

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

**In the Matter of
*The Securities Act, 1988***

and

**In the Matter of
Gaetan Daniel Blouin**

RE: FINANCIAL COMPENSATION

Hearing Held: October 19, 2021

Panel: Howard Crofts (Chairperson)
Honourable Eugene Scheibel (Panel Member)
Norman Halldorson (Panel Member)

Appearances: Connor Smith (Counsel for Staff of the Financial Consumer Affairs Authority of Saskatchewan)

No one appearing for the Respondent, Gaetan Blouin

Date of the Decision: December 16, 2021

I. INTRODUCTION

1. Having found in our decision on the merits in this matter that the Respondent, Gaetan Daniel Blouin ("G Blouin"), contravened various securities laws, the Executive Director of the Securities Division has made a request that G Blouin pay financial compensation to a claimant pursuant to subsection 135.6(4) of *The Securities Act 1988*, SS 1988-89, c S-42.2 [Act]. The Executive Director's request was brought in compliance with PART 13 of *Saskatchewan Policy Statement 12-602 – Procedure for Hearings and Reviews [Local Policy]* and so this decision is concerned with the merits of the request.

2. For the reasons below, the Panel is unanimous in ordering that G Blouin pay \$100,000 in financial compensation to the claimant, Daniel Fleming ("Fleming").

II. BACKGROUND

A. History of the Proceedings regarding G Blouin

3. G Blouin sold securities of Olive Equity Inc. ("Olive Equity") off-book from his employer Raintree Financial Solutions Inc. ("Raintree"). G Blouin was properly registered with the FCAA to sell Raintree products; however, Olive Equity was not an approved product of Raintree and he was not registered with the FCAA for the purposes of selling Olive Equity securities. Moreover, G Blouin failed to inform the FCAA of his off-book dealing and when questioned about the off-book dealing during a compelled interview with an Investigator of the Financial and Consumer Affairs Authority ("FCAA"), G Blouin denied raising any capital for any businesses outside Raintree and therefore made a false statement to the Investigator.

4. After investigating G Blouin, and as a result of G Blouin's actions and inactions, Staff alleged through a Statement of Allegations dated June 13, 2019 that G Blouin contravened:

- a. subsection 27(2) of the *Act* by acting as an advisor and engaging in the business of trading in securities of Olive Equity Inc. ("Olive Equity") while not registered to do so;
- b. subsection 33.1(1) of the *Act* by not taking reasonable steps to ensure that the securities he sold to two clients were suitable for those clients and failing to deal with those clients fairly, honestly and in good faith when he got them to sign a form indicating he was not registered with a regulatory authority and had no duty to conduct a suitability assessment;
- c. subsection 4.1 of *National Instrument 33-109 Registration Information [NI 33-109]* by failing to inform the FCAA of his business activities in selling Olive Equity securities off-book from his employer; and
- d. subsection 55.13 of the *Act* by making a material false statement to Staff of the Financial and Consumer Affairs Authority ("FCAA").

5. Near the end of the hearing on the merits, G Blouin conceded all the allegations brought against him. In our decision on the merits, the Panel agreed with the concessions as the evidence established on a balance of probabilities the allegations brought by Staff. Thereafter, a hearing on sanctions and costs was held and the Panel imposed various sanctions and costs orders against G Blouin.

B. Request for Financial Compensation

6. After the Panel found in our decision on the merits that G Blouin contravened securities laws, Fleming filed a claim for financial compensation with the Executive Director. On August 24, 2021, the

Executive Director made a request to this Panel for an order that G Blouin pay \$100,000 in financial compensation to Fleming.

7. The evidence filed in support of the request included an affidavit from Fleming. In it, Fleming states that he is seeking financial compensation in the amount of his investment, which was \$100,000. He also states that had he known G Blouin was not in compliance with the *Act*, he would have never made the \$100,000 investment in Olive Equity through G Blouin.

8. Fleming also testified at the financial compensation hearing. He reiterated that had he known G Blouin was not in compliance with the *Act*, he would not have invested through G Blouin. He also testified that in his dealings with G Blouin, he believed and trusted that G Blouin was acting as a registrant under the *Act*. He did not know at the time that G Blouin was trading off-book and that these trades were not in compliance with the *Act*.

9. The documentary evidence filed by Staff in the compensation hearing shows that Fleming invested \$100,000 in Olive Equity and that he lost this entire amount.

10. G Blouin did not appear at the financial compensation hearing and provided no materials or submissions for the Panel to consider. As such, the evidence filed by Staff regarding financial compensation is uncontradicted.

III. ISSUE

11. The issue in this decision is whether the Panel should order pursuant to subsection 135.6(4) of the *Act* that G Blouin pay financial compensation to Fleming.

IV. ANALYSIS

12. The operative provision of the *Act* regarding financial compensation is subsection 135.6(4), which sets out the preconditions to ordering financial compensation. The provision reads:

Financial compensation

135.6...

(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 the 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.

13. Recently in *C2 Ventures Inc. v Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 53 (CanLii) [*C2 Ventures*], our Court of Appeal analyzed subsection 135.6(4) and three preconditions to ordering financial compensation, including the “lynchpin” precondition of causation. Before financial compensation can be ordered, it is critical that there is evidence that the contravention at issue caused, either in whole or in part, the claimant's loss. The Court of Appeal wrote:

[39] It is important to understand that *causation* is the last of three preconditions to the making of a compensation order but also that it is the lynchpin of s. 135.6(4). The first two preconditions are (i) a finding of contravention or failure to comply with *The Securities Act, 1988* and (ii) quantification of the claimant's financial loss. The third, 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. ...

14. Applying this law to the facts of the present matter, the first precondition is met because our decision on the merits found four different contraventions of securities laws based on G Blouin's concessions and the evidence as a whole. In respect to the second precondition, Fleming's testimony and affidavit evidence alongside the documentary evidence shows that he invested \$100,000 through G Blouin in Olive Equity securities and that he lost this entire amount.

15. In respect to the third precondition of causation, Fleming placed his trust in G Blouin as an advisor and believed while dealing with G Blouin that he was dealing with a person that was properly registered to sell Olive Equity securities. Fleming did not know at the time he purchased securities through G Blouin that G Blouin was selling off-book when he was not permitted to do so. Fleming further testified that if he had known G Blouin was not in compliance with the *Act*, he would have never invested his \$100,000 through G Blouin in Olive Equity. The same evidence is provided in his affidavit. Since G Blouin did not appear at the financial compensation hearing and did not cross-examine Fleming on this evidence, and since G Blouin did not provide his own evidence on the financial compensation issues, Fleming's evidence stands uncontradicted. Moreover, the Panel finds that Fleming was a credible witness and believes his evidence.

16. While the above is helpful evidence of causation, it may not quite constitute evidence as to how G Blouin's *specific* contraventions caused Fleming's financial loss. Subsection 135.6(4)(c) requires a finding that "the person's or company's contravention or failure caused the financial loss in whole or in part". In *C2 Ventures*, our Court of Appeal stressed that it is the contravention itself that must cause the loss complained of (at paras 49-50). As such, evidence must exist creating a causal link between a specific contravention found by the Panel and the financial loss claimed. With this in mind, it is important for us to consider the specific contraventions in this case and whether there is evidence demonstrating that those specific contraventions caused Fleming's financial loss.

17. In our respectful view, there is sufficient evidence that at least two of G Blouin's contraventions were a cause of Fleming's financial loss. First, while G Blouin was registered as an exempt market dealer, the Olive Equity securities that he sold to Fleming were sold off-book as they were not approved by his employer, Raintree. As such, G Blouin was not registered and not permitted to sell the Olive Equity securities to investors. Despite this, he sold \$100,000 worth of Olive Equity securities to Fleming, which resulted in G Blouin acting as a dealer and advisor while not being registered to do so in contravention of subsection 27(2) of the *Act*. Had he complied with the *Act* by not selling the Olive Equity securities, Fleming would have never had the opportunity to purchase those securities through G Blouin. In addition, on Fleming's uncontradicted evidence, had Fleming known that G Blouin was not in compliance with the *Act*, which includes not being registered to sell Olive Equity securities, he never would have purchased the securities. In our respectful view, this evidence taken as a whole is sufficient to prove that G Blouin's contravention of subsection 27(2) of the *Act* was a cause of Fleming's financial loss.

18. Second, G Blouin's contravention of subsection 33.1(1) of the *Act*, being his failure to conduct a suitability analysis in respect to Fleming and failure to deal with Fleming fairly, honestly, and in good faith was also a cause of Fleming's financial loss. The evidence demonstrates that G Blouin failed to provide proper information to Fleming regarding the Olive Equity investment so that Fleming could understand the nature of that investment. The evidence also demonstrates that Fleming did not ultimately understand the nature of the investment. Instead, Fleming trusted G Blouin and relied on the insufficient and incomplete information G Blouin provided to him regarding the Olive Equity investment at the time he invested. In our respectful view, this is also sufficient evidence that G Blouin's contravention of subsection 33.1(1) of the *Act* was a cause of Fleming's financial loss.

19. In future cases, claimants for financial compensation would do well to clearly explain in their evidence how *specific* contraventions found by a panel have caused their financial loss either in whole or in part. While general causative statements pertaining to a respondent's non-compliance with securities laws may provide some evidence of causation, on the law in *C2 Ventures* it also may not on its own be sufficient to make out a claim for financial compensation under subsection 135.6(4) of the *Act*. That being

said, in the present case when we consider the whole of the evidence before us, we find that there is sufficient evidence that at least two contraventions in this case caused the claimant's financial loss.

V. CONCLUSION

20. Having found that G Blouin contravened securities laws, that Fleming suffered financial loss in the amount of \$100,000, and that at least two of G Blouin's contraventions caused Fleming's loss, the statutory preconditions in subsection 135.6(4) of the *Act* are met. It is therefore proper for this Panel to order that G Blouin pay Fleming \$100,000 in financial compensation and the Panel so orders.

Dated at Regina, Saskatchewan this 16 day of December, 2021

"Howard Crofts"
Howard Crofts, Chairperson

"Norman Halldorson"
Norman Halldorson, Panel Member

"Honourable Eugene Scheibel"
Honourable Eugene Scheibel