representing MGC.

[50] On December 28, 2018, the Remaining Respondents formally advised that they would be represented by new counsel, Mr. Camp. In the afternoon of Thursday, January 3, 2019, with the merits hearing scheduled to begin on the following Monday, the Remaining Respondents filed a motion requesting that the hearing be adjourned and that it commence on February 25, 2019.

[51] In bringing the motion, the Remaining Respondents cited the complexity of this matter, the extensive evidentiary record, and the potentially serious consequences. The Remaining Respondents relied on Payam's affidavit, which:

a. requested the adjournment "to allow our newly retained lawyer time to prepare so that we can fairly respond to Staff's allegations"; and

b. indicated that the Remaining Respondents had decided as of December 5, 2018, to represent themselves, believing that they could do so adequately, but then in mid-December came to the realization that they required the assistance of legal counsel.

3. Analysis

[52] Rule 29(1) of the *Ontario Securities Commission Rules of Procedure* (Rules)[4] provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment."

[53] The requirement for "exceptional circumstances" was introduced in the new Rules in 2017. The former rules of procedure[5] set out, in Rule 9, the procedure for requesting an adjournment and factors to be considered by a Panel in making its decision. The former rule did not prescribe a standard that a requesting party had to meet.

[54] As the Commission has previously held, the new standard is a "high bar"[6] that reflects the important objective set out in current Rule 1, that Commission proceedings be "conducted in a just, expeditious and cost-effective manner." This objective must be balanced against parties' ability to participate meaningfully in the hearing and to present their case. A determination as to whether an adjournment should be granted is necessarily fact-based, and will include consideration of, among other things, how the requesting parties have conducted themselves in the case.[7]

[55] We begin our analysis of the circumstances in this case by noting that the merits hearing had already been adjourned twice. The first adjournment was for two and a half weeks due to miscommunication between the respondents and their prior counsel. The second adjournment was for approximately one month due primarily to the appointment of a receiver over MGMIC.

[56] In our view, both of these adjournments are neutral factors with respect to the Remaining Respondents' current adjournment request. While the first adjournment was attributable entirely to the respondents, it was for a relatively short time, and its effects were rendered moot by the second adjournment. The second adjournment was attributable to the appointment of a receiver, the freezing of funds, and the amendment of the Statement of Allegations. All of those were actions taken by Staff, so the second adjournment ought not to be held against the Remaining Respondents when their current adjournment request is considered.

[57] The firm of Groia & Company was counsel of record for the respondents from the first appearance in January 2018. It was not until December 2018 that there was any suggestion that the firm might not appear for the Remaining Respondents at the merits hearing. At the interlocutory attendance on December 3, 2018, Mr. Richard held open the possibility that his firm might appear but in a limited capacity.

[58] The Remaining Respondents have offered no reason for their decision, effected two days later, to appear on their own behalf. Similarly, they have offered no reason for their decision, once they changed their mind and realized they needed legal assistance after all, to retain new counsel instead of reappointing Groia & Company. While a party's relationship with its counsel is generally protected by

[4] (2017) 40 OSCB 8988 (the *Rules*)
[5] (2014) 37 OSCB 4168
[6] *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28
[7] *Cheng (Re)*, 2018 ONSEC 13, (2018) 41 OSCB 2359 at paras 5-6

solicitor-client privilege, and while a party is generally entitled to choose its counsel without any obligation to explain its choice, that rule cannot apply when the party seeks to rely on a change of counsel to justify an adjournment request. In those circumstances, the party opens itself to inquiry as to the reason for its choice and as to why that reason constitutes exceptional circumstances.

[59] In this case, it is reasonable to assume, absent any evidence to the contrary, that if the Remaining Respondents had reappointed Groia & Company in mid-December when they realized they needed counsel (no more than two weeks after they decided to appear on their own behalf), no adjournment would have been required. Groia & Company had carriage of the matter from the beginning, and it was the change in counsel that the Remaining Respondents submitted was the reason they needed an adjournment.

[60] These circumstances therefore cried out for an explanation. The Remaining Respondents did not offer an explanation; nor did they explain why none was offered.

[61] We acknowledge the possibility that even if the Remaining Respondents had wanted to reappoint Groia & Company at that time, Groia & Company might not have been prepared to act, for any number of reasons. However, the Remaining Respondents made no such suggestion, and we therefore have no basis to conclude that the Remaining Respondents were unable to continue with their previous counsel.

[62] We accept that because of the timing of Mr. Camp's retainer, he found himself in a difficult situation due to circumstances beyond his control. We accept that he had less time to prepare for the hearing than he and the Remaining Respondents would have preferred. However, we reject the Remaining Respondents' submission that denying them the requested adjournment would prevent them from meaningfully exercising their right to counsel. They had the counsel of their choosing throughout the proceeding. They appointed new counsel, without explaining why that was necessary, or even if it was necessary. That is their choice, but having made that choice they cannot complain that the cause of their new counsel's difficulties lies elsewhere.

[63] It is important that proceedings such as this one advance expeditiously. To accede to the Remaining Respondents' position would permit respondents to manipulate the process by delaying hearings without having to justify doing so. Such a result is precisely what Rule 29 seeks to avoid and would be contrary to the public interest.

[64] In our view, the Remaining Respondents failed to demonstrate any "exceptional circumstances" that might warrant a further adjournment of the merits hearing. For that reason, we dismissed their request.

IV. ANALYSIS

A. Issues

[65] Staff's allegations present the following three principal issues:

a. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?

b. In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?

c. Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?

[66] Before turning to our analysis of each of those issues, we consider several evidentiary questions that apply to our analysis generally.

B. Evidentiary Matters

1. Standard of proof

[67] The standard of proof applicable to Commission proceedings is the balance of probabilities. Staff must prove, based on clear, convincing and cogent evidence, that it is more likely than not that the alleged events occurred.[8]

2. Hearsay

[68] Section 15 of the *Statutory Powers Procedure Act* (SPPA),[9] which applies to proceedings before the Commission, provides that a panel may admit as evidence any relevant oral testimony or document, even if not given under oath or affirmation, or admissible in court. This extends to hearsay evidence.

[69] As with all evidence, we must determine what weight to give to admissible hearsay evidence. Hearsay evidence is not necessarily less reliable than direct evidence, but we must avoid placing undue weight on uncorroborated hearsay evidence that does not sufficiently support a conclusion that it is reliable.[10]

3. Adverse inference against Ben

[70] Staff submits that because Ben did not testify at the hearing, we ought to draw the adverse inference that his evidence would not have been helpful to him.

[71] A panel may draw such an inference in respect of a party who does not testify, if the opposite party has made out a *prima facie* case against that party, and if there is no sufficient explanation for the party not testifying. If both those conditions are satisfied, then the party's failure to testify amounts to an implied admission that the party's evidence would not have been helpful to that party.[11]

[72] We conclude that Staff has made out a *prima facie* case against Ben. As we explain more fully below in our analysis of the substantive issues, Staff led evidence that, if believed, would establish wrongdoing on his part. Such evidence includes the oral testimony of Ms. Ghaffari, certain admissions made by Payam

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[8] *FH v McDougall*, 2008 SCC 53 at paras 40, 46, 49; *Meharchand (Re)*, 2018 ONSEC 51, (2018) 41 OSCB 8434 (*Meharchand*) at paras 28-29

[9] RSO 1990, c S.22

[10] *Rex Diamond Mining Corp v Ontario (Securities Commission)*, 2010 ONSC 3926 (Div Ct) at para 4; *Meharchand* at para 52

[11] Sidney N Lederman, Alan W Bryant & Michelle K Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 5th ed (Toronto: LexisNexis Canada, 2018) (*Lederman*), at 406-407

during his oral testimony, statements made by Ben himself when he was interviewed by Staff in 2016, and various documents.

[73] We must therefore consider whether there are circumstances that justify Ben's decision not to testify and that would therefore preclude us from drawing the adverse inference.

[74] While re-examining Payam during the hearing, the Remaining Respondents' counsel noted that Ben had been in attendance for parts of the hearing but not for the entire hearing. Counsel asked Payam whether that fact was connected to Ben's health problems. Payam stated that it was. When asked whether Ben had received any doctor's advice regarding his attendance at the hearing, Payam said: "It was I guess more general advice regarding stressful situations, heart issues, concerns. He's been in and out of the hospital a little bit."[12]

[75] That was the extent of the explanation. It is insufficient. Even on Payam's description, the medical advice was general and unrelated specifically to this hearing, to litigation generally, or to what Ben's role at a hearing might be (*e.g.*, as a witness, or as a non-testifying party). Payam's testimony was unsupported by any document or by any mention of a particular medical professional, and it was completely vague as to time. We cannot accept his testimony as a reason not to draw an adverse inference.

[76] In closing written submissions delivered five weeks after the conclusion of the evidentiary portion of the hearing, the Remaining Respondents offered to provide documentary evidence, such as a doctor's letter, if necessary. No reason was given as to why this step was not taken earlier. It was not in the public interest to re-open the evidence at that late stage. We declined to do so.

[77] We conclude that an adverse inference against Ben is justified. We return to this finding below as appropriate, in the context of specific questions of fact.

4. Witnesses' credibility and reliability

(a) Introduction

[78] In assessing the credibility and reliability of the witnesses who testified at the hearing, we are guided by the decision of the Ontario Superior Court of Justice in *Springer v Aird & Berlis LLP*,[13] in which Newbould J. adopted the following words from a British Columbia Court of Appeal decision:

> The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.[14]

[79] We need not necessarily come to one overarching conclusion about a witness's credibility or reliability. It is open to us to find that a witness was credible in some respects but not in others. We may conclude that some aspects of a witness's testimony are reliable, but that other aspects are not.[15]

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[12] Hearing Transcript, Money Gate Mortgage Investment Corporation (Re) (*Hearing Transcript*), May 15, 2019, at 121
[13] (2009) 96 OR (3d) 325 (*Springer*)
[14] *R v Pressley*, [1949] 1 WWR 692 (BCCA) at para 12, cited in *Springer* at para 14
[15] *Meharchand* at para 62

[80] In this case, the oral evidence of Ms. Ghaffari and of Payam features prominently. Their evidence conflicts in material respects. Therefore, to assist our assessment of their credibility and reliability, we will review the most significant evidentiary contradictions, which arise in the context of two issues:

a. the extent of Ms. Ghaffari's involvement in approving loans, including certain loans made by MGMIC to parties alleged by Staff to have been related to MGMIC (the **Related Party Loans**, which are more particularly described beginning at paragraph [236] below); and

b. whether Messrs. Missaghi and Mohammed exercised some control over MGMIC.

*(b) **Ms. Ghaffari's involvement in** approving loans*

[81] Staff and the Remaining Respondents take opposing positions regarding Ms. Ghaffari's involvement in approving loans, including the Related Party Loans. The Remaining Respondents submit that she was fully involved. Staff contends that she was not. The parties offered conflicting evidence in support of their positions.

[82] In a transcribed interview in July 2016, Ben told Staff that Ms. Ghaffari "was never being active in" and "never took a serious role in" MGMIC.[16] He stated that because Ms. Ghaffari was busy "on the broker side [MGC]", dealing with financial institutions, she did not take part in MGMIC's private lending decisions, other than "one or two deals".[17] According to Ben, it was Payam who did the underwriting on MGMIC's private deals.

[83] Payam gave a similar description in Staff's 2016 interview of him. When asked what Ms. Ghaffari's role was at MGMIC, Payam stated that "[s]he didn't really have an active role."[18]

[84] In her testimony before us, Ms. Ghaffari gave different reasons for her limited role, but her characterization was largely consistent with Ben's and Payam's prior evidence.

[85] Ben and Payam now take a position that is inconsistent with their 2016 statements. They, and MGC, rely on Payam's evidence at the hearing that Ms. Ghaffari was fully involved. They also rely on documents and information regarding some specific loans.

[86] One such loan was to Payam, in the amount of $82,500 and secured by a second mortgage on the residential property at 26 Heron Hollow Avenue in Richmond Hill (**Heron Hollow**). Ms. Ghaffari testified that she believed that Carlo Esposito, who owned a real estate appraisal company, was the original owner of Heron Hollow. She testified that Ben and Payam told her that Mr. Esposito lived there when MGMIC made the loan. Mr. Esposito used the Heron Hollow address as his address on appraisal reports that he issued.

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[16] Exhibit 228, List of read-ins for Ben Katebian, Tab 6 at 36 lines 2-3 and Tab 20 at 206 line 25
[17] Exhibit 228, List of read-ins for Ben Katebian, Tab 15 at 169 lines 4-5 and Tab 23 at 238
[18] Exhibit 253, Excerpt from transcript of voluntary interview of Payam Katebian, September 13, 2016, at 43 lines 15-16

[87] Payam testified that he purchased Heron Hollow in 2015 and sold it in 2016, and that during that time, the home was rented by a Russian couple. Payam denied that Mr. Esposito lived at Heron Hollow. He was unable to explain why Mr. Esposito used Heron Hollow as his business address. Payam testified that he didn't "have that close of a relationship with Mr. Esposito."[19]

[88] On direct examination, Ms. Ghaffari testified that she became aware of the mortgage loan on Heron Hollow only after it had been made. On cross-examination, however, when confronted with a disclosure statement relating to Heron Hollow and bearing her signature, she agreed that she had been aware of the proposed loan before it was made. She said that initially, she was opposed to MGMIC making the loan, but that she was satisfied after receiving answers from Ben and Payam.

[89] Ms. Ghaffari also testified regarding a loan of $665,000 made by MGMIC and secured by a second mortgage on a condominium unit at 2045 Lakeshore Boulevard West in Toronto (Palace Pier). The borrower was Atlas Capital Corporation, whose principal was Jonathane Ricci, a lawyer whose office was in the same premises as those of the respondents.

[90] When shown a disclosure document relating to Palace Pier and purporting to bear her signature, Ms. Ghaffari testified that she had not seen the document before her interview by Staff during the investigation. However, she agreed that the document bore her signature. She testified that she must have been given the document to sign, and that she did so because she trusted that Payam had made the required disclosure to Mr. Ricci.

[91] The conflict between Ms. Ghaffari's statement that she had not seen the document at the time of the loan and her explanation as to why she signed it was not resolved.

[92] We decline the Remaining Respondents' invitation for us to conclude from the presence of Ms. Ghaffari's signature on various documents, and from Ms. Ghaffari's testimony that she was "very, very particular"[20] about transaction documents (a sentiment echoed by Payam),[21] that Ms. Ghaffari was fully involved in MGMIC's lending decisions.

[93] We believe Ms. Ghaffari's description of the usual process, when she says that as the broker of record for MGC she signed disclosure certifications based on a representation to her from an agent (whether Payam or someone else) that the agent had made the necessary disclosure to the borrower.[22] In our view, such a practice is not inconsistent with her being particular about the documents, since that description could refer to a number of things, including the completeness of the documents, and/or the safeguard of the documents and the filing of documents as necessary.

[94] The Remaining Respondents sought to bolster their submission about Ms. Ghaffari's level of involvement by relying on some transaction documents (*e.g.*, mortgage applications) that showed her name. However, we accept Ms. Ghaffari's testimony that for a time, the mortgage application software

[19] *Hearing Transcript*, May 10, 2019, at 31 line 9
[20] *Hearing Transcript*, January 11, 2019, at 116 line 1
[21] *Hearing Transcript*, March 7, 2019, at 58 line 8
[22] *Hearing Transcript*, January 9, 2019, at 122

automatically identified her as the agent, whether or not she was in fact the agent. Her evidence is corroborated by a mortgage application that showed her name but that was printed months after she had left the company.

[95] The Remaining Respondents are correct in noting that on occasion, Ms. Ghaffari gave unclear and sometimes conflicting evidence about the point at which she was aware of an intended or completed loan. However, in our view, the Remaining Respondents conflate Ms. Ghaffari's compliance role for MGC with the activities of MGMIC. We do not accept that Ms. Ghaffari's unclear recollection or lack of precision about some loans indicates that she was being untruthful.

[96] Further, and significantly in our view, Ms. Ghaffari's description of her role is corroborated by Ben's and Payam's statements to Staff in 2016. We prefer that evidence to Payam's testimony at the hearing.

[97] We conclude that Ms. Ghaffari was involved to some extent in lending decisions for some of the Related Party Loans, but we cannot conclude that she was fully involved in approving all loans on behalf of MGMIC. It is clear that by no later than early March of 2016, she felt that there was a lack of integrity in the business and she "took a back seat" and "just watched but did not do anything."[23]

(c) Whether Messrs. Missaghi and Mohammed exercised some control over MGMIC

[98] Ms. Ghaffari testified that Mr. Missaghi was involved in MGMIC's affairs. She stated that he set mortgage rates and interest payments, and that he chose MGMIC's lawyers and appraisers. Her testimony to that effect was not challenged on cross-examination.

[99] Further, her evidence is consistent with an email that Ben wrote to Ms. Ghaffari in March 2016, in which Ben said: "[MGMIC] is no longer a business that we control. Its [*sic*] a company that now has 3 main Players. Myself, Sai [Mohammed] and Ara [Missaghi]. There is no real say in my opinion alone, except when the decisions are made collectively between the 3 Key players."[24]

[100] The Remaining Respondents submit that we should attribute little or no weight to Ben's email, for four reasons.

a. First, the Remaining Respondents question the completeness and accuracy of the document, tendered into evidence, that includes the email. Their concern relates to page numbers and blank spaces between emails. In our view, the page numbers and footers simply suggest that the emails are excerpted from search results. Without more, the blank spaces do not suggest that the content is inaccurate. Further, Ms. Ghaffari testified that she specifically recalled receiving this email. If Ben believed that the apparent content of the email was inaccurate or misleading, it was open to him to testify to that effect. He did not.

b. Second, the Remaining Respondents submit that the email is hearsay. While this is true, the statements in the email were made in circumstances that are consistent with their reliability. They are contained

[23] Exhibit 22, Email correspondence between Ben and Ms. Ghaffari
[24] Exhibit 22, Email correspondence between Ben and Ms. Ghaffari

in a communication from Ben to Ms. Ghaffari, with no apparent reason for Ben to be untruthful at the time.

c. Third, the Remaining Respondents say that because English is not Ben's first language, Ben may not have intended "control" to have its ordinary meaning, and Staff is placing undue and extreme emphasis on the word "control". We do not accept that submission. The record contains numerous emails written by Ben, and there is nothing about those emails that causes us to doubt his ability to express himself clearly in English. Further, the portion quoted above is consistent throughout, with its references to the three individuals and to the fact that Ben's opinion alone was insufficient. Staff's position does not depend on the word "control" alone.

d. Finally, the Remaining Respondents submit that Staff's suggested conclusion is inconsistent with Ms. Ghaffari's and Payam's oral evidence. However, as noted above in paragraph [98], Ms. Ghaffari did testify that Mr. Missaghi made decisions for MGMIC. We characterize those decisions as being of a kind that one would expect from someone with some measure of control. Further, we disagree with the Remaining Respondents' description of other evidence given by Ms. Ghaffari and cited by the Remaining Respondents. In those excerpts, Ms. Ghaffari describes disagreements between Ben and Messrs. Missaghi and Mohammed, and she testifies that Ben wanted control and that Mr. Mohammed and 1PLUS12 also wanted control. None of these facts is inconsistent with Messrs. Missaghi and Mohammed having some control.

[101] In addition, we note that over the Material Time, an increasing and ultimately significant proportion of the MGMIC loan portfolio was invested in properties in which one or both of Messrs. Missaghi and Mohammed, and/or entitles related to them, had some financial interest. While this fact is not determinative of the control issue, it is consistent with Staff's allegation.

[102] Finally, the Remaining Respondents submit that when we consider Staff's allegation regarding Mr. Missaghi's and Mr. Mohammed's control over the respondents' business, we ought to draw an adverse inference against Staff due to Staff's failure to call either of them as a witness.

[103] We reject that submission. Staff relies on evidence that is in the record in support of the allegation regarding Messrs. Missaghi's and Mohammed's involvement. Staff's choice not to call them is unsurprising, given various concerns about their reliability and about whether it was likely that their evidence would assist in proving Staff's case. Those concerns include Mr. Mohammed's use of an alias, and may be borne out by a 2018 finding in the Superior Court of Justice that Mr. Missaghi was "careless with his words and consequently unreliable."[25]

[104] We repeat the caution referred to above in paragraph [72]. An adverse inference ought to be drawn only where the missing evidence would be superior to that

[25] *B&M Handelman Investments Limited v Christine Drotos*, 2018 ONSC 7124 at para 30

called. Further, it ought to apply only where the witness would be assumed to be willing to assist the party who fails to call the witness.[26]

[105] Staff is entitled to call the evidence that it wishes in support of its contention that Messrs. Missaghi and Mohammed were undisclosed principals. Staff's success in proving that fact will depend on the evidence called, not on Staff's tactical decisions.

[106] Taking all of the above into account, we have no difficulty concluding that Messrs. Missaghi and Mohammed exercised increasing and considerable control over the affairs of MGMIC during the Material Time. Ms. Ghaffari's evidence in support of that conclusion was not successfully challenged on cross-examination. Payam's evidence to the contrary is self-serving and uncorroborated, and it conflicts with Ben's own statements made in circumstances that suggest that Ben's statements are reliable. To the extent that Payam's evidence conflicts with that of Ms. Ghaffari on this point, we reject it.

(d) Conclusion as to Ms. Ghaffari's and Payam's credibility and reliability

[107] In general, Ms. Ghaffari's evidence is better corroborated, is more consistent with both documentary evidence and Ben's own evidence, and is inherently more believable, than Payam's evidence. However, each of Payam and Ms. Ghaffari gave us reasons to approach their evidence with some skepticism.

[108] While we are more likely to prefer Ms. Ghaffari's evidence to Payam's in the event of a conflict, we choose to abide by the caution described in paragraphs [78] and [79] above. We will comment further on this topic as appropriate in our analysis below.

(e) Investors

[109] Staff called four MGMIC investors as witnesses.

[110] S.B. described his investment knowledge as below average. He became aware of MGMIC through a co-worker who was involved in 1PLUS12 and who had previously invested. He invested in MGMIC in December 2015 and recalls seeing the offering memorandum at that time, as well as a revised offering memorandum in January 2017. His account statement dated February 2017 shows him holding approximately $103,000 worth of MGMIC shares. He has requested the return of his investment but has received only $24,000.

[111] J.A. described his investment knowledge as average. He invested more than $110,000 in MGMIC from July 2015 to November 2016. He has received none of his original investment.

[112] A.P. testified that he knew "basically nothing" about investing. He learned of MGMIC through a connection of his daughter's. He invested in MGMIC beginning in February 2016 after seeing some promotional materials he received from his connection. His most recent account statement, dated October 2017, shows him holding approximately $110,000 worth of MGMIC shares. He has requested a return of his funds but has received nothing.

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[26] *Lederman* at 406

[113] R.P. described his investment knowledge as average. He became aware of MGMIC through an acquaintance who identified himself as a representative of MGMIC. He invested $11,710.

[114] Of the four investor witnesses, J.A. was the only one who was cross-examined. The cross-examination did not undermine his original testimony.

[115] None of the four investor witnesses' testimony was contradicted in any way. We found all of them to be credible and their testimony to be reliable. We accept it.

5. Weight to be attributed to Payam's undisclosed evidence

(a) Introduction

[116] Staff submits that we should give some of Payam's evidence diminished weight because it was not disclosed to Staff as required prior to the hearing. Staff's concern arises primarily with respect to Payam's evidence regarding the relationship between Mr. Missaghi, 1PLUS12 and MGMIC, and the allegations that the respondents improperly diverted funds. We accept Staff's submission as it applies to some elements of Payam's evidence, for the following reasons.

[117] The Rules require that each party serve on the other parties, prior to the hearing, a summary of the evidence that each witness is expected to give at the hearing, including by identifying any document to which the witness is expected to refer.[27] A party may not rely on evidence that was not disclosed as required, without the permission of a panel.[28]

[118] The Remaining Respondents served a witness statement regarding Payam's anticipated evidence. The statement said simply that Payam would testify in accordance with the transcripts of the examinations that Staff had conducted of him during the investigation.

[119] After the Remaining Respondents retained new counsel, Staff agreed to extend the deadline for delivery of revised witness statements, to February 15, 2019. Despite this, the Remaining Respondents did not deliver any revised statements prior to the hearing.

[120] During his testimony at the merits hearing, Payam began to give evidence that Staff submitted was outside the bounds of Payam's examination transcripts and had therefore not been properly disclosed. Because this issue was likely to recur, the parties agreed to note Staff's blanket objection to previously undisclosed evidence and to have Payam continue to testify. Staff would raise any such issues in written submissions, following which we would take the parties' submissions into account in determining the weight to be given to the evidence.

[121] The parties also agreed that the Remaining Respondents could be taken to have properly disclosed evidence contained in an affidavit sworn by Payam in a civil proceeding that overlaps with this proceeding,[29] which affidavit had been included in Staff's hearing brief served prior to the hearing.

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[27] *Rules*, r 27(3)
[28] *Rules*, r 27(8)
[29] *Estrabillo et al. v Katebian et al.*, Ontario Superior Court File No. CV-18-589395-00CL; affidavit sworn September 13, 2018.

(b) Analysis of the general principles

[122] Staff submits that it is important to respect the policy underlying the disclosure obligation, and that we should attach little or no weight to uncorroborated evidence that was not previously disclosed. The failure to disclose evidence before the hearing deprives the opposite party of the opportunity to test the evidence through further investigation. We agree with this submission.

[123] Staff further submits that Payam had the advantage of hearing Staff's entire case in chief and could therefore tailor his evidence. While there is some truth to that, the fact that Staff disclosed its witnesses' anticipated evidence prior to the hearing minimizes the extent of that advantage.

[124] The Remaining Respondents explain that any failure on their part to provide pre-hearing disclosure in as formal a way as Staff would like is attributable in part to their late change of counsel. Even if that explanation is factually accurate, we reject it for the same reasons for which we declined the Remaining Respondents' request to adjourn the merits hearing.

[125] The Remaining Respondents also note that Staff's Amended Statement of Allegations does not mention a number of the topics that are the subject of Staff's objection, and that it does not mention 1PLUS12 or Mr. Missaghi. We reject that response as well. There is no logical connection between the scope of the Amended Statement of Allegations and Staff's objection to Payam's evidence. It was Payam who first introduced the impugned topics during his examination-in-chief by his counsel. Staff objected at that time. Staff's objection was well-founded, given that Payam was putting forward this evidence for the first time without having previously disclosed it.

[126] For all these reasons, we place no weight on Payam's evidence with respect to two topics. The Remaining Respondents concede that neither topic was the subject of any pre-hearing disclosure by them. Those topics are:

a. a supposed relationship between Ms. Ghaffari and Mr. Missaghi that pre-dated the events at issue in this proceeding; and

b. Staff's allegations that the respondents improperly diverted funds in connection with a property at 4 Birchmount Road in Toronto, which allegations we review in detail beginning at paragraph [288] below.

[127] The other areas of evidence about which Staff objects are more difficult to resolve, because the Remaining Respondents do not concede that the evidence was not properly disclosed. They submit that these areas, including the involvement of Mr. Missaghi and 1PLUS12, "are more complicated",[30] in that Payam's affidavit speaks generally about how loans were approved.

[128] Staff responds that it "can advise that the affidavit does not disclose much of Payam's new evidence, including evidence on, among other things [four specified areas]…".[31] Staff's description is insufficiently precise for us to use it as a basis to resolve Staff's objection.

[129] We are therefore unable to be certain about the extent to which the affidavit gave Staff notice of Payam's evidence on this topic, because the parties chose

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[30] *Hearing Transcript*, June 28, 2019, at 4 line 27

[31] Reply Submissions of Staff dated June 25, 2019, at para 19

not to enter that affidavit into the record. This was so despite the panel's warning during the hearing that if we were asked to resolve this objection, we might need to review documents that were not then in evidence.

[130] Staff seeks to lay responsibility for this choice at the feet of the Remaining Respondents. Staff submits that on cross-examination, Staff suggested to Payam that his evidence was a fabrication. According to Staff, the Remaining Respondents' failure to adduce the affidavit in response to that suggestion deprives them of the ability to argue that proper pre-hearing disclosure was made.

[131] We disagree. There is no logical connection between the issue of pre-hearing disclosure and a suggestion that Payam was fabricating evidence.

[132] We conclude by finding that where Staff seeks to exclude, or to minimize weight given to, testimony given by a respondent, because of an alleged failure to make proper pre-hearing disclosure, the onus lies on Staff to provide the panel with such documents and information as is necessary to enable the panel to compare the testimony to the disclosure. Where, as in this case, Staff fails to do so, it runs the risk that its objection will not be sustained. In our view, that is the appropriate result in this case, except for the two areas conceded by the Remaining Respondents, referred to in paragraph [126] above.

[133] As it turns out, our decision on that point is inconsequential for Staff, because we prefer Ms. Ghaffari's evidence over that of Payam with respect to the role played by Mr. Missaghi and 1PLUS12. Accordingly, while Payam's evidence on the point is admissible, we give it no weight.

6. Staff's expert witness, Mr. Philippe Hébert

[134] Staff called Mr. Philippe Hébert, an expert in real estate appraisals, as a witness. Mr. Hébert gave opinion evidence about two properties in northern Ontario on which MGMIC made significant loans (the Timmins property and the Temiskaming property) and about the methodology underlying the appraisals that MGMIC obtained regarding those properties. Mr. Hébert also gave his opinion regarding the market value of each property as of the date of the appraisal obtained by MGMIC. In both cases, Mr. Hébert's ascribed value was a fraction of the value shown in the MGMIC's appraisals.

[135] In closing submissions, the Remaining Respondents contended that some of Mr. Hébert's opinion evidence was outside the scope of the issue for which he was qualified as an expert, and that we must therefore ignore his evidence. We disagree, but little turns on it. In closing submissions, Staff chose not to rely on any aspect of Mr. Hébert's evidence other than the retrospective value of the two properties. When we asked Staff whether it submitted that the respondents ought to have been aware of the deficiencies identified by Mr. Hébert, Staff advised that it was not taking that position.

[136] For reasons we explain below beginning at paragraph [272], we find that it was inappropriate for MGMIC to rely on the appraisals it obtained with respect to the two properties. We reach that conclusion based on conditions that are evident on the face of the appraisals, and without reference to Mr. Hébert's evidence regarding the value of the properties at the relevant time.

[137] As a result, while we found Mr. Hébert to be a professional, candid and careful witness, and while we have no reason to discount any of his evidence, we need not and do not rely on it in coming to our conclusions.

C. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?

1. Introduction

[138] We now turn to consider Staff's three principal allegations against the respondents.

[139] The first relates to s. 25(1) of the Act, which provides that no person or company shall engage in, or hold themselves out as engaging in, the business of trading in securities, unless the person or company is registered to do so. None of the respondents was ever registered.

[140] The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.[32]

[141] While the respondents suggested, in 2015 correspondence with Staff, that MGMIC could offer and sell shares "under an exemption",[33] that correspondence did not specify the applicable exemption(s). In closing submissions, the Remaining Respondents did not assert that they were entitled to an exemption from the registration requirement.

[142] Accordingly, we must determine whether the respondents engaged in "the business of trading in securities" or held themselves out as doing so.

2. Business trigger

(a) The test

[143] For the registration requirement to apply to a person or company, the business of trading in securities need not be the only business in which that person or company is engaged.[34] As the Commission has previously held, we "must determine whether the activities in this case cross the line between permissible solicitation and the business of trading."[35]

[144] The Commission has adopted Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (31-103CP), which, among other things, sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[145] While 31-103CP is not part of Ontario securities law, and therefore is not directly binding on the respondents, the "business purpose" test in s. 1.3 (also referred to as the "business trigger") includes the following factors, on which Staff relies

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[32] *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11, (2010) 33 OSCB 5535 (*Al-Tar*) at para 81
[33] Exhibit 60, Letter from MGMIC to Staff Re: Money Gate MIC Questions
[34] *Momentas Corp (Re)*, 2006 ONSEC 15, (2006) 29 OSCB 7408 (*Momentas*) at para 56
[35] *Blue Gold Holdings Ltd (Re)*, 2016 ONSEC 24, (2016) 39 OSCB 6947 (*Blue Gold*) at para 20

and which the Commission has adopted in other proceedings.[36] We consider it appropriate to apply these factors in assessing the respondents' conduct in this case:

a. trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavour;

b. directly or indirectly soliciting securities transactions;

c. receiving or expecting to receive compensation for trading; and

d. engaging in activities similar to those of a registrant, including by setting up a company to sell securities, or by promoting the sale of securities.

[146] We now review each of these factors in turn.

(b) Trading with repetition, regularity, continuity

[147] In the first 33 months of the Material Time,[37] the respondents raised approximately $11 million through about 228 separate distributions to 150 investors. There were almost seven distributions per month during that time, and they occurred in all but six of the 33 months.

[148] As Staff notes, the distributions in this case continued over a similar or longer time period than that found in numerous previous Commission decisions in which the business trigger test was found to have been met:

a. 37 months in *Moncasa Capital Corp. (Re)*, in which the issuer raised over $1.2 million;[38]

b. 26 months in *Majestic Supply Co. (Re)*, in which the issuer raised $2.1 million;[39]

c. 19 months in each of *McCarthy (Re)*[40] and *MRS Sciences Inc (Re)*,[41] in which the issuers raised $360,000 and almost $840,000, respectively; and

d. 17 months in *Richvale Resource Corp. (Re)*,[42] in which the issuer raised approximately $750,000.

[149] The frequency and regularity of distributions in this case, combined with the extended time over which the distributions were made, amply meet this component of the business trigger test. We reject the Remaining Respondents' submission that the above facts are not useful indicators.

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[36] See, *e.g.*, *Momentas* at paras 52-56; *Meharchand* at para 111
[37] The Material Time for all allegations is approximately 40 months, from August 2014 to December 2017 (*Amended Statement of Allegations*, para 6). However, the allegation relating to the raising of capital is confined to the period from August 2014 to April 2017 (*Amended Statement of Allegations* at para 4)
[38] 2013 ONSEC 20, (2013) 36 OSCB 5320 at paras 2, 32, 55, 57
[39] 2013 ONSEC 5, (2013) 36 OSCB 2104 at paras 2, 41, 46, 145
[40] 2014 ONSEC 1, (2014) 37 OSCB 510 at paras 18, 25
[41] 2011 ONSEC 5, (2011) 34 OSCB 1547 (*MRS Sciences*) at paras 3, 161-164
[42] 2012 ONSEC 13, (2012) 35 OSCB 4286 at paras 5, 39

(c) *Directly and indirectly soliciting securities transactions*

[150] Staff submits, and it is not disputed, that MGMIC actively solicited the sale of its preferred shares through the following means, among others:

a. promotional events and seminars hosted at MGMIC's offices, to which existing and potential investors were invited;

b. participation in training sessions held by 1PLUS12, at which Ben and Payam talked about how individuals could obtain funds (including by borrowing against home equity) to invest in MICs generally and MGMIC in particular;

c. MGMIC's website, which included an "Investing" page that promoted the sale of MGMIC shares;

d. the use of various promotional materials, including fliers and videos, and the distribution of these materials through social media and other methods; and

e. attendance at trade shows to promote MGMIC's business.

[151] Ben's active participation in MGMIC's solicitation efforts is confirmed by:

a. his own description of his role as CEO ("mostly to coach people to see what is really good for them… [and if] it suitable for them, I introduce them to our own company");[43]

b. his statement that twice he gave presentations in Ottawa to promote MGMIC to existing or potential investors;[44] and

c. the uncontradicted evidence of Payam and Ms. Ghaffari that Ben, among other things:

   i. was responsible for investor relations;[45]

   ii. called individuals who had previously invested through MGC and solicited their investment in MGMIC;[46]

   iii. created one or more of the offering memoranda;[47]

   iv. was involved in the 1PLUS12 presentations referred to in paragraph [150] above;[48] and

   v. was responsible for the content of promotional videos, at least one of which featured him.

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[43] Exhibit 228, List of read-ins for Ben Katebian, Tab 3 at 27 lines 23-25
[44] Exhibit 228, List of read-ins for Ben Katebian, Tab 12 at 112
[45] *Hearing Transcript*, January 7, 2019, at 78 line 3; March 4, 2019 at 67 lines 23-24
[46] *Hearing Transcript*, January 9, 2019, at 15 lines 7-13
[47] *Hearing Transcript*, January 9, 2019, at 43 line 23
[48] *Hearing Transcript*, January 9, 2019, at 49 line 13

[152] Payam, whose employment agreement described him as MGMIC's "Business Development Manager", was also central to MGMIC's solicitation efforts. Among other things, he:

a. called individuals who had previously invested through MGC and solicited their investment in MGMIC;

b. created investment fliers to promote the sale of MGMIC's shares;

c. prepared a slide deck that was used to market to existing and potential investors;

d. was involved in the 1PLUS12 presentations referred to in paragraph [150] above; and

e. reviewed the content of promotional videos.

[153] The evidence clearly establishes that each of MGMIC, Ben and Payam was actively involved in soliciting investment in shares of MGMIC.

(d) Being, or expecting to be, remunerated or compensated for trading

[154] Payam testified that he received an annual salary of $60,000 from MGMIC beginning in 2015. Given his title and his activities as described above, we have no hesitation in finding that he was remunerated at least in part, if not entirely, in respect of MGMIC's trading activities.

[155] We cannot accept Payam's submission that because the amount of his compensation was not tied directly to the amount of capital raised, he neither received nor expected to receive compensation for those activities.

[156] Further, even if we were to accept Payam's submission that he devoted the majority of his efforts to the management of MGMIC's lending business and not to the raising of capital (and we do not accept that submission), the fact remains that at least a portion of Payam's time was devoted to raising capital, an activity for which a corresponding portion of his salary would be attributable.

[157] Staff submits that Ben was indirectly compensated for MGMIC's trading activities, because MGC earned its fee based on the size of MGMIC's portfolio, and Ben shared in MGC's profits. We accept that submission.

(e) Engaging in activities similar to those of a registrant

[158] Staff submits, and we agree, that the respondents' activities were similar to those of an exempt market dealer and its principals. Specifically, the respondents:

a. promoted the sale of MGMIC's preferred shares;

b. met with potential investors to discuss details of the investment and the offering memoranda; and

c. discussed subscription documents with investors, filled in information on those documents, and signed as a witness.

3. Overall nature of MGMIC's business

[159] The Remaining Respondents submit that they did not breach s. 25(1), because the capital raising was incidental to MGMIC's business of operating a mortgage investment corporation.

[160] It is true that, as the Remaining Respondents submit and the Commission has previously held, our role is to "take a holistic view" of the capital-raising and other activities of MGMIC.[49] However, as we have explained above at paragraph [143], such a view does not preclude a finding that MGMIC was simultaneously engaged in the business of trading in securities and the business of investing the proceeds in mortgages.

[161] Indeed, Payam's employment agreement with MGMIC recited that MGMIC was "in the business of raising capital for mortgage investments".[50] These are compelling facts in support of the conclusion that MGMIC was engaged in the business of trading in securities.[51] The fact that the capital was being deployed for uses that did not involve securities does not diminish that conclusion.

[162] Further, we do not agree with the Remaining Respondents that we should apply previous findings of this Commission to the effect that any business seeking equity financing must of necessity trade in its own securities, and that any new corporation seeking capital must solicit trades.[52] Those findings merely confirm that by trading in its own shares, an issuer is not necessarily engaged in the business of trading those securities; a full analysis of all relevant factors is necessary.

[163] Finally, MGMIC's capital-raising activities were not confined to a start-up phase pending the establishment of a revenue-generating business. MGMIC had reached its steady state, with continuous raising of capital, early in the Material Time. MGMIC's failure to be profitable in the several years that it operated cannot be used as a basis for saying that MGMIC was in a start-up phase until it became profitable.

4. Conclusion as to whether MGMIC, Ben and Payam engaged in the business of trading in securities

[164] From its inception and throughout its existence, MGMIC traded in its securities repeatedly, regularly and continuously. Through its principals Ben and Payam, it directly and indirectly solicited those trades, and compensated Ben and Payam for doing so. MGMIC's activities related to the trades were similar to those of a registrant.

[165] MGMIC, Ben and Payam were therefore engaged in the business of trading in securities, as contemplated by s. 25(1) of the Act. While MGC played a role in the overall business, as the broker for all of MGMIC's loans, it does not follow that MGC itself was engaged in the business of trading shares of MGMIC. That allegation is dismissed.

[166] Staff did not submit, and we do not find, that all MICs are necessarily engaged in the business of trading in securities, simply because of the nature of a MIC. The

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[49] *Future Solar Developments Inc (Re)*, 2016 ONSEC 17, (2016) 39 OSCB 4495 at para 45
[50] Exhibit 67, Employment Agreement between MCMIC and Payam Katebian at 2
[51] *Momentas* at para 61
[52] *Meharchand (Re)*, 2015 ONSEC 43, (2015) 38 OSCB 10761 at para 44; *Blue Gold* at para 20

question of whether a particular business, including a MIC, is engaged in the business of trading in securities remains one that must be resolved in light of all the relevant facts.

D. In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?

1. Introduction

[167] Subsection 53(1) of the Act provides that unless a prospectus has been properly filed and receipted, no person or company shall trade in a security on their own account or on behalf of any other person or company if the trade would be a distribution of the security.

[168] Like the registration requirement discussed above, the prospectus requirement is a cornerstone of Ontario's securities regulatory regime. The requirement is an important one because it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[53]

[169] It is undisputed in this proceeding that:

a. MGMIC traded in its own securities;

b. the trades were in previously unissued securities, and were therefore distributions (as defined in s. 1(1) of the Act);

c. no prospectus was filed or receipted; and

d. Ben and Payam, through their activities, engaged in acts in furtherance of the trades (including as set out in paragraphs [151] to [153] above), and would therefore be equally subject to this provision.

[170] Each of the essential elements of a contravention of s. 53(1) of the Act has therefore been established. It remains to be determined whether MGMIC was entitled to an exemption.

[171] An issuer that purports to make an exempt distribution is required to file with the Commission a Form 45-106F1 *Report of Exempt Distribution*. When properly completed, that form discloses details of any exempt distribution, including the exemption on which the issuer relies. MGMIC filed some reports of exempt distribution, although none was filed before April 1, 2015.

[172] In closing submissions, the Remaining Respondents assert four possible exemptions, which we will address in turn. Before doing so, we note that an issuer that purports to rely on an exemption bears the burden of demonstrating that it is entitled to the claimed exemption.[54]

[53] *Limelight Entertainment Inc (Re)*, 2008 ONSEC 4, (2008) 31 OSCB 1727 at para 139
[54] *Meharchand* at para 95

2. Private issuer exemption

[173] For its first two distributions during the Material Time (in August 2014),[55] MGMIC purported to rely on the "private issuer exemption" provided for in s. 73.4(2) of the Act. In order to qualify for that exemption, MGMIC had to meet the definition of "private issuer" set out in s. 2.4(1) of National Instrument 45-106 *Prospectus Exempt Distributions* (NI 45-106). Specifically, MGMIC had to have distributed its securities only to persons listed in s. 2.4(2.1) of NI 45-106 (*e.g.*, a director, officer, employee, founder or control person of the issuer, or persons who are related to any of those, or who are close personal friends or close business associates of any of those).

[174] For MGMIC's third distribution during the Material Time (in October 2014), MGMIC purported to rely on a different exemption. Staff submitted, and the Remaining Respondents did not contend otherwise, that once an issuer that previously relied on the private issuer exemption distributes its securities to a person not listed in s. 2.4(2.1) of NI 45-106, that issuer becomes disentitled to the private issuer exemption for future distributions. This is so even if the subsequent distributions are made in reliance on another exemption. In this respect, we agree with and adopt the language to this effect contained in s. 3.6(5) of the Companion Policy to NI 45-106 (45-106CP).

[175] Despite the fact that MGMIC was no longer entitled to the private issuer exemption, it made 25 subsequent distributions in respect of which it purported to rely on that exemption. These distributions, which raised more than $1.1 million, included two distributions in December 2014, one in February 2015, and the remaining 22 between March 2015 and June 2015. That last group of 22 distributions came after a total of ten distributions during the Material Time that purported to rely on other exemptions.

[176] Even if MGMIC was still entitled to the private issuer exemption in respect of the above-mentioned distributions, Staff submitted, and again the Remaining Respondents did not dispute, that MGMIC failed to adduce any evidence that the investors to whom the distributions were made were included in the list set out in s. 2.4(2.1) of NI 45-106. We therefore conclude that MGMIC failed to meet the burden of demonstrating that it is entitled to the private issuer exemption.

3. Friends, family and business associates exemption

[177] For 170 distributions from July 2015 to April 2017, totaling more than $7.1 million, MGMIC claimed entitlement to the "friends, family and business associates" exemption (FFBA exemption) provided for in s. 2.5(1) of NI 45-106. That exemption is available when the distribution is to a person listed in that subsection (*e.g.*, specified family members, close personal friends, and close business associates). None of the impugned distributions was to a specified family member; accordingly, the relevant elements of that list are a close personal friend, or a close business associate, of a director, executive officer or control person of MGMIC.

[178] Staff submits that few or none of the investors to whom distributions were made in reliance on the FFBA exemption qualified as close personal friends or close business associates.

[55] Exhibit 91, List of distributions

[179] The Remaining Respondents' only submission in response is that the majority of MGMIC's investors qualified for the purposes of the exemption because they "were drawn from Ben's friends made through his membership in Landmark [Education]".[56]

[180] According to Ms. Ghaffari, Ben was "heavily involved" in Landmark Education, an organization that provides motivational seminars.[57] Payam testified that Ben's role with Landmark Education "led him to have a huge number of people he's done business with and became friends with."[58]

[181] For the purposes of the FFBA exemption, it is not enough merely to have done business with someone, or to call someone a friend.

[182] Staff submits, and we agree, that we should adopt the guidance set out in s. 2.7 and 2.8 of 45-106CP, which provide, respectively, that:

a. for an individual to qualify as a "close personal friend", that person must know the director, executive officer or control person well enough, and must have known them for long enough, to be able "to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment"; and

b. for an individual to qualify as a "close business associate", that individual must have had sufficient prior business dealings with the director, executive officer or control person, to make the same assessment as described above.

[183] Staff further submits, and we agree, that we should adopt the guidance set out in s. 3.7 of 45-106CP, which explains that while there is no absolute limit on the number of investors in respect of whom an issuer may rely on the FFBA exemption, a larger number of such persons will be more likely to give rise to a presumption that not all of the investors qualify. In this regard, we recall Payam's description of the "huge number" of people with whom Ben had done business, and whom Ben called friends.

[184] In our view, the number of investors in this case in respect of whom the FFBA exemption is claimed, when combined with Ms. Ghaffari's and Payam's evidence about the connection between the investors and Ben, is sufficient to raise the presumption that many of the investors did not qualify as close personal friends or close business associates.

[185] Even if that presumption did not apply, we cannot accept the Remaining Respondents' assertion that all of the individuals qualified. Payam gave no specific evidence in support of that assertion, beyond the general statement quoted above. The Remaining Respondents neither called any investors as witnesses, nor adduced any other evidence in support of the assertion.

[186] Further, two of the four investor witnesses who testified at the hearing (S.B. and A.P.), and in respect of whom the FFBA was claimed, said that they had never met either Ben or Payam before investing. The evidence was not clear as to which exemption the Remaining Respondents relied on in respect of investor

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[56] Remaining Respondents' Closing Submissions dated June 19, 2019, at para 159
[57] *Hearing Transcript*, January 7, 2019, at 93
[58] *Hearing Transcript*, March 4, 2019, at 120, beginning at line 26

R.P., who also testified that he had never met Ben or Payam before investing. As we noted above, the investors' evidence was credible and was not challenged on cross-examination. We accept it.

[187] We therefore conclude that each of the distributions made in reliance on the FFBA exemption was made without the benefit of that exemption.

4. Accredited investor exemption

[188] For seventeen distributions between December 2014 and January 2017, which raised over $1.7 million, MGMIC purported to rely on the "accredited investor exemption" provided for in s. 73.3(2) of the Act. In order for an issuer to claim the benefit of that exemption in respect of a distribution, the investor must qualify as an "accredited investor" as that term is defined in s. 1.1 of NI 45-106. For the purposes of this proceeding, the relevant elements of that definition are clauses (j) through (m), which set out various income and asset tests.

[189] The Remaining Respondents submit that with respect to these seventeen distributions, it was appropriate for MGMIC to rely, as Payam testified that it did, on the declarations of the investor that she/he was an accredited investor. The Commission has rejected this position on numerous occasions, holding that the burden lies on the issuer to ensure that its distributions comply with applicable law, and that the issuer cannot simply rely on an investor's certification without further investigation:

> Reasonable diligence demands that the seller conduct a serious factual inquiry in good faith before accepting a prospective subscription, which includes a duty to look behind the boilerplate language of a subscription agreement.[59]

[190] Staff submitted, and the Remaining Respondents did not seriously dispute, that MGMIC adduced no evidence to demonstrate that it satisfied this obligation. We accept Staff's submission. We conclude that MGMIC has failed to establish that it was entitled to the benefit of the accredited investor exemption in respect of any of the distributions.

5. Minimum amount exemption

[191] Staff's evidence regarding MGMIC's purported exempt distributions establishes that five distributions were made in reliance on the "minimum amount exemption" set out in s. 2.10 of NI 45-106. For an issuer to be entitled to that exemption, the distribution cannot be to an individual, and must be in an amount not less than $150,000, paid in cash at the time of the distribution.

[192] Three of the five distributions were in amounts less than $150,000. Payam explained that at the time, he misunderstood the requirement. Nonetheless, we conclude that MGMIC was not entitled to the benefit of the minimum amount exemption in respect of those three distributions.

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[59] *York Rio Resources Inc (Re)*, 2013 ONSEC 10, (2013) 36 OSCB 3499 at paras 109-110; *MRS Sciences* at para 189; *Meharchand* at para 101

6. Legal advice defence

[193] Payam testified that in relying on the various exemptions, MGMIC sought legal advice from three law firms.

[194] Staff submits that this fact cannot assist the respondents, because:

a. legal advice can be relevant to the determination of whether a breach has occurred only where a due diligence defence is available; no such defence is available in response to an allegation that a respondent has distributed securities without a prospectus;[60] and

b. in any event, such legal advice as there may have been was given to MGMIC, which did not participate in this hearing and which has never waived privilege over legal advice it received; accordingly, there was no admissible evidence as to the content of that advice.

[195] We agree. Therefore, for the purposes of the merits hearing and this decision, we must disregard the Remaining Respondents' assertion with respect to legal advice sought by MGMIC.

7. Conclusion as to distributions without a prospectus

[196] For the above reasons, we conclude that all distributions of shares by MGMIC during the Material Time were effected in violation of s. 53(1) of the Act, except for:

a. the two distributions in August 2014, made in reliance on the private issuer exemption;

b. one distribution made in reliance on the minimum amount exemption, where the distribution was to a person other than an individual, and the amount of the distribution was at least $150,000; and

c. one distribution made in reliance on the minimum amount exemption, about which there was no clear evidence as to the amount of the distribution.

[197] As we noted in paragraph [169] above, Ben and Payam engaged in acts in furtherance of these trades. Accordingly, all of MGMIC's illegal distributions represent contraventions of s. 53(1) of the Act by Ben and Payam as well.

[198] With respect to MGC, we reach the same conclusion as we did regarding the allegations of trading without being registered. While MGC played a role in the overall business, as the broker for all of MGMIC's loans, it does not follow that MGC was distributing shares of MGMIC. That allegation is dismissed.

E. Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?

1. Introduction

[199] We turn now to Staff's third principal allegation. Staff alleges that during the Material Time, the respondents engaged in various conduct relating to securities

[60] *Rezwealth Financial Services Inc (Re)*, 2013 ONSEC 28, (2013) 36 OSCB 7446 at para 236

that they knew perpetrated a fraud on existing and potential investors in MGMIC, contrary to s. 126.1(1)(b) of the Act.

[200] The Commission has consistently held that fraud is "one of the most egregious securities regulatory violations."[61] Fraud causes direct harm to investors and undermines confidence in the capital markets.

[201] In this case, Staff alleges the following fraudulent misconduct by all of the respondents:

a. a failure to disclose the true nature of MGMIC's operations, controls and processes, including in particular a failure to:

   i. fulfill the mandate of MGMIC's Credit Committee;

   ii. fulfill the mandate of MGMIC's Investment Committee;

   iii. qualify as a MIC under the *Income Tax Act*; and

   iv. properly disclose who had control of MGMIC;

b. a failure to abide by MGMIC's lending parameters, policies and restrictions, by:

   i. making undisclosed investments in third mortgages;

   ii. investing in mortgages that exceeded the self-imposed limitations on size and concentration; and

   iii. investing in imprudent mortgages, including mortgages in excess of appraised values; and

c. diverting loan advances to the benefit of the respondents or companies under their control.

[202] The alleged frauds took place against a backdrop of MGMIC and MGC experiencing financial difficulty. MGMIC's financial statements for the years ending May 31, 2015, and May 31, 2016, showed net losses of $184,048 and $101,951, respectively. MGC's financial statements for the year ending December 31, 2016, showed a net loss of $29,165. In an email to Ms. Ghaffari on February 29, 2016, Ben said: "I don't know how [we] are going to pay our bills this month unless [there is] money… coming [in] that I am not aware [of]." Ms. Ghaffari testified at the hearing that MGMIC and MGC were in crisis, in that they were unable to pay their expenses on a day-to-day basis.

[203] At the time that the receiver was appointed over MGMIC, the company had approximately $164,000 in its bank accounts, and had approximately $11.2 million in preferred shares outstanding. At that time, most of the loans in MGMIC's portfolio were in default.

[61] *Al-Tar* at para 214, quoting David Johnston & Kathleen D Rockwell, *Canadian Securities Regulation*, 4th ed (Markham: LexisNexis, 2007) at 420

2. Need for expert evidence

[204] Before we consider the specific fraud allegations, we review the Remaining Respondents' submission that without expert evidence (which Staff did not lead on these points), we do not have the ability to assess:

a. whether MGMIC's business was conducted in a manner that was riskier to investors than was represented to them;

b. even if so, whether the respondents should have known that certain loans were high-risk; or

c. whether MGMIC conducted appropriate due diligence regarding the loans on the Temiskaming property and the Birchmount property.

[205] The Remaining Respondents rely on the decision of the Ontario Superior Court of Justice (Divisional Court) in *Hanif v College of Veterinarians of Ontario* (*Hanif*), in which the Court held that "[e]xpert evidence is generally required in order to establish the relevant standard of practice of the profession".[62] However, the issue in *Hanif* was not whether the panel could make a decision without the benefit of expert evidence; rather, the Court's comment was in response to the appellant veterinarian's complaint that the Discipline Committee panel did in fact use an expert. The Court upheld the panel's ability to rely on an expert and to determine what weight to assign to the expert's opinion.[63]

[206] The Remaining Respondents also rely on a decision by the Divisional Court that a Discipline Committee of the Association of Professional Engineers of Ontario, not all of whose members were engineers, was not entitled to consider whether the standard of practice had been met by a professional engineer regarding structural engineering in the agricultural sector.[64] As in *Hanif*, the issue was whether an individual met a professional standard of practice. We agree with Staff's submission that no such issue arises in this proceeding.

[207] The Remaining Respondents further rely on a decision by the Divisional Court that a hearing officer of the Ontario Civilian Commission on Police Services erred in purporting to take judicial notice of the combined effects of alcohol and Percocet.[65] That case is of no assistance here. The decision followed explicit authority from the Court of Appeal that while judicial notice may be taken of the fact that alcoholic spirits can be intoxicating, a similar conclusion cannot be reached with respect to various pills or narcotic substances.

[208] In summary, none of these authorities supports the Remaining Respondents' submission that expert evidence was needed to support Staff's fraud allegations.

[209] Specialized tribunals such as the Commission may draw on their own expertise. As a general matter, it is for a tribunal to determine whether it needs the assistance of an expert.[66] Concerns about the need for expert evidence typically arise in the context of a criminal trial with a jury, or in other cases where the decision-maker is unable to formulate the necessary inference. Where, on

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[62] 2017 ONSC 497 at para 88
[63] *Hanif* at para 91
[64] *Katsoulakos v Association of Professional Engineers of Ontario*, 2014 ONSC 5440
[65] *McCormick v Greater Sudbury Police Services*, 2010 ONSC 270 at paras 129-132
[66] *Sutton (Re)*, 2018 ONSEC 42, (2018) 41 OSCB 6675 at para 153

proven facts, the decision-maker can reach its own conclusions without assistance, no expert opinion is necessary.[67]

[210] Staff's allegations that the respondents failed to disclose the true nature of MGMIC's operations, controls and processes require us to examine the respondents' statements from the perspective of an investor. We are not measuring the respondents' conduct against a professional standard; rather, we are considering whether a reasonable investor would have been misled, and whether the respondents complied with their own promises. Those issues are squarely within the expertise of this tribunal.

3. Analysis

[211] We will address each of Staff's fraud allegations in turn below, following a review of the relevant law.

(a) Law regarding fraud

[212] It is well established that the elements of fraud under the Act are:

a. the *actus reus*, or objective element, which must consist of:

i. an act of deceit, falsehood, or some other fraudulent means; and

ii. deprivation caused by that act; and

b. the *mens rea*, or subjective element, which must consist of:

i. subjective knowledge of the act referred to above; and

ii. subjective knowledge that the act could have as a consequence the deprivation of another.[68]

[213] Clause 126.1(1)(b) of the Act prohibits acts "of deceit, a falsehood or some other fraudulent means". An act is of deceit or is a falsehood if the person who committed it "as a matter of fact, represented that a situation was of a certain character, when, in reality it was not." The third category, "other fraudulent means", includes acts that a reasonable person would consider to be dishonest, such as "non-disclosure of important facts,… unauthorized diversion of funds, and unauthorized arrogation of funds or property."[69]

[214] The second component of the *actus reus*, deprivation, is satisfied on proof of actual loss to one or more investors, actual prejudice to investors' economic interests, or even the risk of prejudice to those interests.[70] Given that a mere risk of prejudice is sufficient to establish a fraud allegation, then as long as there is a sufficient causal connection between the fraudulent act and the risk of deprivation,[71] Staff need not prove that investors actually relied on the misleading statements. In this regard, we reject the Remaining Respondents' submission that reliance is an essential element of the *actus reus* of fraud.

[67] *R v Abbey*, [1982] 2 SCR 24 at 42
[68] *R v Théroux*, [1993] 2 SCR 5 at 27 (*Théroux*), cited in *Richvale Resource Corp (Re)*, 2012 ONSEC 13, (2012) 35 OSCB 4286 at para 102; *Meharchand* at para 119
[69] *Théroux* at para 18; *Meharchand* at para 120
[70] *Théroux* at para 16-17; *Quadrexx Hedge Capital Management Ltd. (Re),* 2017 ONSEC 3, (2017) 40 OSCB 1308 at para 21; *Meharchand* at para 121
[71] *R v Riesberry*, 2015 SCC 65 at para 22

[215] In order to establish *mens rea* (*i.e.*, the necessary subjective element) for a finding under clause 126.1(1)(b) of the Act, Staff must show that the respondent who has allegedly committed the offence "knows or ought reasonably to know" that the conduct involved perpetrates a fraud. As the Supreme Court of Canada has held in the context of a criminal case, the "accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations at risk."[72]

[216] The Court further stated that "where the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear."[73]

[217] It is no answer for a person accused of fraud to maintain that they did not think the acts were wrong, or that they hoped that no deprivation would occur.[74]

(b) Fraud effected by way of false or misleading statements in promotional materials and ***in MGMIC's*** *offering memoranda*

[218] Before turning to consider the specific fraud allegations, some general comments are in order.

[219] Full, true and plain disclosure of all material facts has long been held to be a cornerstone of securities regulation.[75] In *Philip Services Corp. (Re)*, the Commission stated:

> Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions.[76]

[220] Disclosure is fundamental to the fairness of Ontario's capital markets and to the protective mandate of the Act. However, that disclosure must be accurate and complete to be meaningful.[77] Accurate and complete public disclosure allows investors to assess the risks involved with making an investment, and serves to level the playing field between investors.[78]

[221] In *Rex Diamond Mining Corp. (Re)*, the Commission held that the burden rests on the company to broadly disclose information to the public. It should not be necessary for individual shareholders to make specific inquiries in order to find out information that should be disclosed.[79] The policy of equal access to

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[72] *Théroux* at para 29; *Meharchand* at para 122
[73] *Théroux* at para 29; *Meharchand* at para 123
[74] *R v Drabinsky*, [2009] 242 CCC (3d) 449 (ON SC) at para 473, cited in *Meharchand* at para 124
[75] *Cornish v Ontario (Securities Commission)*, 2013 ONSC 1310 (CanLII) (Div Ct) (*Cornish*) citing *Ontario Securities Commission and Brigadoon Scotch Distributors (Canada) Ltd. (Re)*, [1970] 3 OR 714 (HCJ) at 717. This language was adopted by the majority in *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 SCR 112 at 126.
[76] *Philip Services Corp. (Re)* (2006), 29 OSCB 3971 (*Philip Services*) at para 7
[77] *Cornish* at para 38 citing *Philip Services* at para 7
[78] *Sino-Forest Corporation (Re)*, 2017 ONSEC 27, (2017) 40 OSCB 6291 at para 1124, citing *AiT Advanced Technologies Corp (Re)*, 2008 ONSEC 3, (2008) 31 OSCB 712 at para 198
[79] *Rex Diamond Mining Corp. (Re)*, 2008 ONSEC 18, (2008) 31 OSCB 8337 at para 263

information that is reflected in the disclosure requirements under the Act has been characterized as the "most fundamental principle of securities regulation."[80]

[222] When an issuer tells prospective and actual investors how funds raised will be invested, the issuer has considerable latitude in deciding what constraints to subject itself to, unless such constraints are specifically prescribed by applicable law. Subject to any prescribed legal constraints, an issuer may reserve for itself the ability to exercise wide discretion as to how funds will be deployed. Alternatively, the issuer may explicitly impose strict limitations on the use of funds.

[223] Once the issuer makes that choice, however, the choice is binding. The disclosure must be true; it must also not be misleading. Non-disclosure of material facts is sufficient to satisfy the *actus reus* element of fraud.[81]

[224] The Remaining Respondents submit that they were not required to comply strictly with representations and commitments made in MGMIC's offering memoranda. In making this submission, the Remaining Respondents contend that the offering memoranda contain two types of representations: (i) MGMIC's "investment policies, practices and restrictions", and (ii) general descriptions of MGMIC's business. We consider each of these in turn.

[225] The section of the offering memoranda that is headed "Investment Policies, Practices and Restrictions" includes the following:

a. MGMIC would maintain "at least 50% of its portfolio in mortgages secured on Canadian residential real estate and in short term deposits";

b. "investments are made only when recommended by the Manager and approved by the Credit Committee";

c. MGMIC "does not invest in any mortgage or make any investment that would result in its failure to qualify as a Mortgage Investment Corporation as defined in the Income Tax Act";

d. MGMIC "does not loan money to… non-arm's length parties"; and

e. MGMIC's "investment policies, practices and restrictions set out above may be amended… from time to time by unanimous approval of [MGMIC's] Board of Directors."[82]

[226] Even though the Remaining Respondents described MGMIC's investment policies, practices and restrictions set out above as "mandatory",[83] the Remaining Respondents rely on the language quoted in paragraph [225](e) above in support of their submission that the investment policies, practices and restrictions were subject to change at MGMIC's discretion and without limitation. We do not accept this submission. The quoted language merely describes the authority to make a change. It does not relieve MGMIC of its disclosure obligations to investors, including the obligation to give investors proper notice of planned changes.

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[80] *Cornish* at para 40, citing *Cartaway Resources Corp. (Re)*, [2000] BCSCD No 92 (BCSC) at para 216
[81] *Théroux* at para 18
[82] Exhibit 5, Offering Memorandum dated August 1, 2014, at 11
[83] *Hearing Transcript*, June 27, 2019, at 131

[227] Similarly, we cannot accept the Remaining Respondents' submission that representations that were contained in the offering memoranda but that were outside the "Investment Policies, Practices and Restrictions" section, merely constituted a description of how the business was to be operated, were "not mandatory", and therefore allowed "more scope for change"[84] without notice to investors.

[228] For example, the explicit statement that "approximately 85% [of MGMIC's investments] will be secured by second mortgages with the balance by first mortgages" is outside the investment policies, practices and restrictions section, but it unambiguously excludes the possibility that MGMIC will invest in third mortgages. No reasonable investor would see that statement as a casual and non-binding description of how the business was to be operated. In our view, that commitment is no less "mandatory" than those listed in paragraph [225] above.

[229] In summary, we do not distinguish between those commitments that are found within the investment policies, practices and restrictions section, and those that are elsewhere in the offering memoranda. The conclusions proposed by the Remaining Respondents would be fundamentally at odds with the nature of an offering document.

[230] Finally, we reject the Remaining Respondents' invitation to give significant weight to warnings contained in the offering memoranda to the effect that investment in MGMIC was speculative and risky. Such warnings do not absolve an issuer from complying with representations and commitments it makes in those offering memoranda.

[231] We will now examine each of the alleged failures to comply with statements made in the offering memoranda, as well as in MGMIC's promotional materials.

(c) ***Failure to disclose the true nature of MGMIC's operations, controls and processes***

i. *Failure to fulfill the mandate of MGMIC's Credit Committee*

[232] Staff alleges that the respondents represented to investors that MGMIC would make investment decisions (including decisions relating to loans, borrowings, acquisitions and dispositions) only if recommended by MGC and approved by MGMIC's Credit Committee. That committee was to meet as required and no less frequently than quarterly.

[233] Staff alleges that the Credit Committee did not meet as required and that it did not review and approve many of MGMIC's investments. Staff submits that MGMIC made numerous investment decisions without the involvement of Ms. Ghaffari, who was the head of the Credit Committee.

[234] The Remaining Respondents submit, and we agree, that as a practical matter, the Credit Committee "met" frequently. Its only members were Ben and Ms. Ghaffari, and there is no dispute that the two of them spoke very often, typically one or more times daily. While better practice would include minutes that record the required discussions and approvals, and while in this case there

[84] *Hearing Transcript*, June 27, 2019, at 131

are no such minutes, we do not find that the non-existence of any minutes requires the conclusion that the Credit Committee did not meet.

[235] However, even if it could be said that the Credit Committee met frequently, we are unable to find that Ms. Ghaffari was involved in approving all of MGMIC's lending decisions, as we explained above, concluding at paragraph [97]. We therefore accept Staff's submission that at least in some instances, the Credit Committee did not operate in the way that was set out in the offering memoranda. As a result, there was no proper substantive review of some of the loan applications.

ii. Failure to fulfill the mandate of MGMIC's Investment Committee

[236] The respondents represented to investors that MGMIC established an Investment Committee to, among other things, adjudicate and advise on transactions involving potential conflicts of interest, and approve or reject investments in mortgages that might adversely affect MGMIC's status as a MIC. The Investment Committee's two members were Ben and Ms. Ghaffari.

[237] Staff alleges that the following transactions (the Related Party Loans) were non-arm's length, either because they were loans to Ben or Payam, or because they were loans to other individuals or corporations related to MGMIC:

a. *to Payam* – in January 2015, a loan of $82,500 regarding Heron Hollow (referred to beginning at paragraph [86] above);

b. *to Ben* – in April 2015, $500,000 secured by a third mortgage on 133 Boake Trail and a collateral mortgage on 11 King High Drive;

c. *to Atlas Capital Corporation*, of which Mr. Ricci was a director and officer – in August 2015, a loan of $665,000 regarding Palace Pier (see paragraph [89] above), which Ben listed in court filings as Mr. Mohammed's address;

d. *to Alijan Alijanpour* – in October 2015, a loan of $650,000 secured by a second mortgage on 23 Thornridge Drive, a property that Ben advised Ms. Ghaffari was being held for Mr. Missaghi so that Mr. Missaghi could carry out a power of sale and recover funds owing to him;

e. *to Enigma Land Ltd.*, of which Payam was a director – in November 2015, a loan of $320,000 secured by a second mortgage on 4342 Steeles Avenue, which was owned by Mr. Missaghi;

f. *to World Properties Corporation*, which was controlled by Mr. Mohammed (according to Ben's statement to Staff) or Mr. Missaghi (according to Ben's statement to Ms. Ghaffari) – in December 2015, a loan of $700,000 secured by a second mortgage on a retail commercial plaza;

g. *to Canadian Land Corporation*, which MGMIC has stated was controlled by what it described as "the Missaghi gang", and of which Mr. Missaghi was a director – in February 2016, a loan of approximately $2.7 million secured by a first mortgage on a property in Timmins;

h. *to Mansteel New Liskeard Inc.* (Mansteel), of which Ben's father-in-law was a director – in June and July 2016, loans totalling approximately $3.9 million, which were guaranteed by Ben's father-in-law, and which were secured by first and second mortgages over a property in Temiskaming that Payam testified Messrs. Missaghi and Mohammed and another individual were "in charge of";[85]

i. *to 245 Ltd.*, one of Payam's numbered companies (see paragraph [23] above) – in September 2016, a loan of $282,500 secured by a second mortgage on 293 Euclid Avenue, a residential property in Toronto;

j. *to Ben* – in March 2017, a loan of $1 million secured in the same fashion as the April 2015 loan in (b) above, *i.e.*, a third mortgage on 133 Boake Trail and a collateral mortgage on 11 King High Drive;

k. *to 254 Inc.*, one of Payam's numbered companies (see paragraph [23] above) – in May 2017, a loan of $611,000 secured by a second mortgage on 558 Dovercourt Road, a residential property in Toronto; and

l. *to World Finance Corporation* (World Finance), Mr. Missaghi's company – in November 2017, a loan of $1.6 million secured by an interest in a third mortgage on the Birchmount property.

[238] Each of these loans was to Ben, Payam, Mr. Missaghi or Mr. Mohammed, or to corporations controlled by them. Given our finding that Messrs. Missaghi and Mohammed exercised considerable control over MGMIC, it follows that each of these Related Party Loans presented a conflict of interest.

[239] With respect to the two instances where Staff submits that Ben had a conflict of interest (*i.e.*, the loans identified in (b) and (j) above), Payam testified that in his view, as long as the offering memoranda disclosed that MGMIC directors could borrow funds from MGMIC, and as long as such transactions were later disclosed in MGMIC's financial statements, no conflict of interest existed. We disagree. The conflict existed, whether it was disclosed or not.

[240] Staff alleges that the failures to comply with the commitment regarding the Investment Committee arose in one of two ways: (i) where Ms. Ghaffari did not approve a Related Party Loan, or (ii) where Ben approved a Related Party Loan in respect of which he was in a conflict of interest.

[241] As was the case with the Credit Committee, we accept the Remaining Respondents' submission that because Ben and Ms. Ghaffari spoke so frequently, we cannot find that the Investment Committee did not meet. However, there are no minutes or other evidence to show that the committee considered everything it was required to. We repeat our conclusion, stated above, that Ms. Ghaffari was not involved in approving all of the Related Party Loans. We therefore accept Staff's submission that at least in those instances, the Investment Committee did not operate in the way that was set out in the offering memoranda.

[242] The Remaining Respondents submit that because the offering memoranda contemplated that conflicts might not always be resolved in favour of investors, it cannot be said that the respondents failed to comply with their obligations in this regard. We disagree. MGMIC's by-laws explicitly prohibited directors or officers who had a material interest in a transaction from voting on any resolution to approve the transaction. Both Ben (in his statements to Staff) and

[85] *Hearing Transcript*, March 8, 2019, at 11-12

Ms. Ghaffari (in her testimony before us) stated that the Investment Committee did nothing at any time.

[243] The investors were promised, and were entitled to assume, that the Investment Committee would abide by its obligations and follow its process, by which unconflicted members of the committee would turn their mind to the relevant issues. In our view, it is at least misleading, if not bad faith, to ignore the process completely.

[244] We conclude that in all of these instances, the Investment Committee failed to operate as required.

iii. Failure to qualify as a MIC under the Income Tax Act

[245] In the offering memoranda, MGMIC represented to investors that it would at all times conduct its affairs so as to qualify as a MIC. While MGMIC did warn that there could be no assurance that it would be able to meet the MIC qualifications at all material times, MGMIC represented that its directors would use their best efforts in this regard.

[246] This was an important selling point for MGMIC. Maintaining status as a MIC would ensure that shares of MGMIC would be qualified investments for the purpose of registered retirement savings plans, deferred profit-sharing plans, registered retirement income funds and registered education savings plans. MGMIC also represented that it operated as a tax-free flow-through conduit of profit to its preferred shareholders, most of whom invested through registered accounts.

[247] MGMIC did not qualify as a MIC until mid-2016 at the earliest. MGMIC's audited financial statements for the years ending as at May 31, 2015, and May 31, 2016, disclosed this fact. MGMIC did not produce audited financial statements for the following year, despite the requirement that such statements be produced in order to qualify as a MIC.

[248] The failure to qualify jeopardized MGMIC's ability to pay returns to its investors and exposed them to adverse tax consequences.

[249] The fact that MGMIC did not qualify as a MIC was noted in the financial statements. However, the statements for the year ending and as at May 31, 2015, were not issued until June 28, 2016, and the May 31, 2016, statements were not issued until September 30, 2016. As a result, the disclosure was not timely.

[250] While we have concerns about the timeliness and effectiveness of the disclosure, the record on this point is insufficient for us to conclude that the respondents committed fraud, either through a failure to take adequate steps to ensure MGMIC's status, or through inadequate disclosure, or both.

iv. Failure to properly disclose who had control of MGMIC

[251] Staff alleges that until May 30, 2016, the respondents represented to investors that Ben, Payam and Ms. Ghaffari were the directors and senior officers of MGMIC. The revised offering memoranda disclosed beginning May 30, 2016, after Ms. Ghaffari had left MGMIC, that Ben and Payam were the sole directors and senior officers.

[252] Staff alleges that this disclosure was false, in that by no later than March 2016, MGMIC was controlled by Ben, Mr. Missaghi, and Mr. Mohammed. As we have explained above, we agree.

[253] As Staff alleges, no disclosure was ever made to investors, through revised offering memoranda or otherwise, regarding this change in control. Accordingly, investors had no way of evaluating the management experience or qualifications of Messrs. Missaghi or Mohammed, and were therefore unable to make fully informed decisions about the potential risks of investing in MGMIC.

*(d) **Failure to abide by MGMIC's lending parameters,** policies and restrictions*

i. Undisclosed investments in third mortgages

[254] Staff alleges that until January 2017, the respondents represented to investors that loans by MGMIC would be limited to certain specified types of mortgages. These permitted loans included first and second mortgages but did not include third mortgages. The offering memoranda stated that approximately 85% of MGMIC's investments would be secured by second mortgages, with the balance secured by first mortgages.

[255] A revised offering memorandum dated January 31, 2017, contemplated investment in third mortgages "where the equity in a property, relative to amounts owing under prior mortgages, and/or additional collateral provided are sufficient security for the Corporation's mortgage investment."[86] However, Staff alleges, and the Remaining Respondents concede, that before that change, MGMIC did invest in a third mortgage loan to Ben on 133 Boake Trail (see paragraph [237](b) above).

[256] Staff alleges that by investing in third mortgages, MGMIC used investor funds in a manner contrary to the limitations set out in the offering memoranda and thereby exposed the investors to greater risk.

[257] On cross-examination, Payam testified that the risk is greater where the lender is the second or third mortgagee, and another lender holds the higher priority mortgage(s). We agree. Indeed, it is evident from the limiting language quoted in paragraph [255] above that MGMIC had that view at the time.

[258] We find that MGMIC, by investing in the third mortgage, failed to abide by the lending parameters, policies and restrictions set out in the offering memoranda in effect at the time.

[259] We note also that, as Staff submits, the third mortgage granted on the Richmond Hill Property brought the total mortgages on that property to almost $2.3 million, thereby causing the loan-to-value ratio for that property to exceed 100%, given the property's appraised value of $2.15 million. While MGMIC purported to take additional collateral for this mortgage, in the form of security on a property owned by Ben in Vaughan, Staff alleges that this collateral was of no value to MGMIC, since the property was already funded by mortgages totalling approximately $1.75 million, which exceeded its appraised value. We agree.

[86] Exhibit 49, Offering Memorandum revised January 31, 2017, at 10

ii. Investments in mortgages that exceeded the self-imposed limitations on size and concentration

[260] Until January 2017, MGMIC represented in its offering memoranda that a "typical loan size" for MGMIC would range up to $2 million. Promotional materials distributed by MGMIC stated that mortgage loans would range up to $1 million.

[261] MGMIC also promised that there would be concentration limits for its loans. In particular, a maximum of 35% of MGMIC's assets would consist of mortgages on commercial and industrial properties, and at least half of MGMIC's assets would consist of mortgages on "new, existing, proposed or in construction" residential properties.[87]

[262] The offering memoranda also represented to investors that MGMIC had "established a policy that limits its credit exposure to any one borrowing group."[88] Ms. Ghaffari testified that there was no such policy, and the respondents did not adduce evidence of the existence of such a policy.

[263] Staff alleges that MGMIC did not abide by these representations to investors. In particular, MGMIC exceeded the stated maxima:

a. in early 2016, by advancing $2,372,500 on the industrial property in Timmins referred to in paragraph [237](g) above; and

b. in June and July 2016, by lending approximately $3.9 million on the industrial Temiskaming property referred to in paragraph [237](h) above.

[264] By March 2017, those two loans alone made up over 60% of MGMIC's portfolio, thereby exceeding the 35% limit for commercial and industrial properties. We cannot accept the Remaining Respondents' submission that at least some portion of, if not all of, the Timmins and the Temiskaming properties were residential properties. The Remaining Respondents say this is so because when the loans were made there was a residential development planned, thereby bringing the properties within the word "proposed" referred to in the offering memoranda and in paragraph [261] above.

[265] The only evidence in this respect was Payam's assertion that a substantial portion of the Timmins property was "designated for residential development" because that is what Troy Wilson, a close associate of Mr. Missaghi's, and the 1PLUS12 group were planning to do.[89] Payam's hearsay evidence about Mr. Wilson's untested hope does not rise to the necessary level to establish that any portion of the Timmins property was "proposed" to be residential. A reasonable investor would not include, within "residential property", an industrial property that was not zoned to be residential and in respect of which there was not at least a formal application to allow the property to be used for that purpose.

[266] With respect to the Temiskaming property, there was no evidence to support the Remaining Respondents' submission that there were plans for a residential development there, let alone a formal proposal. The portion of Payam's testimony that the Remaining Respondents cite in this regard relates only to the

[87] See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 8
[88] See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 10
[89] *Hearing Transcript*, March 8, 2019, at 61 lines 20-26

Timmins property and not to the Temiskaming property. Further, the appraisal obtained by MGMIC from Mr. Esposito describes the property type as "industrial manufacturing facility", the zoning as "Legal, Non-Conforming Industrial Use (Rural)", and the highest and best use of the property to be continuation "of its current industrial use until the site becomes economically feasible for redevelopment in accordance with the governing land use regulations."[90]

[267] In addition, Staff alleges, and we agree, that these two loans of $2.4 million and $3.9 million were inconsistent with MGMIC's description of the "typical" loan size being less than $1 million (according to MGMIC's promotional materials) or less than $2 million (according to the offering memoranda). We reject the Remaining Respondents' submission that because two loans represented a small fraction of the number of loans (*i.e.*, by counting the number of loans rather than focusing on the dollar amount of the loans), the representation regarding typical loans was complied with. While the representation was arguably true in a strictly literal sense, we find that it was substantively misleading to investors, in that it conveyed an inaccurate picture of the overall portfolio (*i.e.*, the two loans represented 60% of the portfolio) and fundamentally undermined what the investors bargained for.

[268] Further, approximately 75% of the portfolio consisted of loans made to borrowers related to Mr. Missaghi. While MGMIC failed to establish a policy regarding concentration, as it had promised to do, we have no difficulty concluding that this level of concentration was inconsistent with what the reasonable expectations of investors would have been, given the promise to limit MGMIC's exposure to any one borrowing group. The representation promised investors a diversified portfolio. MGMIC's portfolio was not diversified.

[269] We find that by making the two loans, MGMIC knowingly breached the promised limit regarding commercial and industrial properties and misled investors regarding typical loans. Those two loans, together with other loans in the portfolio, constituted a deliberate contravention by MGMIC of its representation regarding borrowing group concentration. In all these ways, MGMIC exposed investors to greater risk than had been disclosed and that they had agreed to assume in making their investment in preferred shares of MGMIC.

iii. Investing in imprudent mortgages, including mortgages in excess of appraised values, and loan-to-value ratios exceeding maxima

[270] In the offering memoranda, MGMIC represented to investors that it would attempt "to minimize risk by being prudent in both its credit decisions and in assessing the value of the underlying real property offered as security."[91] In promotional materials that MGMIC prepared for potential investors, MGMIC explicitly set out "lending parameters", including a maximum loan-to-value ratio of 85% on second mortgages, or 90% on bundled first and second mortgages, and a maximum mortgage amount of $1 million.

[90] Exhibit 111, Appraisal re: 1107 Lakeshore Road South (Temiskaming Property) (*Temiskaming Appraisal*) at 4
[91] See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 9

[271] Staff cites five instances in which it alleges that MGMIC did not conduct appropriate due diligence, and/or where MGMIC made imprudent lending decisions.

(a) Timmins property

[272] The first instance is the Timmins property. Staff's concerns, which we address in turn, are as follows.

[273] First, MGMIC did not obtain any information about the ability of the borrower (Canadian Land Corporation) to pay the monthly interest payments of over $24,000, or to repay the principal; nor did MGMIC obtain information about the creditworthiness of Mr. Wilson, who was the guarantor. We accept the Remaining Respondents' submission that for mortgages of this nature, the necessary comfort may be derived from the value of the property, rather than the borrower's creditworthiness. As we discuss below, however, we find that MGMIC had no reasonable basis to assess the value of the property.

[274] Second, Staff raised a concern regarding a condition contained in MGMIC's commitment letter to Canadian Land Corporation. That condition required that there be an appraisal reflecting a minimum value of $3.65 million based on a maximum "marketing time" of 60 to 90 days. Staff submits, and we agree, that the appraisal that MGMIC obtained from Mr. Esposito did not meet this condition. In reaching that conclusion, we considered the following evidence:

a. Ms. Ghaffari's testimony that marketing time is the time required, in the event of a default by the mortgagor, for a lender to sell the property and to recover the lender's investment; and

b. the statement in Mr. Esposito's appraisal that "reasonable exposure time" (which the context makes clear is synonymous with "marketing time") is the:

> estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.[92]

[275] We accept that evidence, and we reject Payam's contrary suggestion that marketing time merely means the period during which a particular listing agreement would be valid. The logical connection between the appraised value of a property and the time that would be required to obtain that value is obvious. There is no logical connection between an appraised value and the length of one particular listing agreement, especially given that a listing agreement can be either renewed or extended indefinitely.

[276] We find that marketing time in the context of the MGMIC commitment letter means the time required to expose the property to market in order to sell it for close to its fair market value.

[277] Mr. Esposito's appraisal of the Timmins property concluded that the exposure time for that property would be "in the order of five years, assuming that the property is not sold as part of a portfolio and marketed in a professional

[92] Exhibit 111, *Temiskaming Appraisal* at 8

manner."[93] This qualification on the appraised value falls well short of the 60-to-90-day condition set out in the commitment letter. It renders the appraised value worthless for MGMIC's immediate-term lending decisions, especially given MGMIC's stated reliance on asset value for lending purposes. The respondents ought not to have relied on the appraisal.

[278] Staff's third concern regarding the Timmins property is that the appraisal obtained by MGMIC recommended an environmental audit, but none was obtained by MGMIC. We agree with Staff's submission that it was imprudent to make the loan without doing so.

[279] Fourth, in its promotional materials, MGMIC committed to make mortgage loans only where the loan-to-value ratio was no more than 85% on second mortgages and no more than 90% on bundled first and second mortgages. On cross-examination, Payam agreed that as the loan-to-value ratio increases, so does the risk. As discussed above, we find that the respondents were not entitled to rely on the appraisal obtained by MGMIC, which suggested a value of $3,650,000. They therefore had no basis to conclude that they complied with their promised maximum loan-to-value ratio.

[280] In summary, by lending on the Timmins Property, MGMIC violated its promise to follow prudent lending practices, because MGMIC failed to obtain an environmental audit, and because MGMIC relied on an appraisal that had as an essential underlying assumption a marketing time of five years, a period that is unsupportable, and that is significantly longer than the 60-90 day maximum called for in the commitment letter.

(b) Temiskaming Property

[281] The second instance that Staff cites as being imprudent is the loan on the Temiskaming property. Staff identifies the following concerns.

[282] First, Ben and Payam knew, before MGMIC took an assignment of the first mortgage, that the borrower Mansteel had defaulted on that mortgage, not having made any interest payments for nearly three years. MGMIC did not obtain any information about Mansteel's ability to pay the monthly interest payments of over $36,000, or to repay the principal; nor did MGMIC obtain information about the creditworthiness of Ben's father-in-law, who was the guarantor but who had no economic interest in the property. Rather, Payam testified that he had relied on "new structures of individual shareholders";[94] however, there was no evidence as to what these new structures were.

[283] Once again, even if we accept the Remaining Respondents' submission that for loans of this kind, the lender's comfort as to the value of the property may obviate the need to be confident about the borrower's ability to repay, the fact is that MGMIC had no reasonable basis to assess the value of the property. MGMIC's commitment letter to Mansteel required that there be an appraisal reflecting a minimum value of $4.63 million that could be achieved with a 365-day maximum marketing time. The appraisal that was delivered indicated that the property needed a marketing time of five years to sell at that price. For

[93] Exhibit 111, *Temiskaming Appraisal* at 8
[94] *Hearing Transcript*, May 14, 2019, at 132 lines 12-15

the same reasons as discussed above, this assumption easily disqualifies the appraisal as a basis for determining value for a prudent lender.

[284] Payam also testified that he relied on an additional $4 million, referring to funds held by the Ministry of the Environment and funds paid into court relating to environmental work performed by Mansteel. Staff submits that these funds were not available as security for repayment of Mansteel's debt to MGMIC. We agree.

[285] Further, the appraisal recommended an environmental audit, but none was obtained by MGMIC. This is of particular concern with respect to Temiskaming, since Mansteel had been fined $9,000 for environmental violations in connection with the property. We agree with Staff's submission that MGMIC's failure to obtain an environmental audit was inconsistent with the position that MGMIC followed prudent lending practices.

[286] Finally, Staff notes that Payam did not visit the property. We do not regard this as requiring the conclusion that the loan was therefore imprudent.

[287] In summary, by lending on the Temiskaming property, MGMIC violated its promise to follow prudent lending practices, because MGMIC failed to obtain an environmental audit, and because MGMIC relied on an appraisal that had as an essential underlying assumption a marketing time of five years, a period that is unsupportable, and that is significantly longer than the 365 day maximum called for in the commitment letter.

(c) Birchmount property

[288] The third instance of imprudent lending cited by Staff is the Birchmount property.

[289] By November 2017, Payam and Ben had advised Staff of their desire to wind up MGMIC, and MGMIC's shareholders had approved of a wind-up. Despite that, soon afterwards MGMIC committed to purchase an interest in a third mortgage on the Birchmount property, which mortgage was held by World Finance. As Payam acknowledged he knew at the time, Mr. Missaghi controlled World Finance.

[290] MGMIC agreed to lend $1.85 million to World Finance in return for a 30% interest in the third mortgage. Under this agreement, World Finance was to be responsible for all mortgage payments and fees.

[291] By December 11, 2017, MGMIC had advanced $1.6 million to World Finance. It did so even though:

a. the underlying security for the agreement was a third mortgage that had been in default for nine years and that had been granted by an owner who was bankrupt;

b. MGMIC did not require any personal guarantees to support the loan;

c. MGMIC did not obtain any evidence to support its reliance on World Finance to make the mortgage payments; and

d. MGMIC relied on an appraisal valuing the property at $9.25 million, based on a condition that the property could be developed to include a senior citizens' apartment, a use that was not permitted by existing zoning restrictions.

[292] As Staff notes, it subsequently became clear that the appraisal significantly overvalued the property, as is evidenced by the June 2018 approval of a sale of the property by a receiver, for $3.45 million (about one third of the "appraised" value of $9.25 million). As of the conclusion of the evidence portion of the merits hearing, MGMIC had not received any funds from the sale or recovered any amounts under its agreement with World Finance. Some proceeds remained following the disqualification of the first mortgagee and payment to the second mortgagee, but World Finance and a fourth mortgagee dispute MGMIC's entitlement to any share of the proceeds.

[293] The deficiencies cited above are serious. We find that they combine to require the conclusion that by making this loan, MGMIC violated its promise to follow prudent lending practices.

[294] In reaching that conclusion, we reject Payam's evidence that MGMIC was appropriately comfortable with the risk associated with the loan. Payam sought to explain that by advancing the funds to World Finance, MGMIC was enabling the 1PLUS12 investors to repay approximately $1 million they owed to Ben in respect of other properties. Staff submits that we ought not to give any weight to Payam's testimony on this point, because of his failure to make proper pre-hearing disclosure of his evidence (see the analysis beginning at paragraph [116] above). We do not find it necessary to resolve that issue, because we would reach the same conclusions even if we were to take Payam's testimony into account.

[295] With or without Payam's testimony, it is clear to us that the loan had no legitimate economic purpose that was in the interests of all MGMIC shareholders. The loan may have served the interests of Ben and Payam, but it was imprudent for MGMIC.

(d) Loan-to-value ratios exceeding maxima on two properties

[296] Finally, Staff notes that MGMIC exceeded the promised maximum loan-to-value ratio on the Heron Hollow property and on 293 Euclid Avenue. The actual loan-to-value ratios were 90% and 91% respectively, on second mortgages alone, without any bundled first mortgage. The ratios therefore exceeded the promised maximum of 85%.

(e) Diverting loan advances to the benefit of the respondents or companies under their control

[297] Staff's final fraud allegation is that the respondents improperly diverted MGMIC loan advances relating to two properties.

i. The Temiskaming property: Diversion of $435,196 to Ben's Numbered Company

[298] Staff alleges that in January 2017, Ben arranged for the diversion of $435,196 from the final $445,000 advance to Mansteel regarding the Temiskaming property to go instead to his numbered company. Staff led the following evidence, which was not challenged, and which we accept:

a. MGMIC advanced $445,000 to its own solicitor;

b. MGMIC's solicitor deducted fees and remitted the balance to Mansteel's solicitor;

c. Mansteel's solicitor remitted $435,196 to Ben's Numbered Company; and

d. both Ben and Payam took steps to effect these transfers.

[299] Payam testified that the funds were remitted to Ben's Numbered Company because Mansteel did not have a bank account.

[300] After Ben's Numbered Company received the funds, it made the following payments:

a. $100,007 to Canada Capital Corporation, a company related to Mr. Missaghi;

b. two payments totaling $208,874 to 245 Ltd. (which was 50% owned by Payam, and over which company's account both Ben and Payam had signing authority);

c. $13,326 to Ben in cash; and

d. $116,007 to C&K Mortgage Services, with a notation saying "High Point Missaghi".

[301] Payam attempted to justify these payments, including by explaining that Ben's father-in-law guaranteed the loan and was added as a director of Mansteel, to ensure that payments on the mortgage were made as required. Payam's testimony on this point was not cogent, and we were left with no convincing explanation as to how the significant payments to the parties mentioned above were made for legitimate reasons in the interests of MGMIC's shareholders. We were similarly unconvinced by the Remaining Respondents' submission that the funds were available to be paid back to MGMIC, and that therefore it could not be said that the funds were not diverted.

[302] Accordingly, we find that MGMIC deliberately diverted these funds to Ben and Payam, and to entities in which they or the 1PLUS12 investors had a significant or controlling interest. We reject the Remaining Respondents' submission that Staff's choice not to call Messrs. Missaghi or Mohammed as witnesses precludes this finding. The uncontroverted evidence shows the flow of funds as described, and makes it more likely than not that MGMIC diverted the funds to the Remaining Respondents' benefit. The respondents failed to rebut that conclusion.

ii. The Birchmount property: Diversion of $1.1 million to Ben

[303] Staff alleges that in December 2017, Ben diverted approximately $1.1 million to himself from the $1.6 million that MGMIC advanced regarding the Birchmount property. Staff led unchallenged evidence, which we accept, that establishes that on each of November 28, December 5 and December 6, 2017:

a. MGMIC advanced $400,000 to its solicitor;

b. MGMIC's solicitor deducted the firm's fees and remitted the balance to World Finance's solicitor;

c. World Finance's solicitor deducted that firm's fees and remitted the balance to a corporation of which Mr. Wilson (Mr. Missaghi's associate, referred to in paragraph [265] above) was the sole registered director and officer;

d. that corporation transferred the funds to Ben's Numbered Company; and

e. Ben's Numbered Company transferred part or all of the funds to Ben's personal account.

[304] As a result of the above transactions, Ben received $1,115,000 into his personal account. Ben used the funds to repay his personal indebtedness to MGMIC in respect of the mortgages on Boake Trail and King High Drive referred to in paragraphs [237](b) and (j) above.

[305] In his testimony, Payam attempted to explain these transactions as a "solution" advanced by the 1PLUS12 group to repay an alleged $1 million debt owed to Ben by the 1PLUS12 group. Once again, Payam's explanation was not cogent, and in any event it was not disclosed to Staff before the hearing, as a result of which we give it no weight, for the reasons set out in paragraphs [122] to [126] above.

4. Conclusion regarding Staff's fraud allegations

[306] In summary, we find that in circumstances when the respondents were experiencing significant financial pressure, MGMIC perpetrated frauds on MGMIC's investors, and thereby contravened s. 126.1(1)(b) of the Act when it:

a. knowingly engaged in acts of deceit by failing to:

i. disclose that MGMIC's Credit Committee did not operate as promised in the offering memoranda;

ii. disclose that MGMIC's Investment Committee did not properly review and advise regarding transactions in which MGMIC had a conflict of interest;

iii. disclose that Messrs. Missaghi and Mohammed exercised considerable control over MGMIC;

iv. comply with MGMIC's commitment not to invest in third mortgages;

v. comply with the $1 million maximum loan amount set out in MGMIC's promotional materials and the maximum "typical" loan amount of $2 million specified in MGMIC's offering memoranda;

vi. establish and comply with a policy to limit MGMIC's exposure to one borrowing group; and

vii. comply with MGMIC's commitment to be prudent in its credit decisions and in assessing the value of underlying real property offered as security;

all of which were facts that would, as the respondents knew, have been material to investors; and

b. thereby caused a deprivation to MGMIC's investors, in that they exposed the investors to greater risk than the investors had agreed to assume; and

c. did so knowing that their conduct could result in the MGMIC suffering that deprivation.

[307] We also find that MGMIC perpetrated frauds on its investors when, without proper authority, MGMIC deliberately diverted to Ben's and Payam's benefit portions of the advances on the Temiskaming property and the Birchmount property. We reject the Remaining Respondents' submission that the payments were not a "course of conduct relating to securities", and that they therefore fall outside the scope of s. 126.1 of the Act.

[308] The diversion frauds consist of two inextricably intertwined elements: (i) the sale of securities to MGMIC shareholders on the strength of promises that the investors' funds would be used for a particular purpose; and (ii) the diversion, instead, of those funds to the benefit of Ben, Payam, and their related entities.

[309] Finally, we find that Ben, Payam and MGC were inextricably wound up in all of MGMIC's frauds, and that Ben and Payam were fully knowledgeable about the extent of MGMIC's misconduct described above. They knew that by failing to comply with their disclosure and risk management obligations, they were exposing investors to greater risk than those investors had bargained for. Therefore, all three of the Remaining Respondents (*i.e.*, Ben, Payam and MGC) contravened s. 126.1(1)(b) of the Act, which brings within its scope those who "directly or indirectly… participate in" any conduct prohibited by that section.

[310] Given these findings, it is unnecessary to address Staff's allegations that the respondents breached s. 122(1)(b) of the Act by making misleading or untrue statements in the offering memoranda. That conduct is subsumed within our findings with respect to the fraud allegations.

V. CONCLUSION

[311] The full extent of the relationships among the four respondents, Messrs. Missaghi and Mohammed, 1PLUS12 and others was not made clear by the evidence in this hearing. However, that evidence did establish a mosaic that includes:

a. the close relationships between the respondents and Messrs. Missaghi and Mohammed;

b. the considerable influence that Messrs. Missaghi and Mohammed exercised over MGMIC;

c. the large and late-in-the-day Related Party Loans; and

d. the various conflicts that were neither properly disclosed nor properly managed by Ben and Payam.

[312] All of that led to investors in MGMIC making an investment that in material respects was different than what they had bargained for, and that led ultimately to the destruction of MGMIC's portfolio at the expense of the investors and for the benefit of Ben and Payam. The conduct shows a profound disregard by MGMIC for its investors, and a profound disregard by Ben and Payam of their duties as directors and officers of MGMIC.

[313] Staff has established that:

a. MGMIC, Ben and Payam were engaged in the business of trading in securities, contrary to s. 25(1) of the Act;

b. MGMIC, Ben and Payam contravened s. 53(1) of the Act as a result of their conduct associated with all of MGMIC's distributions of shares during the Material Time, except for the four distributions referred to in paragraph [196] above; and

c. contrary to s. 126.1(1)(b) of the Act, all four respondents perpetrated frauds on MGMIC's investors as described in paragraphs [306] and [307] above.

[314] Given our findings that Ben and Payam directly contravened the Act as described in the preceding paragraph, we need not address Staff's request that we find that Ben and Payam "authorized, permitted or acquiesced in" MGMIC's and MGC's misconduct, as contemplated by s. 129.2 of the Act.

[315] The parties shall contact the Registrar on or before January 10, 2020, to arrange a first attendance in respect of a hearing regarding sanctions and costs. That first attendance is to take place on a date that is mutually convenient, that is fixed by the Secretary, and that is no later than January 31, 2020.

[316] If the parties are unable to present a mutually convenient date to the Registrar, then each of Staff and the Respondents may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for the first attendance. Any such submission shall be submitted on or before January 10, 2020.

Dated at Toronto this 17th day of December, 2019.

"Timothy Moseley"

Timothy Moseley

"M. Cecilia Williams"	*"Lawrence P. Haber"*
M. Cecilia Williams	Lawrence P. Haber

APPENDIX 6

Court File No. CV-18-00609338-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 29TH
	)	
JUSTICE PENNY	)	DAY OF MARCH, 2019

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MORTEZA KATEBIAN also known as BEN KATEBIAN and 2450531 ONTARIO LIMITED also known as 2450531 ONTARIO INC.

Respondents

APPLICATION UNDER
Subsections 126(5) and (5.1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended

ORDER

THIS APPLICATION made by the Ontario Securities Commission (the "**Commission**") for an Order pursuant to section 126 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Securities Act***") to continue the Certificate of Direction issued by the Commission on November 16, 2018 in relation to the properties located at 293 Euclid Avenue in the City of Toronto and for other related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Louisa Fiorini sworn November 2, 2018 and November 22, 2018, the affidavit of Payam Katebian sworn March 4, 2019, the affidavit of Eugenia Antoniou sworn March 15, 2019 and the affidavit of Michelle Spain sworn March 18, 2019, and the Exhibits thereto, and on hearing the submissions of counsel for the Commission, and counsel for the Respondents,

1. **THIS COURT ORDERS** that the Direction issued by the Commission on November 16, 2018 attached as **Schedule "A"** (the "**Direction**") relating to 293 Euclid Avenue in the City of Toronto (the "**Property**") is hereby continued until further order of this Honourable Court or until the Commission revokes the Direction or consents to the release of the property from the Direction.

2. **THIS COURT ORDERS** that in the event the Property is sold by a person with an encumbrance that was registered on the Property prior to November 16, 2018 then the net proceeds of sale after payment of any prior encumbrance that was registered on title prior to November 16, 2018, and after payment of the amounts set out in the items identified as firstly through fifthly in section 27 of the *Mortgages Act*, RSO 1990, M. 40 shall be paid into the Superior Court of Justice to the credit of this proceeding, and upon such payment into Court having been made the Applicant will consent to the deletion of the Direction from title to the Property.

3. **THIS COURT ORDERS** that, subject to paragraph 2 of this Order, nothing in this Order or the Direction, as extended by this Order, shall prevent any person with an encumbrance registered on the Property prior to November 16, 2018 from exercising any remedies available to them, including but not limited to remedies under the *Mortgages Act*, R.S.O. 1990, c. M.40.

SCHEDULE "A"

Ontario

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

Phone: 416-263-7653
Fax: 416-593-2319

Web site: www.osc.gov.on.ca

IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
2450531 ONTARIO LIMITED, also known as 2450531 ONTARIO INC.

CERTIFICATE OF DIRECTION
(Subsections 126(1)(c) and 126(4))

TO: The Land Registrar
Land Titles Office No. 80 Metro Toronto (64 & 66)
420-20 Dundas Street West
Toronto, Ontario
M5G 2C2

TAKE NOTICE that, on November 16, 2018, pursuant to subsection 126(1)(c) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), the Ontario Securities Commission (the "**Commission**") has directed 2450531 Ontario Limited, also known as 2450531 Ontario Inc., to maintain the following lands and any related interest in those lands:

PIN	21249-0077 LT
Description	PT LT 108 PL 314 TORONTO AS IN CA758318; CITY OF TORONTO
Municipal Address	293 Euclid Avenue Toronto, Ontario

and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of the property (the "**Direction**").

AND TAKE FURTHER NOTICE that, pursuant to subsection 126(4) of the Act, you are directed to register this Certificate of Direction on title to the property and that, on registration, this Certificate of Direction shall have the same effect as a certificate of pending litigation, until the Commission revokes the Direction or authorizes the removal of this Certificate of Direction from title to the property, or until the Ontario Superior Court of Justice orders otherwise.

DATED at Toronto, Ontario this 16th day of November, 2018.

____

Properties

PIN	21249 - 0077 LT
Description	PT LT 108 PL 314 TORONTO AS IN CA758318; CITY OF TORONTO
Address	293 EUCLID AVE TORONTO

Party From(s)

Name	ONTARIO SECURITIES COMMISSION
Address for Service	20 Queen Street West, 22nd Floor Toronto, Ontario, M5H 3S8

I, Johanna Superina, Deputy Director, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

Schedule: See Schedules

The registration of this document is not prohibited by registration AT4526574 registered on 2017/03/31.

Signed By

Paul Robert Bottos	201-4370 Steeles Ave. West Woodbridge L4L 4Y4	acting for Party From(s)	Signed	2018 11 16

Tel 905-850-0155

Fax 905-850-0498

I have the authority to sign and register the document on behalf of the Party From(s).

Submitted By

PICCIN, BOTTOS	201-4370 Steeles Ave. West Woodbridge L4L 4Y4	2018 11 16

Tel 905-850-0155

Fax 905-850-0498

Fees/Taxes/Payment

Statutory Registration Fee	$64.40
Total Paid	$64.40

ONTARIO SECURITIES COMMISSION
Applicant

\- AND -

MORTEZA KATEBIAN, a.k.a Ben Katebian, *et al.*
Respondents

Court File No. CV-18-00609338-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL COURT

Proceeding commenced at TORONTO

ORDER

ONTARIO SECURITIES COMMISSION
20 Queen St West, 22nd Floor
Toronto ON M5H 3S8

Jamie Gibson / Dihim Emami
LSUC No. 62858O / 57402S
Tel: 416-593-3783
Fax: 416-593-8956

Counsel for the Ontario Securities Commission