DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSMER AFFAIRS AUTHORITY OF SASKATCHEWAN ACT*, SS 2012, C F-13.5 (the "***FCAA Act***")

In the Matter of

The Securities Act, 1988*, SS 1988-89, c S-42.2** (the "Securities Act***")

and

In the Matter of

ROCHELLE LAFLAMME

ALISA THOMPSON

EPIC ALLIANCE REAL ESTATE INC.

and

12767490 CANADA INC.

(the "**Respondents**")

APPROVAL OF SETTLEMENT AGREEMENT

Application filed:	February 23, 2024
Before:	Karen Prisciak, K.C., Panel Chairperson Tracey Bakkeli, Panel Member Honourable Eugene Scheibel, Panel Member (referred to collectively as the "**Panel**")
Appearances:	Sonne Udemgba and Steve Robertson on behalf of the Financial and Consumer Affairs Authority of Saskatchewan (the "**FCAA**") Securities Division ("**Counsel for the FCAA**") Alex Koch on behalf of the Respondents ("**Counsel for the Respondents**")
Date of Decision:	April 5, 2024

I. INTRODUCTION

1. This is the Panel's decision with respect to a Joint Application for Approval of a Settlement Agreement dated February 22, 2024 (the "**Joint Application**") submitted by the parties in this matter.

2. For the reasons that follow, the Joint Application is allowed.

II. BACKGROUND AND PROCEDURAL HISTORY

3. The Executive Director of the Securities Division of the FCAA (the "**Executive Director**") filed a Statement of Allegations dated January 20, 2023 (the "**Statement of Allegations**") with the Panel in this matter. In summary, the Statement of Allegations alleged that the Respondents contravened:

a) sections 27(2)(a), 55.11(1), 55.14, 55.15, and 58(1) of the *Securities Act*;

b) section 6.1 of National Instrument 45-106 *Prospectus Exemptions*; and

c) section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations*.

4. On March 8, 2023, a Notice of First Appearance issued whereby the first appearance in this matter was scheduled for April 6, 2023.

5. On April 6, 2023, an Adjournment Order issued whereby the first appearance was adjourned to May 1, 2023.

6. On May 8, 2023, an Order Setting Hearing Dates issued setting the hearing dates for August 28 to 31 and September 1, 5 to 8, and 11 to 15, 2023 as needed.

7. On August 10, 2023, a Consent Adjournment Order issued whereby the August and September 2023 hearing dates were vacated and a scheduling hearing was set for August 28, 2023.

8. On August 29, 2023, an Adjournment Order issued whereby the scheduling hearing was adjourned to September 18, 2023.

9. On September 25, 2023, an Adjournment Order issued whereby a pre-hearing conference was scheduled for February 5, 2024 and the hearing dates were rescheduled to commence on April 8, 2024 and continue each weekday until April 25, 2024 as needed.

10. On February 5, 2024, the parties attended the pre-hearing conference and confirmed they had reached a settlement agreement that morning. The parties agreed that they would file an application for approval of the settlement agreement on or before February 23, 2024. The parties also consented to the matter being disposed of based on written submissions without the need for an oral hearing.

11. On February 23, 2024, the parties filed the Joint Application with the Panel, which included a copy of the Settlement Agreement dated February 5, 2024 (the "**Settlement Agreement**") signed by the Executive Director and the Respondents.

III. LEGAL AUTHORITY

12. Pursuant to section 17 of the *FCAA Act*, the Chairperson of the FCAA has appointed the Panel to hear this matter. Further, a decision or action of the Panel is the decision or action of the Commission by virtue of subsection 17(7) and paragraph 2(a) of the *FCAA Act* and paragraphs 2(1)(b.2) and (e) of the *Securities Act*.

13. Pursuant to paragraph 135.3(1)(a) of the *Securities Act*, a proceeding commenced under the *Securities Act* may be disposed of by an agreement approved by the Commission.

14. Additionally, paragraph 135.3(1)(d) of the *Securities Act* provides that a proceeding may be disposed of without a hearing where the parties have agreed to waive the hearing.

15. In summary, the Panel has the authority to approve or deny the Joint Application and dispose of the within matter without a hearing.

IV. PROPOSED SETTLEMENT AGREEMENT

16. The following documents were filed with the Panel in support of this application:

a) the Joint Application;

b) the Settlement Agreement (Tab 1 to the Joint Application);

c) a draft Order Approving Settlement Agreement (Appendix A to the Settlement Agreement and Tab 2 to the Joint Application) (the "**Draft Order**"); and

d) a Memorandum of Argument of Counsel for the FCAA with copies of authorities cited (Tab 3 to the Joint Application) (the "**Memorandum of Argument**").

17. The entire Settlement Agreement is not reproduced in this decision. Rather, the salient points are summarized. Nevertheless, the Panel reviewed and considered the Joint Application in its entirety in arriving at its decision.

18. In paragraph 1 of the Settlement Agreement, the Respondents admit to various facts alleged in the Statement of Allegations. Further, in paragraph 2, the Respondents—or a combination of some but not all of the Respondents, as appropriate—admit to contravening all provisions alleged to have been contravened in the Statement of Allegations. Finally, in paragraph 6, the Executive Director and the Respondents consent to the issuance of an order in substantially the form of the Draft Order.

19. In summary, the Draft Order seeks to impose the following sanctions and administrative penalties on the Respondents:

a) all exemptions in Saskatchewan securities laws do not apply to the Respondents for a period of 20 years;

b) the Respondents shall cease trading in securities or derivatives in Saskatchewan, except for the purposes of trading securities or derivatives on their own account, for a period of 20 years;

c) the Respondents shall cease acquiring securities or derivatives in Saskatchewan, except for the purposes of trading securities or derivatives on their own account, for a period of 20 years;

d) the Respondents shall cease giving advice respecting securities, trades, or derivatives in Saskatchewan for a period of 20 years;

e) the Respondents shall not be employed by any issuer, registrant, or investment fund manager in any capacity that would allow them to trade in securities or

derivatives in Saskatchewan and not be a director or officer of any issuer, registrant, or investment fund manager for a period of 20 years;

f) the Respondents are prohibited from becoming or acting as a registrant, an investment fund manager, or a promoter for a period of 20 years;

g) the Respondent, Rochelle Laflamme, shall pay an administrative penalty to the FCAA in the amount of $100,000;

h) the Respondent, Alisa Thompson, shall pay an administrative penalty to the FCAA in the amount of $100,000; and

i) the Respondent, Epic Alliance Real Estate Inc., shall pay an administrative penalty to the FCAA in the amount of $100,000.

20. In the Memorandum of Argument, Counsel for the FCAA rely on *Re Blouin*, 2021 CanLII 142784 (SK FCAA) [***Blouin***] and *Re Bergen*, 2021 CanLII 142789 (SK FCAA) as authorities on the principles for the Panel to consider in imposing sanctions. Specifically, the following factors should be weighed (*Blouin*, *supra* at para 21):

a) the seriousness of the allegations;

b) the respondent's experience in the marketplace;

c) the level of a respondent's activity in the marketplace;

d) whether or not there has been recognition of the seriousness of the improprieties;

e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

f) any mitigating factors;

g) the size of any profit made, or loss avoided, from the illegal conduct;

h) the size of any financial sanctions or voluntary payment when considering other factors;

i) the effect any sanction might have on the livelihood of a respondent;

j) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;

k) the reputation and prestige of the respondent;

l) the shame or financial pain that any sanction would reasonably cause to the respondent; and

m) the remorse of the respondent.

21. *Blouin* (*supra*) is also cited as relevant jurisprudence on the importance of the public interest when determining appropriate administrative penalties.

22. Counsel for the FCAA further provide the cases of *Re Tri-Link Consultants Inc.* (FCAA, April 21, 2009, unpublished) [***Tri-Link***], *Re Aitkens*, 2019 CanLII 149034 (SK FCAA) [***Aitkens***], and *Re Pastuch*, 2014 CanLII 150149 (SK FCAA) [***Pastuch***] as examples of circumstances where permanent bans were imposed on respondents at least partially because the respondents engaged in fraudulent conduct.

23. Counsel for the FCAA list several aggravating factors in the Memorandum of Argument, including:

a) the contraventions occurred over a six-year period and involved multiple investors, a significant amount of capital, and complex transactions;

b) the Respondents sold 96 promissory notes with an estimated minimum face value of CAN$4.3 million;

c) the Respondents routinely sought clientele by posting advertisements through social media sites that were intentionally visible to the general public;

d) the Respondents failed to comply with a Temporary Cease Trade Order dated October 21, 2021 issued by the Executive Director (the "**Cease Trade Order**");

e) the Respondents conducted no suitability assessment on investors;

f) the Respondents failed to comply with an undertaking that they provided to the Executive Director on September 22, 2023; and

g) the severity of the contraventions of securities law and the avoidance of safeguards imposed by the Legislature to protect investors have caused significant harm to the reputation of the capital markets of Saskatchewan.

24. Several mitigating factors were also noted, including:

a) the Respondents have cooperated in the settlement negotiations;

b) the Respondents have made admissions in the Settlement Agreement;

c) the Respondents have terminated their operations;

d) the Respondents do not have any prior experience in the capital markets;

e) the Respondents do not have any prior disciplinary record with any securities regulatory authority; and

f) the Respondents agreed to reach a resolution prior to commencement of a hearing on the merits.

25. Counsel for the FCAA submit that the sanctions proposed in the Settlement Agreement are in the public interest. They indicate that this matter is distinguishable from *Tri-Link* and *Aitkins* since, in those cases, the respondents were found to have defrauded their investors. Further, Counsel for the FCAA submits that this matter is also distinguishable from *Pastuch* because the respondents in that case provided no remorse or admission of wrongdoing, which resulted in a hearing taking place that spanned several weeks.

V. ANALYSIS

26. Given the parties agreed to have the Settlement Agreement considered by written submissions, the Panel cannot speculate as to the reasons the parties agreed to specific terms of the Settlement Agreement. Nor can the Panel speculate as to what facts the parties considered in agreeing to the Settlement Agreement. The Panel can only consider the facts as agreed between the parties in the written Settlement Agreement.

27. In particular, the Settlement Agreement is silent on the issue of misrepresentations and/or fraud. There are no facts before the Panel to evaluate whether the Respondents engaged in misrepresentations or fraud *vis-à-vis* their investors. Furthermore, the Statement of Allegations did not allege the Respondents' conduct was fraudulent contrary to section 55.1 of the *Securities Act*, but rather alleged the Respondents' statements were misleading and untrue pursuant to section 55.11 of the *Securities Act*. However, in the Settlement Agreement, the Respondents did not accept responsibility for misleading and/or untrue statements. Instead, the Respondents accept responsibility for failing to register as a dealer, failing to comply with an undertaking given to the Executive Director, failing to comply with a decision of the Executive Director, failing to file a prospectus, and failing to determine the suitability of investors. The Respondents' culpability is limited to these specific violations of the *Securities Act*.

28. The task before the Panel is to decide whether to accept or dismiss the Settlement Agreement. As previously noted, the two primary goals guiding the Panel's consideration of the sanctions are protecting the investing public and maintaining the integrity of capital markets to prevent future harm to the public and capital markets (*Blouin*, *supra* at para 19).

29. The proposed sanctions for the Respondents' conduct have both a temporal and a capacity component. Firstly, the Respondents are banned from involvement in the investment industry for a 20-year period. A permanent ban is not appropriate in these circumstances given that there is no agreement or finding that the Respondents were fraudulent (*Tri-Link*, *Aitkens*, and *Pastuch*, *supra*). A 20-year prohibition from involvement in the capital markets of Saskatchewan is significant.

30. Secondly, the Respondents' capacity for involvement in Saskatchewan securities or derivatives market is severely restricted. Except for their personal accounts, the Respondents are prohibited from any involvement in trading, acquiring, or advising on securities or derivatives in Saskatchewan. The Respondents cannot be employed by any issuer, registrant, or investment fund manager involved in trading securities or derivatives. Furthermore, the Respondents are prohibited from being a director or officer of any issuer, registrant, or investment fund manager. These restrictions on the Respondents' commercial activity and potential livelihood are broad and extensive.

31. The Panel is mindful of the effect the Respondents' conduct had on others. Ninety-six investors invested an estimated $4.3 million over six years. The promissory notes provided by the

Respondents offered the investors a 15% return. In addition, the Respondents created two complex commercial investment products involving rental properties and sold 703 of those two products offering a 10% to 15% return. The Respondents failed to assess whether these investments were suitable for the investors as required under the *Securities Act*. If these investments were not suitable, it is a reasonable inference that the investors lost the opportunity to invest in other investment products that were more suitable.

32. The Respondents' conduct undermined the authority of Executive Director tasked with ensuring compliance with the *Securities Act*. In the execution of his legislatively mandated duties, the Executive Director asked and received an undertaking from the Respondents to cease trading. Not only did the Respondents fail to comply with the undertaking given on September 22, 2021, but they also failed to follow the Cease Trade Order dated October 21, 2021. It is important that the public and those involved in offering investment products understand and respect the importance of complying with their undertakings and Orders of the Executive Director.

33. The Panel agrees that a two-decade ban coupled with the restrictions on the Respondents' involvement in the investment marketplace recognizes the number of investors involved in these transactions and the significant cumulative investment. It also recognizes the requirement for compliance with the authority of the Executive Director. The Respondents are prohibited from any meaningful participation in the investment marketplace and restricted from employment and corporate involvement regarding securities and derivatives. These sanctions assist in maintaining the integrity of capital markets because the Respondents cannot return to the investing public and capital markets with complex products such as those offered to their investors. The Panel views these restrictions as being in the public interest by ensuring that neither the investing public nor the capital markets will be at risk of future harm by the Respondents. The proposed sanctions satisfies both goals of protecting the investing public and the integrity of capital markets.

34. The specific sanctions addressing the Respondents' responsibility for their conduct are reflected in the administrative penalties. Each Respondent agrees to a penalty of $100,000 for a cumulative administrative penalty of $300,000. This is the maximum administrative penalty available pursuant to section 135.1 of the *Securities Act*. Even if a multi-week hearing had resulted in the Panel finding the Respondents had violated the *Securities Act* as alleged, the Panel would be precluded from awarding any higher penalty than is permissible under the legislation. Given the number of investors and the cumulative amount of the investments along with the Respondents' failure to comply with its undertaking and the Cease Trade Order, the Panel agrees

it is appropriate the Respondents receive the maximum administrative penalty available under the *Securities Act* to deter the Respondents, and others, from similar conduct in the future.

35. The Panel must also ensure the sanctions are proportionate in the circumstances. *Blouin* (*supra*, at para 21) suggests the Panel consider 13 factors. Of those factors, six are relevant to assist the Panel in this matter because there is no evidence in the Settlement Agreement on the other factors (i.e., remorse or financial gain of the Respondents).

36. The Panel has weighed the following factors in determining whether the sanctions are proportionate:

a) Seriousness of the allegations – The allegations against the Respondents are serious. They marketed products without being registered or filing a prospectus. They secured investments without ensuring investors' suitability. They failed to comply with their undertaking given to the Executive Director and failed to follow an Order of the Executive Director. Both the undertaking and the Cease Trade Order prohibited the Respondents from trading. The Respondents' conduct directly violated the express provisions of the *Securities Act*.

b) Respondents' experience in the marketplace – The Respondents had no previous experience in the marketplace.

c) Level of Respondents' activity in the marketplace – The Respondents sold two complex investment products for six years. At the height of their activity, they had 703 active products offering a 10% to 15% annual return. In addition, 96 investors provided the Respondents with approximately $4.3 million in exchange for promissory notes securing a 15% annual return. The Respondents' involvement in the marketplace was significant.

d) Whether the sanctions may deter others – The Respondents have agreed to the highest administrative penalty available under the *Securities Act*. A penalty of $100,000 each coupled with restrictions on the Respondents' participation in the marketplace clearly sends a message to deter others inclined to similar conduct.

e) Mitigating factors – The Respondents accept responsibility for their conduct which avoided a multi-week hearing for the parties and their witnesses. The Respondents had no prior disciplinary record involving securities regulators.

f) Effect on the Respondents' livelihood – The restrictions on the Respondents' employment options are significant. They cannot be employed by, nor can they be a director or officer of, any registrant, investment fund manager, or promoter. They are prohibited from trading, acquiring, or advising in securities or derivatives except their own.

37. After considering these factors, the Panel agrees the sanctions are proportionate in these circumstances.

38. The Panel notes paragraph 123(j) of the Statement of Allegations requested compensation for the investors' financial losses, whereas the Settlement Agreement does not refer to investor compensation. Again, it is not within the purview of the Panel to lift the veil of settlement discussions to examine why investor compensation was not part of the Settlement Agreement. The Panel's jurisdiction is limited to accepting or dismissing the Settlement Agreement rather than speculating as to reasons for the parties' agreement.

VI. CONCLUSION

39. For the reasons provided above, the Settlement Agreement in its entirety is approved. Accordingly, the Joint Application is allowed. An Order confirming same will be issued in due course.

40. This is a unanimous decision of the Panel.

Dated at Regina, Saskatchewan this 5th day of April, 2024.

"Karen Prisciak, K.C".
Karen Prisciak, K.C., Panel Chairperson

"Tracey Bakkeli"
Tracey Bakkeli, Panel Member

"Eugene Scheibel"
Honourable Eugene Scheibel, Panel Member