DECISION OF A PANEL APPOINTED PURUSANT TO *THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN ACT*

IN THE MATTER OF

THE SECURITIES ACT, 1988

AND

IN THE MATTER OF

Edna Keep and

3D Real Estate Investments Ltd.

(collectively referred to as the Respondents)

DECISION OF THE HEARING PANEL CONCERNING THE HEARING ON FINANCIAL COMPENSATION

Hearing held:	May 3-4, 2023
Before:	Norman Halldorson, Panel Chairperson Peter Carton Honourable Eugene Scheibel
Appearances:	Mr. Connor Smith on behalf of the Securities Division ("Securities Division") of the Financial and Consumer Affairs Authority ("FCAA") Edna Keep representing herself and 3D Real Estate Investments Ltd. ("3D")
Date of decision:	September 29, 2023

I. INTRODUCTION

1. This is the Panel's decision with respect to financial compensation in this matter. This decision follows the amended Decision on the Merits dated March 7, 2022 (the "Merits Decision"), and the decision on Sanctions and Costs dated August 9, 2022 (the "Sanctions Decision").

2. At the outset of the hearing into financial compensation, this Panel reminded the parties that the financial compensation hearing is not an opportunity to revisit previous findings made in either the Merits Decision or the Sanctions Decision. Similar comments were made at the outset of the hearing into the appropriate sanctions. Rather, the purpose of the financial compensation stage is to determine whether the breaches, as previously found, have caused ascertainable financial loss to investors.

3. In the Merits Decision this Panel found that the Respondents were in violation of sections 27(2)(a) and 58(1) of *The Securities Act, 1988*, SS 1988-89, c S-42.2, (the "*Act*"), in relation to investments made in two separate real estate joint venture agreements. As will be discussed in greater detail below, these findings were made with respect to two investors referred to as Investors 1 and 2. A further 20 allegations, some of which related to Investors 1 and 2 and some of which related to an unrelated Investor 3, were dismissed.

4. In the Sanctions Decision this Panel imposed a 4-year ban on the Respondents' participation in Saskatchewan capital markets, a $30,000 administrative penalty, and an $8,700 costs award. These sanctions were imposed based on the Respondents' conduct with respect to Investors 1 and 2.

5. By way of a Request for Orders pursuant to subsection 135.6(2) dated January 20, 2023, (the "Request for Financial Compensation"), the Director of the Securities Division is seeking financial compensation for 16 individual investors in an amount totaling $942,057.67. This Request for Financial Compensation is only in relation to one of the two real estate joint venture properties (the "Vaughn Street Venture"). Of the total amount requested, $114,672.53 is in relation to Investors 1 and 2.

6. In broad brush strokes, the Securities Division argued that:

a. The evidence relating to all 16 investors, introduced through 9 sworn witnesses, should be accepted in full;
b. The Merits Decision findings of breaches of sections 27(2)(a) and 58(1) are sufficient to satisfy the first hurdle to a financial compensation order, being a contravention of or failure to comply with the *Act*;
c. The second hurdle to a financial compensation order is also satisfied because the investors all lost an initial investment and/or subsequent cash calls the total amount of which is ascertainable;
d. The third hurdle, a causal link between the breach and the loss, is also satisfied because:
    i. The *Act* only requires that the breach cause the loss "in part" thus as long as a contravention of the *Act* in some way contributes to a financial loss the entire loss can be compensated;
    ii. The specific contravention in this case was the unregistered sale of the 27 Vaughn Street Joint Venture "investment product" to all the investors, not just Investors 1 and 2. And that the focus should be on unregistered dealing, i.e. the breach of section 27(2)(a) of the *Act*; and
    iii. None of the investors would have invested had they known that the Respondents were not registered dealers.

7. Although not quite as clearly articulated, the Respondents argued that:

a. It is unfair to accept evidence from some witnesses because she did not have an opportunity to test their evidence at the merits stage;
b. It is unfair to accept large volumes of documentary evidence for purposes that may be beyond the immediately obvious value because she is not a lawyer and does not have the capacity to sift through every possible use of these documents;
c. The registration status was irrelevant to all of the investors in any event, and they would have invested whether or not the Respondents were registered;

d. The investors' testimony is tainted by leading questions, hindsight, and they only know about registration requirement because of later legal proceedings;
e. The financial difficulties suffered by the real estate joint venture were the result of problems with the property itself, challenges with property management, and/or market forces; and
f. If restitution is going to be ordered for Investors 1 and 2 it should be ordered for everyone because they all took the same risk; but
g. A restitution order will simply look good "on paper" in any event because the Respondents do not have the funds to satisfy any restitution and will claim bankruptcy.

8. There is no dispute between the parties that the Panel's ability to award financial compensation is governed by section 135.6(4) of the *Act*, which says:

> (4) If requested by the Director to do so, the Commission may order the person or company to pay the claimant compensation for the claimant's financial loss, if, after the hearing, the Commission:
>
> (a) determines that the person or company has contravened or failed to comply with:
> (i) Saskatchewan securities laws;
> (ii) a written undertaking made by the person or company to the Commission or Director, or
> (iii) a term or condition of the person's or company's registration;
> (b) is able to determine the amount of the financial loss on the evidence; and
> (c) finds that the person's or company's contravention or failure caused the financial loss in whole or in part.

There is also no dispute between the parties that the Panel's application of section 135.6(4) should be guided by the Saskatchewan Court of Appeal's reasons in *C2 Ventures v Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 53 ("*C2 Ventures*").

9. For the reasons that follow the Panel is not persuaded that this is an appropriate case to order financial compensation for any of the investors. First, accepting evidence in relation to all the investors at this stage of the proceeding would result in procedural unfairness and undermine the integrity of the entire proceeding including this Panel's previous decisions. Second, the findings of specific contraventions that could cause loss in this case were limited to Investors 1 and 2 in the Merits Decision. Third, the assertion that a contravention need only cause a part of a loss in order for the Panel to award full compensation for the loss is without merit. And fourth, even if the Panel accepts the evidence in relation to all investors, and even if the contraventions had been found in relation to all the investors, the evidence does not establish a causal link between the Respondents' registration status and the claimed financial losses in any event.

10. The remaining paragraphs in this decision will begin by revisiting the background from the Merits and Sanctions stages of this proceeding to demonstrate the manifest unfairness of expanding this proceeding at this stage. Particular emphasis will be placed on the Panel's procedural decisions documented in the transcript of proceedings to preserve this proceeding's integrity. By the close of the background section, it will be clear that this Panel's previous conclusions were limited to Investors 1 and 2.

11. This decision will then turn to briefly address the assertion that losses only need be caused in part by a contravention in order to be fully compensated. If the Panel were to accept this assertion as framed, it would mean that market participants can be held liable for the blameworthy conduct of others. This conclusion is inconsistent with the reasoning in *C2 Ventures* and must be rejected.

12. Finally, this decision will turn to the evidence of causation for Investors 1 and 2. Out of caution for the possibility that the previously stated reasons are legally incorrect, the evidence in relation to the remaining investors will also be examined. Overall, even if this evidence is accepted in full it is insufficient to establish a causal connection between the contraventions found in the Merits Decision and the losses claimed by the investors.

II. BACKGROUND

13. In order to assess the appropriate scope of the acceptable evidence at this stage of the proceeding, and in order to determine the appropriate scope of the contraventions as found in the Merits Decision it is necessary to review the record and the Panel's previous decisions in this matter.

14. From the outset of this matter, the Securities Division's theory of the case in relation to the Vaughn Street Venture was that the Respondents acted as promoter for this investment by distributing marketing materials, hosting a client event and speaking about exempt market products, and ultimately building a relationship with Investors 1 and 2 using the individual Respondent's status as an exempt market dealer with Pinnacle Wealth Products. The joint venture agreement, it was argued, qualified as an "investment contract" and therefore a security under the *Act* because Investors 1 and 2 passively invested capital on the expectation of profit through the managerial efforts of the Respondents. This, it was argued, was unregistered, or "off-book", dealing in securities because the joint venture agreement was not approved by Pinnacle Wealth Products.

15. All the evidence on these points was limited to Investors 1 and 2. All the arguments, both written and oral, from the Securities Division mentioned only Investors 1 and 2. Indeed, in written argument the Securities Division expressly advanced an interpretation of the law that the "ultimate issue" was the relationship between investor and promotor. In oral argument the Securities Division specifically argued that the legal test for an investment contract is met:

> "where there's a person that invests money, that person has an expectation of making a profit, and it's expected that the profit is going to be derived through the efforts of a separate person." [emphasis added]

16. The only evidence of expectation heard at the Merits Stage came from Investors 1 and 2. Securities Division's written submissions concluded, at paragraph 132:

> "As such, in selling the JVA investments to [Investors 1 and 2] Ms. Keep was dealing in "off-book" securities. In so doing she acted as a dealer while not being a properly registered dealer nor while registered as a representative of a registered dealer and acting on behalf of that dealer, in contravention of section 27(2)(a) pf the Act." [emphasis added]

17. Securities Division's theory of the case was that this behaviour was also a contravention of section 58(1) of the *Act* because the marketing material did not meet the requirements of a prospectus, and because the marketing material was never filed with and approved by the Securities Division. The Securities Division also argued that this was not a circumstance where an exemption to the prospectus requirement applied, and specifically introduced evidence that Investors 1 and 2 would not have qualified for certain exemptions.

18. Overall, every argument that was advanced by the Securities Division either expressly referenced Investors 1 and 2 or was implicitly tied directly to Investors 1 and 2.

19. In closing submissions at the Merits stage, the Respondents expressly argued that:

> "…[I]t is a very important point to that of all 9 Investors involved in these deals only one chose to make a complaint and I feel that it is quite obvious that it is because they were all well aware of the risks involved and thus why they opted not to testify even though obviously [Investors 1 and 2] and the FCAA put immense pressure on all of them all to do so."

20. Clearly both sides of this dispute argued the Merits on the basis that the transactions with Investors 1 and 2 were the only relevant transactions for the Panel to consider. Based on these arguments and the evidence presented in support of them, the Panel found in its Merits Decision that the Respondents breached sections 27(2)(a) and 58(1) with respect to Investors 1 and 2. The Panel does not accept the Securities Division's revisionist argument that these breaches are sufficient to satisfy the requirement of section 135.6(4)(a) for the investors other than Investors 1 and 2. The Panel did not find that the Respondents were in contravention of the *Act* by selling an investment product to a universe of investors.

21. Moreover, the Panel is not inclined to accept evidence from the investors other than Investors 1 and 2 because to do so would be manifestly unfair to the Respondents and would compromise the integrity of the proceeding.

22. At the opening of both the Sanctions Hearing and the Financial Compensation Hearing the Panel was very clear that it was not prepared to reopen the Merits Decision or to re-argue points that had already been decided.

23. Yet, at the Financial Compensation Hearing the first question posed to each of the investors other than Investors 1 and 2 by the Securities Division was some variation of the following:

> "And if you could just explain, what were the circumstances or how did you become invested in 27 Vaughn?"

It will be appreciated that the response to this question from all the investors other than Investors 1 and 2 is direct evidence of the nature of the relationship between that investor and the Respondents. It is also direct evidence of an investment in the Vaughn Street Venture. This evidence could have and should have been introduced at the Mertis stage of this proceeding.

24. To demonstrate the manifest unfairness to the Respondents it is only necessary to consider the response to this question from one of the witnesses. This investor said:

> Q. Okay. So if you could just briefly explain, how did you get involved with 27 Vaughn?
>
> A. On that particular location I had a friend of mine that was looking to invest in another apartment building that myself and Edna were involved in. We had oversubscribed as in we didn't need his investment at that particular location, and I offered to him to check with Edna about being a potential investor at the Vaughn location.
>
> Q. Okay. And so did you end up – I think you said you ended up investing in 27 Vaughn?
>
> A. As far as 27 Vaughn is concerned, with the investment of my friend, Edna offered me a 3 percent stake in the building as interest for finding an investor.
>
> Q. Okay. So just to be clear, did you make any principal monetary investment in 27 Vaughn?
>
> A. No principal, just I was responsible for any cash calls, which I provided during that time period.

25. On the basis of this evidence, this investor's relationship with the Respondents is obviously very different from the relationship that the Respondents had with Investors 1 and 2. There is no mention of client appreciation nights, no mention of marketing materials, no mention exempt market products or Pinnalce Wealth, and no mention of an investment of initial capital. Rather, it appears that this investor obtained a percentage ownership in the Vaughn Street Venture by soliciting other investors to contribute capital. It is a fair and open question whether this behaviour is more consistent with being a passive investor or being a promoter. Indeed, the cross examination of this witness included the following exchange:

> Q. And are you registered as a dealer?
>
> A. No. I have investment properties as well, and I'm not registered as a dealer either.
>
> Q. And you have investors as well, and you're not registered as a dealer, correct?
>
> A. I have partners in my case. I don't have any joint ventures in my company.

26. Shortly after this point in the cross examination the Panel intervened as this line of questioning was not related to any evidence this witness had given in chief. During the course of the debate on whether to permit the Respondents to continue down this path, Ms. Keep made the following point:

> "Well I think this is very relevant. <u>I didn't have [this witness] to ask questions to when we were in the hearings, and this type of questioning was not even coming up,</u> so I would –

> maybe I'll ask you guys, does everybody have to be registered as a dealer or only select people?" [emphasis added]

27. At the time the Panel was not inclined to continue down the Respondent's desired road of questioning. The Financial Compensation Hearing is not an opportunity to explore whether someone other than the Respondents contravened the *Act*. However, neither is it an opportunity to explore whether the Respondents are guilty of additional contraventions which were not found in the Merits Decision.

28. The Panel finds Ms. Keep's point to be persuasive. Evidence from investors other than Investors 1 and 2 as to how they became involved in the Vaughn Street Venture did not come up at the Merits or Sanctions stages. The Respondents did not have an opportunity to face this evidence head on and cross examine on it *before* a contravention was found. This evidence would have been very relevant to the nature of the relationship between the investors and the Respondents, which is the foundation of Securities Division's theory of this case of unregistered dealing in an investment contract.

29. In addition, evidence as to whether any of these additional investors qualified for an exemption would have been relevant to the allegation that the Respondents breached section 58(1) of the *Act* by failing to file a prospectus. Proceeding to seek financial compensation, in part, on the basis of a failure to file a prospectus for investors other than Investors 1 and 2 deprives the Respondents of the opportunity to raise the defence that a prospectus was not required.

30. The Panel finds that it would be manifestly unfair to the Respondents to expand the scope of this proceeding to include evidence of contraventions in relation to investors other than Investors 1 and 2 at this juncture of the proceeding.

31. Separate and apart from the unfairness to the Respondents, expanding the scope of the investors involved at this stage also compromises the integrity of the proceeding.

32. On the very first day of the Merits Hearing, before any evidence had been introduced, the Panel made it expressly clear that interested members of the public were permitted to attend and observe the proceeding provided that they would not be called as witnesses. The Panel was clear that if someone was going to be called as a witness then that person needed to be excluded from the hearing until after they had given their testimony. A member of the public was in attendance and identified himself. After being identified the following exchange took place:

> [Chairperson] Q: All right. And you're here as an observer, are you?
>
> A: Well, I'm involved with the two joint ventures that will be probably talked about in the – in the trial, so I – I just wanted to phone in to clarify that because I know Edna had made a – raised a concern about that, and I just wanted to know whether I would be – should be on or can be still as an observer or not.

33. The concern alluded to in this passage was an express objection by the Respondents to people who might be called as witnesses observing the proceeding as members of the public. Following this

exchange, the Panel expressly asked the parties: "… do either of you intend to call this individual … as a witness?". Counsel for the Securities Division at that time stated: "I do not expect to be calling him as a witness for staff." The Respondents indicated that they would not be calling this person as a witness either, and on that basis this person was permitted to attend and observe the entirety of the Merits Hearing.

34. This exact same individual was called as a witness on behalf of the investors other than Investors 1 and 2 at the Financial Compensation Hearing. This witness proceeded to give evidence about how he became involved in the Vaughn Street Venture. If the Panel accepts this evidence at this stage, as the Securities Division invites the Panel to do, it will undermine the integrity of the entire proceeding. The Panel is not prepared to accept evidence from witnesses who observed the Merits Hearing and had the opportunity to review the Merits Decision prior to giving their evidence on the substantive merits of the allegations against the Respondents.

35. The Securities Division could have and should have brought this evidence forward at the Mertis Hearing. To borrow the words of the Saskatchewan Court of Appeal:

> "… it appears the Director maintained an unexpressed intention to request compensation orders, the [Merits Stage] should have reflected that intention and should have set forth [the evidence] the Director had to act on that intention. However, the failure to do so in these circumstances elevates that failure from a procedural oversight to an implicit recognition that the [Merits Decision] resolved all statutory claims [of contravention] against [the Respondents]." *C2 Ventures* at para. 29.

36. To be clear, the Panel is expressly rejecting the Securities Division's invitation to accept the evidence from witnesses other than Investors 1 and 2. Instead, the Panel is exercising its discretion to reject this evidence from the record. The Panel finds that accepting this evidence would be manifestly unfair to the Respondents and would compromise the integrity of the entire proceeding.

37. The Panel is also expressly rejecting Securities Division's argument that the contraventions found with respect to Investors 1 and 2 should be subjected to revisionism and expanded to include the other investors. The theory of the case, the evidence, the arguments from the outset, and the Panel's findings in the Merits Decision were limited to Investors 1 and 2. The Panel has been crystal clear that it is not prepared to revisit the findings from the Merits Decision at later stages of this proceeding.

38. These findings are sufficient to dispose of the requests for financial compensation for all the investors other than Investors 1 and 2. There is no breach of the *Act* in relation to these investors on this record. The Panel has accepted no evidence of loss or of causation in relation to these investors. There is therefore no basis to award financial compensation as none of the requirements of section 135.6(4) have been met with respect to these investors.

39. These findings leave only the issues of quantification of financial loss and causation with respect to Investors 1 and 2 to be decided. However, out of an abundance of caution for the possibility that the

above analysis is legally incorrect with respect to the other investors, the Panel will also examine, in the alternative, the evidence for causation for investors other than Investors 1 and 2.

40. Prior to turning to the causation analysis, a brief comment is necessary on the Securities Divisions' argument that a breach only need cause financial loss in part in order for the full loss to be compensation.

III. CAUSATION – IN WHOLE OR IN PART?

41. Section 135.6(4)(3) allows a Panel to award financial compensation where it "finds that the person's or company's contravention or failure caused the financial loss in whole or in part." The Securities Division argued that the "in part" language contained in this clause means that where a contravention "at least in part cause[s] the losses suffered by investors" the full amount of the financial loss can be compensated by the Panel. There is no statutory interpretation analysis offered in support of this argument. There is no precedent from any securities tribunal offered in support of this argument. And there is no case law offered in support of this argument.

42. The Panel rejects this argument. It is inconsistent with the binding guidance from the Saskatchewan Court of Appeal:

> The third [requirement], that the "contravention or failure caused the financial loss in whole or in part", must obviously follow from the first two because it links them together, thereby triggering a panel's authority to order the person who committed the contravention to pay compensation to the claimant. The requirement of proof of a causal connection between a contravention (s. 135.6(4)(a)) and a loss (s. 135.6(4)(b)) is necessary because civil liability is generally imposed by the state only in accordance with the principle that individuals who cause harm to others must take responsibility for their actions. [*C2 Ventures* at para. 39]

43. If the Panel were to accept the Securities Division's argument, it would mean that respondents could be required to compensate claimants for financial losses caused by the actions of others. The preferable interpretation is that the words "in part" mean that where the contravention (i.e. the actions of a respondent) have partially caused a loss, the loss may be partially compensation in proportion to that causation.

44. In this particular case, the implications of this interpretation are that only the initial investment made by investors can be the subject of an award of financial compensation. The contravention in question was unregistered dealing in a security (i.e. trading in a security without being properly registered) and trading in a security without filing a prospectus where one was required. Both of these contraventions are complete the moment that the trade is completed. Once the security is acquired in exchange for the investment the contravention is complete. Where, as here, there is no further finding of fraudulent conduct or other contravention, subsequent payments or cash calls pursuant to the terms of a contract are not properly the subject of an award for financial compensation. However, this point is moot because based on the analysis below the Panel is not satisfied that any loss was caused by the contraventions in this case.

45. Before moving on it should be noted that there was no dispute about the quantum of any initial investment or subsequent cash call on the facts of this case.

IV. CAUSATION – TESTIMONY, ANALYSIS AND DECISIONS ON THE MERITS

46. At the outset it should be noted that there is no evidence on the record that the failure to file a prospectus when required to do so in any way contributed to the losses claimed. Despite the broad language in the Request for Financial Compensation, in argument the Securities Division was clear that the contravention of concern was unregistered dealing (s. 27(2)(a)). Indeed, in written submissions the Securities Division argued that "the specific contravention found at the merits hearing was the unregistered sale of the 27 Vaughn St. investment product by the Respondents." The Panel therefore finds that the contravention of section 58(1) did not in any way cause any loss.

47. The remainder of this section will examine the available evidence of causation. It will proceed investor by investor beginning with Investors 1 and 2 and then proceeding to the remaining investors. The totality of the evidence, relating to both cash calls and initial investments, will be considered.

Investors 1 and 2

48. The evidence for Investors 1 and 2 was given by Investor 2. As Investors 1 and 2 are a married couple, we will accept Investor 2's evidence on behalf of both of them.

49. In examination in chief the following evidence in relation to cash calls was presented:

> Q. Okay. And so can you just tell me how this investment turned out? What happened?
>
> A. … That was the only payment there ever was. The rest of the time we got nothing. Like, the 400 to $700 a month never materialized except for that one-time payment. The building was operated at a loss. The whole time we had frequent cash calls to provide additional money to keep the operation afloat. Eventually the building was sold in – I believe January of 2022 was finally when it sold after the bank had foreclosed on the mortgage and various other things had gone wrong, it was – basically as an investment it was a dog from the get-go.
> …
>
> Q. And, [Investor 2], you, I think, briefly made mention of cash calls. Just briefly, in general, what were the cash calls for, what were they about, why were they needed, that sort of thing?
>
> A. Well, the joint venture agreement provided for the directors to ask for cash from the investors if the revenue generated by the property did not meet expenses, and that happened every year from 2017 to 2020, according to Ms. Keep. We were asked to provide additional cash.
> …
> Q. Okay. And I can't remember if I asked you, do you recall why you had to make this payment?

A. Yeah, because the – the revenue generated by the building was insufficient to cover the operating and maintenance costs of the building, so we had to make up the difference, the investors.

There was no cross examination on this point, but the evidence is clear. The cash calls were required because the rental property failed to generate sufficient revenue to cover the expenses. It was a term of the contract between the parties that these sorts of payments could be required. Rental properties failing to generate sufficient revenue is not a breach of the *Act*. An injection of capital into a business without a trade in a security is not a breach of the *Act*. This evidence is in no way linked to unregistered dealing. As a result, there is no evidence of a causal link between the cash calls for Investors 1 and 2 and the contraventions as found in the Merits Decision. There is no basis to award financial compensation for these amounts.

50. Investor 2's evidence regarding causation for the initial investment is as follows:

Q. Okay. And, again, just briefly if you could, can you just explain, how did you come to be aware of this investment opportunity?

A. It was brought to our attention by our financial advisor at the time, who was Marja Harmer, a business partner of Edna Keep, acting on behalf of Edna, as far as I know. She was – it was Edna's firm that was putting together these joint ventures that we were getting involved in, and it was Marja Harmer who basically sold us this investment.

…

Q. So I take it, again, as we sit here today right now, you are now aware that Ms. Keep – she was found to have violated The Securities Act in dealing with 27 Vaughn. You're aware of that?

A. Yes.

Q. And more specifically, you're now aware that she was found to have been an unregistered dealer in getting investors in 27 Vaughn. You're aware of that?

A. Yes.

Q. Were you aware of those circumstances at the time of your investment?

A. No.

Q. Okay. So if you had been aware of these circumstances at the time of your investment, would you still have invested?

A. No.

Q. Why do you say that?

A. Well, had I known she was not licensed to do what she was doing, and in fact, as it turned out, did not know what she was doing, no, I wouldn't have invested. [emphasis added]

51. In cross examination Investor 2's evidence was:

Q. What made you think I was a registered dealer in the first place?

A. Because you were dealing. What else would I assume?

Q. You didn't answer my question. What made you think I was a registered dealer? Like, was I dealing cards? I don't know – I don't know what you're saying. I gave you no indication that I was a registered dealer. You have said through all your documents you did not even talk to me until we signed the documents and that Marja was your financial advisor, so where does it come up that I was a registered dealer?

A. You were presented to us by Marja as an expert in the field of real estate investments.

Q. Mmhmm. And –

A. We met you at the signing of the Robinson joint venture agreement, as I recall, and you always represented yourself as – as an expert in this business.

Q. Yeah. And I believe that you guys –

A. It never occurred to me to challenge your credentials.

Q. Oh, okay, but I never at any point told you I was a registered dealer. You just assumed I was and didn't –

A. Well, it seems a reasonable assumption under the circumstances because of what you were doing.

Q. But in fact you never knew anything about registered dealers until you started looking into this and this whole schmozz came up about, you know, FCAA and prospectuses and not filing a prospectus, and Marja was your registered dealer, not – not I anyway. I was a joint venture partner in an apartment building.

A. So what?

Q. So you read – and you read my book, right? You read my book?

A. Multiple Ways to Wealth, yes.

Q. Yeah. And in there, right, it says this book is presented solely for educational and entertainment purposes, we're not offering legal, accounting or other professional service advice, so stated long before you ever even invested with me, and at no point did I put out that I was a registered dealer representative or talked about it or even brought it up.

A. Well, I don't see the point of that claim. I mean, you were dealing in investments in real estate, and we were involved in it. I assumed you knew what you were doing and you were licensed and registered to do what you were doing. In the absence of information to the contrary, why would I assume anything else?

And that standard boilerplate disclaimer in your book, that's – that's just standard practice. You know, you can't – you can't pretend to be giving advice in a book. You know, you have to – you have to tell people that this is for entertainment and information purposes only because you're not saying in your book you're –

Q. Yeah, but at no point –

A. – you're not operating as a licensed dealer; you're just telling a story.

Q. Yeah, well, I guess that's your assumption, so – okay. That's the only question I had.

A. Well, it's a perfectly reasonable assumption under the circumstances considering what you were doing.

Q. Yeah, seven years of course it is because you're coached by a lawyer that says you got to be a dealer representative, and all this other stuff, it's all made up, but, you know, that's—

A. We were not coached by a lawyer. We were advised by a lawyer.

Q. Same thing.

A. No, I don't think so.

Q. There was no – nothing said about me being a registered or unregistered dealer. I was a joint venture partner in an apartment building deal, our second deal that we did on our own ever, so, again, you're surmising the expertise or –

A. You claimed to have expertise. What are you talking about? [emphasis added]

52. The Panel has a few comments on this evidence.

53. First, it is clear based on this passage and evidence that was available at the Merits Hearing, that Investors 1 and 2 chose to invest in the Vaughn Street Venture based on advice from Marja Harmer, their financial advisor. Indeed, in the forms filed requesting compensation for financial loss, under the heading "Name of the individuals you dealt with:" Investors 1 and 2 both wrote "Marja Grobbink Harmer". Investors 1 and 2 filed a complaint with the MFDA against Marja Harmer (a decision dated March 22, 2022 found her culpable for, *inter alia*, acting in a position of conflicting interests). Investors 1 and 2 have also sued Marja Harmer (Q.B.G. 362 of 2020, judicial centre of Regina). The Panel finds as a fact that Investors 1 and 2 did not rely on or trust the Respondents' registration status in order to make the initial investment.

54. This point is sufficient to dispose of the Securities Division's argument that "fidelity to the reasoning in" *Re Blouin*, 2021 CanLii 142780 (SKFCAA) ("*G Blouin*") and *Re Blouin*, 2022 CanLii 9932 (SKFCAA) ("*F Blouin*") "entails no other interpretation". In both *G Blouin* and *F Blouin* the contraventions causing the losses included *advising* while not registered to do so (*G Blouin* at paras. 4a, *F Blouin* at paras. 4a), and failing to deal with a client honestly, fairly, and in good faith (*G Blouin* at para. 4b., *F Blouin* at para. 4b.). There was evidence in both cases that the claimants trusted the Blouins as an adviser and believed they was properly registered (*G Blouin* at paras. 8, 15, 17, and 18; *F Blouin* at paras. 8, 19, 22, and 23). With respect, there can be no question of fidelity to the current case. The facts and contraventions in this case are divorced from the reasoning in the Blouin decisions. Investors 1 and 2 did not trust and rely on the Respondents as their adviser, they relied on Marja Harmer as their adviser.

55. Second, to the extent, if any, that Investors 1 and 2 relied on the Respondents' status or expertise, it was limited to expertise in managing rental real estate properties. Expertise in real estate rental properties or property management is materially different from registered dealer status under the *Act*. Operational business activities, even if they cause the venture to fail, do not establish the causal link between unregistered dealing and loss: *C2 Ventures* at para. 45.

56. Third, Investor 2's assertion that Marja Harmer was acting on behalf of Ms. Keep is not evidence. It is a legal argument that Ms. Keep ought to be held liable for the behaviour of Marja Harmer. The Panel is not prepared to accept this legal argument. The actual legal argument submitted by the Securities Division does not invite the Panel to subscribe to this theory or accept that portion of Investor 2's testimony. There is no legal authority provided to support this proposition. The Panel rejects this portion of Investor 2's testimony.

57. Fourth, we find the Respondents' criticism of Investor 2's testimony to be persuasive. In response to the assertion that Investor 2 did not know anything about registration requirements at the relevant time, Investor 2 responded "So what?". The Panel's view is that Investor 2's evidence on this point is self-serving and coloured by hindsight. As a result, his assertion that he assumed the Respondents' registration status is unreliable. This is consistent with Investor 2's statement in chief that he was unaware of any unregistered dealing by the Respondents at the time of the investment.

58. Overall, the Panel is not satisfied that the Respondents' contravention – acting as a dealer without being properly registered – caused the losses claimed by Investors 1 and 2 in whole or in part.

Investor H

59. Investor H testified that he is a retired accountant and that he was testifying on behalf of both himself and his wife. Investor H's evidence on cash calls was:

> Q. Okay. And so if you could just, again, state or explain what ended up happening, how did this turn out?
>
> A. I guess with the property itself, whether it was a downturn in the market or just bad management, the property started losing money, so we ended up putting more money in through cash calls. …
> …
>
> Q. Okay. I'll go over another set of documents in a moment, but first I'd like to ask you briefly – I believe you mentioned cash calls. You know, just in general can you explain why did the cash call have to be made, what was the money being used for, that sort of thing?
>
> A. Well, the cash calls – like I said, the – obviously the management of the corporation or the downturn in the market, the rents weren't enough to cover the operating costs and the mortgage payment of the property, so there were shortfalls in regards to cash flows to keep the building up and running, so she would request cash calls from all the investors to make up the shortfalls. [emphasis added]

Investor H was not cross-examined on this point, but the evidence is clear. As far as Investor H – a retired accountant – is concerned, the cash calls were caused by either market forces or mismanagement of the property. The Panel is satisfied that the Respondents' contravention of dealing in securities while not being properly registered to do so was not the cause of these cash calls.

60. With respect to the initial investment, Investor H testified in chief as follows:

Q. Okay. And can you just briefly explain how did you and your wife come to hear about this, get involved, that sort of thing?

A. We had an email sent to us about an investment opportunity through our IG representative Marja Harmer who was a business partner of Edna Keep. She presented us with some financial information regarding this investment that we went through, asked a few questions, and then we ended up investing in this property.
…

Q. Okay. So, again, as we sit here today, I take it that now you are now aware that Ms. Keep was in violation of The Securities Act when she got people involved with 27 Vaughn. Are you aware of that?

A. Yes.

Q. And more specifically, again, as you sit here today right now, you are aware that, more specifically, Ms. Keep was acting as an unregistered dealer in getting investors in 27 Vaughn. You're aware of that?

A. Correct, yeah.

Q. Okay. Did you know this at the time of your investment?

A. no.

Q. Okay. If you had known this at the time of your investment, would you have still have invested in 27 Vaughn?

A. No.

Q. Why not?

A. Because then we would have felt that there was no truth that she's actually involved or is an actual real estate – registered with the Real Estate Commission that she is able to sell these products. [emphasis added]

61. In cross examination Investor H's evidence on causation was:

Q. I don't need to see the document. I just want to ask [Investor H], what made you think that I was a registered dealer representative? I at no time told you that.

A. Well, based on the information we received from your business partner Marja Harmer, she indicated that you guys were business partners and you were a real estate expert.

Q. Okay. And who defines "real estate expert"? What is that defined as?

A. Well, that's the information she provided us, so we assumed at that point in time that you guys were professionals in both real estate and financial advising.

Q. Okay, so another assumption, there, okay, because I never said anything that I was a financial advisor. As a matter of fact, I left Assante a long time ago, and so assumed professional – maybe even a realtor is kind of the understanding that I heard. Were you thinking as a realtor?

A. Well, I didn't really say realtor. I said she indicated real estate or realtor – realtor expert, whatever that meant.

Q. Okay, but what did you take it to mean?

A. Well, I was – we assumed at that point that you were very knowledgeable in the real estate industry, and you would be able to pick up very good properties for these investments. [emphasis added]

62. The first challenge with Investor H's testimony from the point of view of causation is the same as the first challenge with Investor 2's testimony. It is clear that Investor H, and his wife, were relying on the financial advice they received from Marja Harmer in order to purchase an interest in the Vaughn Street Venture. Investor H and his wife participated in the same MFDA proceeding that Investor 2 participated in. Investor H and his wife also indicated that they dealt with "Marja Grobbink Harmer" on their forms requesting financial compensation. Investor H and his wife have commenced their own civil action against Marja Harmer (Q.B.G. 361 of 2020, judicial centre of Regina). This evidence does not establish that Investor H and his wife were relying on and trusting the Respondents' registration status, instead it establishes that they were relying on Marja Harmer's status as a registered adviser.

63. The second challenge with Investor H's testimony from the point of view of causation is that it confuses expertise in real estate with registration as a dealer under the *Act*. The fact of the matter is that the individual Respondent was registered as an exempt market dealer through Pinnacle Wealth at the time the Vaughn Street Venture was marketed off-book. But there is nothing in Investor H's testimony to suggest that he was aware of that fact or that it was in any way relevant to the decision to invest. Instead, Investor H's testimony is that he thought the Respondents were experts in the real estate industry but not realtors. The Panel finds that Investor H thought the Respondents were expert property managers. The Respondents may or may not have this expertise, but it is irrelevant to registration status under the *Act*.

64. The third challenge with Investor H's testimony is that it is subject to the same criticism as Investor 2's. The leading, self-serving, and coloured-by-hindsight answer that he would not have invested if he had known that the Respondents were in violation of the *Act* is not reliable enough to assign any weight to it.

65. Overall, the Panel is not satisfied that the Respondents' contravention – acting as a dealer without being properly registered – caused the losses claimed by Investors H and his wife. There is no evidence to suggest that Investor H and his wife thought the Respondents were registered as dealers under the *Act*, nor that they invested in the Vaughn Street Venture in reliance on that registration status.

Investor W

66. Investor W testified on behalf of herself and her husband. Her evidence with respect to the cash calls was as follows:

> Q. So, [Investor W], you mentioned previously in your testimony that you had to make some cash calls. Again, If you could just briefly explain why were the cash calls made, what were they for, why were they needed, that sort of thing?
>
> A. Well, in November of 2017 our financial advisor phone us and said there were unforeseen problems at Vaughn and there was a cash call for us for $8,571, and she just said unforeseen problems. In 2018 we got a letter from Edna that there wasn't enough money to continue making – paying all the expenses, and it was December 28th she sent the cash call, and we were going to redeem some more investments to pay it, and others informed us that they weren't paying it right at that time, so then we ended up just paying it in installments. And then there was another one in 2019 saying the building wasn't – didn't have enough revenue to cover expenses.

67. Investor W was not cross-examined regarding the cash calls, but the evidence is clear. There is no suggestion that the cash calls were caused by anything other than challenges with the property or insufficient revenue. There is nothing in this evidence linking the cash call with the contravention of dealing in securities while not being properly registered to do so. The Panel is satisfied that the Respondents' contravention of dealing in securities while not being properly registered to do so was not the cause of these cash calls.

68. Investor W's testimony regarding causation for the initial investment was:

> Q. And if you could just explain, what were the circumstances or how did you become invested in 27 Vaughn?
>
> A. Our financial advisor had sold us a previous so-called cash flow investment and told us that one was being sold, and if we wanted to continued with a cash flow investment, we could invest in 27 Vaughn Street.
> …
> Q. Okay. So, again, as we're talking here today, I take it you're now aware that when Ms. Keep had you invest in 27 Vaughn, she was in violation of The Securities Act?
>
> A. Right.
>
> Q. you now know that?
>
> A. Yes, I know that now.
>
> Q. Okay. And, again, as of today, right now, I take it you're also aware more specifically that when Ms. Keep got you to invest in 27 Vaughn, she was acting as an unregistered dealer. Do you know that now?
>
> A. I know that now.
>
> Q. Okay. Did you know anything of that nature at the time?

A. No.

Q. Had you known this at the time, would you still have invested?

A. Heavens, no.

Q. Why not?

A. I wouldn't have thought it was a legitimate project if they weren't registered to do it.

69. In cross examination Investor W's evidence was:

> Q. Hi [Investor W]. Okay. So my first question is, is you had said that you figured I was a registered dealer. Where did you get that idea from?
>
> A. I didn't know anything about registered dealers. Marja just told me that you were her partner and that you left [sic] after this, and we trusted Marja, so we trusted you too.
>
> Q. Okay. So you didn't think I was a realtor or a financial –
>
> A. Yes, Marja said you were in real estate, that's what she told us, that you looked after this kind of thing and that you would be managing it, and we wouldn't have to do anything, you and — with her help would look after everything. It was just an investment for cash flow according to her. [emphasis added]

70. The first challenge with Investor W's testimony from the point of view of causation is the same as the first challenge with Investor 2's and Investor H's testimony. It is clear that Investor W, and her husband, were relying on the financial advice they received from Marja Harmer in order to purchase an interest in the Vaughn Street Venture. Investor W and her husband participated in the same MFDA proceeding that Investor 2 and Investor H participated in. Investor W and her husband also indicated that they dealt with "Marja Grobbink Harmer" on their forms requesting financial compensation. Investor W and her husband have commenced their own civil action against Marja Harmer (Q.B.G. 360 of 2020, judicial centre of Regina). This evidence does not establish that Investor H and his wife were relying on the Respondents' registration status, instead it establishes that they were relying on Marja Harmer's status as a registered adviser. The Panel is not prepared to hold the Respondents accountable for the trust Investor W and her husband placed in Marja Harmer.

71. The second and third challenges with Investor W's testimony are identical to the challenges with Investor H's testimony. Investor W also conflates expertise in real estate with registration under the *Act,* and her assertion that she would not have invested then if she only knew what she knows now is not reliable enough to carry any weight.

72. Overall, the Panel is not satisfied that the Respondents' contravention – acting as a dealer without being properly registered – caused the losses claimed by Investors W and her husband. There is no evidence to suggest that Investor W and her husband thought the Respondents were registered under the *Act*, nor that they invested in the Vaughn Street Venture in reliance on that registration status.

Investor Ba

73. Investor Ba testified on behalf of himself and his wife. His evidence regarding cash calls was:

> Q. So I'm going to bring up another document in a moment here, sir, but you previously mentioned having to make cash calls. Can you just explain generally what was your understanding, why did these cash calls have to be made, what were they being used for, things of that nature?
>
> A. Well, it was – one of the major things right off the start was the boilers. They were supposed to be in good order, we were told, and before long they weren't working correctly, and they had to be replaced or fixed. Some of the other building needed to be – the roof had to be worked on. Eventually one corner of the building was run into. There was a cost to fix that. There was supposed to be insurance.
> …
>
> Q. Okay. And having looked at these images, these cheques, and reviewing the details, are the details you've looked at consistent with what you recall happening?
>
> A. Well, these were just to keep the building going supposedly and fixing it up, as I mentioned, the boilers, the roofs, the –
>
> Q. Yea, so my question is really do you remember these cash calls being paid?
>
> A. Yes, I do.

74. Investor Ba was not cross-examined with regards to the cash calls, but the evidence is clear. There is no suggestion that the cash calls were caused by anything other than challenges with the property that needed to be paid for. There is nothing in this evidence linking the cash call with the contravention of dealing in securities while not being properly registered to do so. The Panel is satisfied that the Respondents' contravention of dealing in securities while not being properly registered to do so was not the cause of these cash calls.

75. Investor Ba's evidence on causation for the initial investment was:

> Q. and if you could just in general briefly explain, how did you become – or how did you get involved with this?
>
> A. Well, a good friend of mine mentioned Ms. Keep was looking for more people to venture money into these projects, and we met with Edna at her house.
> …
>
> Q. All right. And as we're sitting here today discussing this, I take it you're now aware or you no know that Ms. Keep was in violation of The Securities Act when you invested in 27 Vaughn? You now know that, right?
>
> A. Right.
>
> Q. And, more specifically, I think you're aware that when Ms. Keep got you invested in 27 Vaughn, she was acting as an unregistered dealer. You know that now?

A. Right.

Q. Okay. Did you know anything of that nature at the time?

A. No, we did not. We thought that we were dealing with a professional broker. I'm not sure broker is quite the right word, but we thought she was an up-to-date and licensed person to be doing these kind of ventures.

Q. Okay. So if you had known that she was not licensed, in violation of The Securities Act, that sort of thing at the time, would you have invested – or, sorry, I just asked you that. So why do you say no, I guess, my question, really.

A. Well, if we would have known anything like that to start with, we would not have put out money into anything like that. We thought she was a licensed person who had been doing these kind of things.

76. In cross examination Mr. Baht's evidence was:

Q. So you had said that you were referred to us by a friend of yours to put money into the real estate project. What made you decide to invest with us?

A. Well, this friend of mine had given me some deals that he had had with you and thought that they were good at that time, so that's when I decided to invest with you.

Q. And at any time did he tell you I was a registered dealer?

A. I can't recall that he did, but I thought anybody doing this kind of business, handling this kind of money, that they would be registered.

Q. Or did the lawyer tell you that that's how it's supposed to work?

A. What was that?

Q. Or did a lawyer tell you that that's how that's supposed to work, because at the time I think you mentioned that you had no idea of what a registered dealer was or anything like that?

A. I just thought that anybody in that business would be registered.

Q. Yeah, after the fact, though, right? At the time you never put any weight on it?

A. No, I didn't. [emphasis added]

77. Investor Ba's evidence that he thought he was dealing with a registered person and that he would not have invested had he known that the Respondents were not properly registered is directly contradicted by his answer in cross examination. Investor Ba conceded when pressed that he placed no weight on registration status at the time of the investment. To the extent of any inconsistency between Investor Ba's evidence in chief and his evidence in cross examination the Panel prefers and relies upon the concession in cross examination. The evidence in chief is too leading, self-serving, and informed by hindsight to be reliable in the face of such a clear admission.

78. With respect to Investor Ba and his wife, the Panel is satisfied that the Respondents have made out their argument that these investors would have invested irrespective of registration status. On his own admission, Investors Ba placed no weight on registration status at the time of the investment. In other words, it was irrelevant and had no bearing on his decision to invest. There is therefore no causal link between the contravention of dealing in securities while not being properly registered to do so and the losses claimed by Investor Ba and his wife.

Investor F

79. Investor F is the investor whose testimony is reproduced above under the Background section. Investor F did not make any form of initial principal investment, but instead obtained an interest in the Vaughn Street Venture in exchange for finding additional investors. Investor F's only financial contribution to the Vaughn Street Venture was cash calls. His evidence in that respect is as follows:

> Q. Okay. And so what ended up happening with 27 Vaughn? Did it make any money?
>
> A. They initially had made money, and eventually they ran into some difficulties with a variety of issues, some insurance claims, different things that were happening. As far as the building itself, it was needing extra money for cash calls, so after a while I think the investors challenged it, and that is when it didn't – wasn't able to perform its payment anymore, and it ended up going to receivership with their principal mortgage company.
> …
>
> Q. Okay. And you mentioned cash calls previously. Can you just briefly explain, what was your understanding, why were the cash calls required, what were they being used for, why was additional money needed, that sort of thing?
>
> A. Well, basically a cash call per se is used when a particular operation is short in funds due to either problems with – with funding various operations of the building, whether it be a renovation or just not – not enough revenue. Either way, the long and short of it is, is that when that situation happens and there's money required to pay the bills, they come to the investors and ask them for money to help get them through the period of trying to get them through to the next period so they don't have any troubles with – with default on any bills. [emphasis added]

80. Investor F was not cross-examined on the cash calls. Although his evidence is not quite as clear as some of the other investors, what is clear is that there is no suggestion that proper registration status or lack thereof in any way contributed to the need for cash calls. The Panel is satisfied that there is no evidence linking the cash calls from Investor F to the Respondents contravention of dealing in securities while not being properly registered to do so.

Investor Bu

81. Investor Bu testified on behalf of herself and her husband. Her testimony with respect to cash calls was as follows:

Q. So I should ask you first before we get to that – you referenced cash calls – can you just explain what was your understanding – what were the cash calls for, or why was more money needed? What was going on there?

A. Well, there were various reasons given by Edna claiming that the apartment was – complex was losing money and that it was our responsibility to make up those losses.

82. Investor Bu was not cross-examined at all. Although it seems clear that Investor Bu has suspicions about the reasons provided by the Respondents for cash calls, she does not offer any evidence to contradict the explanation provided. Nor does Investor Bu provide any evidence to suggest an alternative reason why the cash calls were required. There is nothing in her testimony to link the cash calls to the contravention of dealing in securities while not being properly registered to do so. The Panel is satisfied that there is no basis to award financial compensation for the cash calls in relation to Investor Bu and her husband.

83. With respect to the initial investment, Investor Bu testified as follows:

Q. Okay. And if you could just briefly explain, what were the circumstances that led you to invest in 27 Vaughn?

A. Okay. Edna Keep and I use the same hairdresser, and she – the hairdresser knew that [my husband] and I were interested in investing in real estate, and she mentioned knowing Edna Keep, a real estate investor, and as a result from that discussion I set up a meeting for Edna to meet with [my husband] and I at our home, and Warren Keep attended as well. They prevented [sic] the investment information about 27 Vaughn with us and gave us a prospectus at that time. Edna outlined that we would be investing in a joint venture agreement in this 27-unit apartment, supposedly with a new roof, boiler and windows.

…

Q. And, again, as we sit here today, I take it you're now aware that when Ms. Keep got investors in 27 Vaughn she was in violation of The Securities Act. You now know that?

A. I now know that, yes.

Q. Okay. And more specifically, I take it you're aware that when, again, Ms. Keep was getting investors in 27 Vaughn, she was acting as an unregistered dealer. You're now aware of that?

A. I am now aware of that as well.

Q. Did you know this at the time you and [your husband] got involved?

A. No.

Q. Okay. So if we could turn back the clock, if you had known this at the time, would you still have invested in 27 Vaughn?

A. No. I wish we had never invested in Vaughn.

Q. So why do you say no?

A. I'm sure my husband – no.

Q. Why do you say no?

> A. Well, I think – I guess because I feel like Edna took our funds by misrepresenting the condition of the apartment and then proceeded to mismanage the investment and use creative accounting practices to justify her cash calls and really has not once claimed responsibility for her actions or for the failure of this investment at all. [emphasis added]

84. The testimony from Investor Bu suffers from slightly different challenges than the other investors. The biggest challenge is that significant portions of this testimony are not actually evidence, they are allegations. The comments relating to the supposed condition of the investment property, "misrepresenting the condition of the apartment", and "creative accounting practices" are all novel allegations that the Respondents have contravened the *Act* in ways never previously discussed. Investor Bu had her opportunity to bring whatever complaints and allegations she wanted to at the Merits stage of this proceeding, she chose not to do so. The Panel is not prepared to entertain these unsupported allegations at this juncture.

85. Further, with respect to the allegation that there were "creative accounting practices", it is noteworthy that the actual accounting records are not in evidence before the Panel. The Panel is not prepared to accept Investor Bu's opinion on accounting documents that the Panel has not reviewed, particularly given that Investor H – a retired accountant – did not mention any similar concern.

86. The evidence presented about how this investor came to be involved with the Respondents is also evidence that ought to have been brought forward at the Merits stage of this proceeding. Without accepting and deciding any facts based on this evidence, it is clear that the nature of the relationship between Investor Bu and the Respondents is materially different from the findings of fact used to justify the contraventions found in the Merits Decision. It is noteworthy that registration status or lack thereof is not mentioned anywhere in Investor Bu's testimony regarding how she became involved in the Vaughn Street Venture. Indeed, Investor Bu expressly states she did not know about unregistered status at the time of the investment. There is nothing to indicate she believed the Respondents were properly registered at that time and relied on that registration status to make the investment either.

87. In response to the question of why she would not have invested, the only actual evidence presented by Investor Bu was that the property was mismanaged. That may well be true, but it has nothing to do with the contravention in question – it has nothing to do with the Respondents' dealing in securities while not properly registered to do so. Poor business activities are unrelated to be registered under the *Act*.

88. Overall, there is no reliable evidence in Investor Bu's testimony to establish a causal link between the contravention as found in the Merits Decision and the loss claimed by this investor and her husband.

Investor Fo

89. Investor Fo testified on behalf of himself and his wife. His evidence with respect to cash calls was:

> Q. Okay. And so what ended up happening? How did this investment turn out for you?

A. Not very good … You know, we never did receive any of that money, and in fact as time went on, we needed to actually contribute more money in the cash calls because the property was losing money.

90. Investor Fo was not cross examined in relation to the cash calls, but his evidence clearly does not establish a causal link between dealing in securities while not being registered to do so and the cash calls. If anything, his evidence is consistent with the evidence from other investors that the property was not generating sufficient revenues to cover its expenses. There is no basis for the Panel to award Investor Fo and his wife financial compensation for the cash calls.

91. Investor Fo's testimony in relation to the initial investment was:

Q. Okay. And can you just explain the circumstances as to how you came to invest in 27 Vaughn?

A. My parents knew Marja Harmer, and through Marja we got to know Edna Keep. And we purchased the property not from – through – with Edna, but with another – with 3D – or sorry, with Safri Investments and kind of just knowing Edna a little bit, and she was able to provide us with that, you know, information that we needed to invest with them. And then shortly after that we went to 27 Vaughn for a meeting, and they showed us the property and showed us around and then essentially gave us a prospectus showing us if we wanted to invest in that property. So that's kind of where we got to know Marja and Edna.

…

Q. All right. And, again, as we're sitting here today, I take it you're at least now aware that when Ms. Keep was getting investors in 27 Vaughn, she was in violation of The Securities Act. You now know that?

A. Yes, I do. Yes.

Q. Okay. And more specifically, I take it, again, as of today, right now, you're aware that when Ms. Keep was getting, again, investors in 27 Vaughn, she was acting as an unregistered dealer?

A. Yes, I'm aware of that – aware of that today. I didn't know that at the time, but aware of that today.

Q. Sorry, you did – I missed that. You didn't know that at the time?

A. I didn't know when – when the initial investment was made, but I do know that now.

Q. Okay. Sorry, it cut out there for a second or something.
So if you had known at the time that she was contravening The Securities Act, unregistered, so on – if you had known that at the time of your investment, would you still have invested with her?

A. No. No, I wouldn't have. If I would have had any thought that it was anything illegal or anything that was not completely aboveboard, I would not have.

Q. So why do you say no?

A. Just because it was a big investment, and really, you know, we were hesitant, you know, a little bit nervous, a little bit scared about, you know, a $100,000 investment, and so I think I would have shied aware from anything that, you know, I felt that wasn't

> completely aboveboard, that wasn't completely legal, that wasn't completely, you now, honest kind of thing. And, you know, we found out that the person we invested with is—wasn't very honest with us and – but if I would have known that there was signs like that ahead of time, I certainly would not have invested.

92. There was no cross examination of Investor Fo.

93. The evidence from Investor Fo with respect to his relationship with Marja Harmer is vague relative to the evidence from other investors, but there was obviously some sort of a pre-existing relationship with Marja Harmer before the Vaughn Street Venture became a reality.

94. Whether or not this previous relationship with Marja Harmer amounted to a trusted adviser relationship as it did with the other investors, there is direct statement in Investor Fo's testimony to indicate that he was aware of, inquired into, or relied upon the Respondents' registration status in order to make his initial investment. Certainly, there is no evidence of knowledge or trust between Investor Fo and the Respondents as there was in the *G Blouin* and *F Blouin* cases. Investor Fo only testified that he "got to know" Ms. Keep.

95. The bulk of the remaining testimony suffers from the same unreliability due to hindsight, self-serving answers, and leading questions as the other investors. The Panel does not assign any weight to the assertion that Investor Fo would not have invested then if he only knew then what he knows now.

96. Finally, the Panel is not persuaded by Investor Fo's novel and vague allegations of dishonesty. If Investor Fo wanted to raise allegations of dishonesty, he ought to have done so at the Merits stage. Moreover, without some detail, particulars, and evidence of the dishonest conduct it is not at all fair to brand Ms. Keep with that label. To her credit Ms. Keep has been steadfast from the outset of this proceeding that she did not believe she needed to be registered in order to market these joint ventures. She was wrong in this belief, but that does not mean she was dishonest.

97. Overall, the Panel is not convinced that there is any causal link between the contravention of dealing in securities while not being properly registered and the losses claimed by Investor Fo and his wife.

Investor S

98. Investor S testified on his own behalf. His evidence with respect to the cash call was:

> Q. Okay. And so what happened with 27 Vaughn? Was this – how did the investment turn out?
>
> A. After a couple years we started getting cash calls because the building wasn't fairing very well, it wasn't full, it was in disrepair in a lot of ways. We ended up having these cash calls for a few years, and then eventually the building just kind of – the deal fell apart, the building fell apart, and it was repossessed by the bank.

99. Investor S was not cross examined. But his evidence is clear. Cash calls were required because the building was not full of tenants and repairs were required. This evidence has nothing to do with dealing

in securities while not properly registered to do so. There is no basis to award financial compensation to Investor S in relation to the cash calls.

100. In terms of the principal investment, Investor S' testimony was:

> Q. Okay. So if you could just briefly describe, what were the circumstances that led to you involvement with 27 Vaughn?
>
> A. I was called by one of my peers, [Investor F], about an investment opportunity in a joint venture agreement where I would put some money in to an apartment building and be kind of like a silent investor. I met [Investor F] and Edna Keep at Abstractions coffee shop one day. I don't recall what date it was, but we had about an hour, hour-and-a-half discussion about the joint venture agreement and how things worked.
>
> …
>
> Q. So I take it as of today or as of right now you're aware that when Ms. Keep was getting investors in 27 Vaughn she was in violation of The Securities Act. You're aware of that?
>
> A. Yes, I am aware now, yeah.
>
> Q. Okay.
>
> A. I wasn't aware then obviously.
>
> Q. And more specifically, again, as of today or right now, you are aware that Ms. Keep when she was getting investors in 27 Vaughn was acting as an unregistered dealer. You know that?
>
> A. Yes, I am aware of that.
>
> Q. Did you know any of that at the time of your investment?
>
> A. No, I did not know at all.
>
> Q. Okay. If you had known this at the time of your investment, would you still have invested in 27 Vaughn?
>
> A. No, there is no way I would have invested, not with – with somebody that wasn't qualified to be selling that type of an investment.
>
> Q. Why is that? Why are you saying no way, no why is that important to you?
>
> A. It's important to me because there would have been likely very little training on how that sort of investment would work, no insurance protection or fallback. As a pharmacist, I have many, many rules I need to follow, and I know investing is much similar, and if you don't follow them, then things go off the rails, and yea, I wouldn't put my money behind something like that.

101. Investor S was not cross examined.

102. The first challenge with Investor S' testimony is that there is no mention of registration status at the time of the investment. Based on Investor F's testimony above to the effect that he did not know the Respondents' registration status and did not inquire into it, it was not possible for Investor F to have shared

any information on that point with Investor S. There is nothing else in the description of the initial meeting at Abstractions coffee shop to indicate that Investor S contemplated registration status at the time the investment was made. There is no evidence to indicate that he believed the Respondents were registered or that he relied on their registration status at that time. This is sufficient to distinguish these facts from the reasoning in *G Blouin* and *F Blouin*.

103. The second challenge with Investor S' testimony is that it is speculative. It assumes it "would have been likely very little training". There is no evidence or material on the record indicating that registered dealers obtain training in real estate investment or rental property management. There is similarly no evidence or other material before the Panel indicating that there would have been insurance available to cover the loses had the Respondents been properly registered. Insurance contracts tend to provide coverage for clearly defined risk events. The overwhelming majority of the evidence from all the investors is that the property was in a poor state of repair and was not being managed particularly well. The evidence on cash calls from Investor S is consistent with that evidence. It is speculative to suggest that registered dealer insurance, even if available and required, would have covered the losses.

104. The remaining challenge with Investor S' testimony is that it suffers from the same reliability issues as the other investors. It is easy to look back and say "I could have, would have, and should have done something differently." But on Investor S' own testimony, he invested $100,000 into a real estate joint venture after an hour and a half conversation with someone he met in a coffee shop. Investor S doesn't even mention being provided with marketing materials or financial projections. This admitted behaviour is inconsistent with after-the-fact testimony suggesting that he is too risk adverse to invest with someone who is not properly registered. The Panel is not prepared to place any weight on Investor S' after the fact assertions that there is no way he would have invested or the explanation why.

105. Overall, the Panel finds that the causal connection between the Respondents' contravention of dealing in securities while not being properly registered to do so and the losses claimed by Investor S has not been made out.

Investor P

106. Investor P testified on his own behalf. His evidence regarding cash calls was:

> Q. Now, [Investor P], you made, I believe, a brief reference to some cash call payments. Do you recall, if you could briefly describe, you know, what was going on that cash call payments were needed? What was happening.
>
> A. That was never really clear, but the way I understood it, there – cash calls were required to keep the whole operation up and running in many different ways, sometimes for repairs that – that went to the payment of the administration of the building. It was never really clear. There was simply just a cash call.

107. Investor P was not cross examined on his evidence in relation to the cash calls. Investor P's evidence does not establish a causal connection between the contravention of dealing in securities while not being properly registered and the cash calls. In fact, Investor P's evidence does not establish a concrete cause for the cash calls at all. To the extent the evidence relating to cash calls form Investor P is inconsistent with the preponderance of the evidence from the other investors, the Panel accepts the evidence from the other investors. The Panel does not have the requisite causal justification to award a financial compensation to Investor P for his claimed loss in relation to cash calls on the basis of this testimony.

108. Investor P's evidence in chief on causation was:

> Q. And if you could just briefly explain, what were the circumstances that led to your investment here?
>
> A. I was contacted by Edna Keep. She recommended this as a good investment, sent me a – I'm not sure what it's called, but a description of the property and an outline of the investment, and at some point I decided to go with that investment.
>
> …
>
> Q. Okay. Thank you. I might have misheard that. That could have happened as well. So I take it that as we're discussing this here today, you're now aware that Ms. Keep in getting people to invest in 27 Vaughn was in violation of the Securities Act? You're now aware of that?
>
> A. I'm aware of that now, yes.
>
> Q. And more specifically, as of today, right now, you're ware that Ms. Keep in getting people to invest in 27 Vaughn was acting as an unregistered dealer?
>
> A. That is what I believe yes.
>
> Q. Okay. Did you know anything of that nature at the time of your investment?
>
> A. I did not.
>
> Q. Okay. Had known [sic] that at the time of your investment, would you have still made that $100,000 investment?
>
> A. No, I would not have.
>
> Q. Why do you say no?
>
> A. It would be a risky investment. It's just inherently – it's something I would not do.

109. In cross examination Investor P's evidence was:

> Q. So, [Investor P], when is the first time you invested in real estate?
>
> A. With you?
>
> Q. Oh, you didn't own any houses before you invested with me?
>
> A. I'm just asking you, are you talking about my personal investments or my –
>
> Q. Your personal investments, yeah.

A. Oh, what year was that? It would have been back in around 2000 perhaps that I purchased some duplexes in Regina.

Q. Okay. And are you a registered dealer?

A. No.

Q. And do you feel like if you were a registered dealer that you would have considered your houses less risky to invest in?

A. I wasn't selling them; I was buying them.

Q. Exactly, we were buying an apartment building too, right?

A. An investment for a revenue property.

Q. Yeah. Is that is the same reason you bought into the apartment building is as a revenue property?

A. Can you ask that again?

Q. I guess my question is how do you feel being a registered dealer lowers your risk?

A. Well, if I'm buying something from somebody, I want to buy it from a registered dealer.

Q. And yet you never asked if I was a registered dealer at the beginning, and, in fact, you didn't know anything about registered dealers until this FCAA stuff started, right?

A. As far as I was concerned at the time, everything was on the up and up when I made the investment in 27 Vaughn Street.

Q. I think the question was how do you feel being a registered dealer lowers your risk?

A. Because a registered dealer would have to answer to whoever they are registered with. There would be some regulation over what is the transaction that's being transacted.

Q. Okay, but you don't know how that would be; it's just somehow somebody overlooks that?

A. Correct.
…

110. The fundamental problem with Investor P's testimony is that his answers are circular. In chief he asserts that he would not have purchased from an unregistered dealer because it would be a risky investment. In cross he asserts that buying from an unregistered dealer is riskier because he would prefer to buy from a registered dealer. These circular answers go round and round the real issue here. There is nothing in Investor P's testimony to answer how being a registered dealer under the *Act* in any way affects the risks associated with rental property management. His answer that being registered would mean that the registrant is subject to regulation presupposed that this type of behaviour is governed by the *Act*. This answer is an argumentative legal conclusion that the Panel rejects. The risk being discussed here – the risk of a rental property business venture failing – is a risk that Investor P ought to have been well aware of given that he owned "some duplexes" for over decade before he became involved in the Vaughn Street Venture.

111. The other challenge with Investor P's testimony is that he is very vague. He does not speak to his relationship with Ms. Keep in any detail. He does not suggest that he thought or knew she was a registered dealer and that he therefore trusted her. He does not suggest that he received financial advice from the Respondents. Rather, he says that he thought the investment was "on the up and up". Ms. Keep's version of events from the outset of this proceeding has been that she thought the investment was on the up and up as well. It seems that both Investor P and Ms. Keep were wrong in this respect, but that does not establish a causal link between dealing in securities while not being properly registered to do so and the losses claimed by Investor P.

112. Investor P's testimony suffers from the same reliability concerns as the others.

113. Overall, the Panel is not convinced that there is a casual connection between the Respondents dealing in securities while not being properly registered to do so and the losses claimed by Investor P.

V. CONCLUSION

114. Accepting evidence in relation to all the investors at this stage of the proceeding would result in manifest unfairness and undermine the integrity of the entire proceeding. The theory of the case and the evidence presented at the Merits stage of this proceeding were limited to Investors 1 and 2. The Panel's findings in the Merits Decision were limited to Investors 1 and 2. Additional allegations in relation to other investors could have and should have been introduced at the Merits Stage. The failure to bring those allegations forward effectively precludes that possibility at this juncture. The Financial Compensation Hearing is not an opportunity to re-try matters already decided at the Merits. Introducing evidence from investors other than Investors 1 and 2 and this stage is manifestly unfair to the Respondents and undermines the integrity of the proceedings. The Panel therefore exercises its discretion and rejects the evidence from investors other than Investors 1 and 2.

115. The Panel also rejects the argument that the Merits Decision found a breach in relation to an investment product in relation to all investors. The Panel made no such finding.

116. The argument that a contravention need only cause a part of a loss in order for the Panel to award full compensation for the loss is without merit. This argument is inconsistent with binding case authority from the Saskatchewan Court of Appeal and would allow registrants to be held financially liable for the blameworthy conduct of other people.

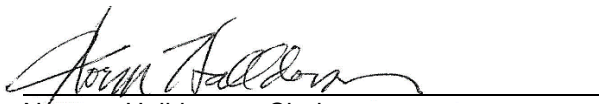
117. With respect to Investors 1 and 2, the Panel is not persuaded that the Respondents' contravention of trading in securities while not being properly registered to do so caused the losses claimed. Investors 1 and 2 did not trust and rely on the Respondents' registration status to make an investment in the Vaughn Street Venture. They relied on the trust they placed in Marja Harmer, a registered adviser.

118. The alternative that the Panel is incorrect to reject the evidence of investors other than Investors 1 and 2 makes no difference in the end result. The preponderance of evidence, if accepted, establishes that the Vaughn Street Venture failed because it generated insufficient revenue, required repairs, and was mismanaged. Even if true, these facts do not establish a causal connection between the Respondents' dealing in securities while not being properly registered to do so and the losses claimed by the investors. There is no reliable evidence that the investors knew of, relied on, and trusted the Respondents' registration status in order to make an investment. The *Act* does not regulate rental property management.

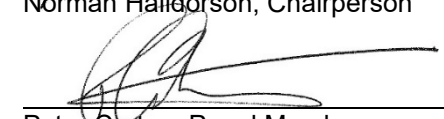
119. For these reasons, the Panel is not persuaded that this is an appropriate case to order financial compensation for any of the investors. The Directors Request for Financial Compensation is therefore dismissed.

120. This is a unanimous decision of the Hearing Panel.

Dated at Regina, Saskatchewan this 29th day of September, 2023.



Norman Halldorson, Chairperson



Peter Carton, Panel Member

Honourable Eugene Scheibel, Panel Member