



THE MANITOBA
SECURITIES
COMMISSION

January 8, 2020

IN THE MATTER OF: THE SECURITIES ACT

- and -

**IN THE MATTER OF: MADISON STREET LIMITED PARTNERSHIP,
5218838 MANITOBA LTD., and BRENDA
ANDRE**

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel:

Panel Chair:	Mr. J.T. McJannet, Q.C.
Member:	Mr. C.D. Burns
Member:	Mr. D.A. Huberdeau-Reid

Appearances:

Mr. S. Gingera)	Counsel for Commission Staff
		On behalf of the Respondent, Brenda
		Andrea, no one appearing on behalf of
Mr. A. Stacey)	Madison Street Limited Partnership
		nor for 5218838 Manitoba Ltd.

The Panel reconvened the hearing of May 30th, 2019 at 10:00am on November 29th, 2019 to consider arguments with respect to the costs, administrative penalties and compensation that could be levied against the respondents.

This matter came on for hearing on May 28, 29 and 30, 2019. Argument was presented to this Panel by Mr. Gingera and by Mr. Stacey. At the conclusion of such argument, it was agreed that additional argument would be allowed once this Commission Panel had reached its decision on the validity and effectiveness of the five areas raised by Mr. Stacey as defenses to the allegations. Such additional argument would relate to any awards for compensation to individuals suffering financial loss, costs and administrative penalties.

When the hearing reconvened on November 29, 2019, the Panel first considered a letter dated November 18, 2019, to Chris Besko, Director of the Manitoba Securities Commission (MSC) from Steve Gingera, Legal Counsel for the MSC accompanied by an 80-page excerpt from the hearing transcript of Mr. Braccio, an investor in the Limited Partnership and a possible beneficiary of compensation, requesting the Panel to reconsider its decision regarding the Friends and Family exemption applicable to Mr. & Mrs. Braccio.

This Panel, on August 13, 2019, delivered its decision on the areas raised by Mr. Stacey. Accordingly, this continuance on November 29, 2019, is convened to hear argument from counsel on costs, administrative penalties and compensation.

At commencement of the hearing on November 29, 2019, this Panel noted that Mr. Gingera in his letter of November 18th, 2019 takes issue to a statement in this Panel's initial decision:

“According to Braccio he was a close personal friend of Mr. Haderer....”

which in his view, appeared to lead this Panel to erroneously conclude the “Family and Friends Exemption” applied to Braccio.

We have reviewed the 80 page excerpt from the transcript and note Mr. Braccio refers to Mr. Haderer as:

“an acquaintance”

“a friend” (interview with Terlinski/Roy) (cross-examination by Mr. Stacey)

We concluded that Mr. Braccio was within the Family and Friends Exemption based upon Mr. Braccio’s overall evidence and not just on what Mr. Braccio stated in one line of his evidence. It is of course our right and obligation to make such a conclusion as Mr. Gingera stated in his examination of Mr. Braccio:

“You are going to have to determine whether or not Mr. Braccio was a close personal friend..... He can give an opinion on it. He can give the base on which he gives that opinion.” (transcript page 215, line 18-23)

Mr. Gingera raises the first question:

“Is the Panel, having delivered an initial decision on August 13, 2019, entitled to reconsider its decision – i.e. does this Panel have the power to reconsider?”

Mr. Gingera refers us to Administrative Law in Canada (6th Edition) by Sara Blake (para 4.50 – 4.51) which states: “The first issue, then, is whether a final decision has been rendered.”

Reference is also made to Federal Court of Canada decision in Dolly Shuk Ching Chan and Minister of Citizenship and Immigration, 1996 Carswell Nat. 937.

Mr. Stacey argued that there is no specific provision in The Securities Act (Manitoba) to authorize the revisiting of a decision once made. Mr. Stacey invites us to reject making any change in our August 13, 2019 decision.

This Panel finds it unnecessary to make any changes to its decision and thus makes no determination of the issue raised by Mr. Gingera.

Therefore, we find it is unnecessary to make any determination on the question of the jurisdiction to amend our previous decision.

Costs

The respondents were asked by the Panel if they accepted the costs as presented by the MSC staff. (Exhibit #15) Bill of Costs. The respondents accepted the costs as presented.

Costs are to be assessed against Madison Street Limited Partnership, 5218838 Manitoba Ltd. and Brenda Andre. Costs are assessed against the respondents in the amount of \$15,428.80 to be paid within 30 days of this decision.

Administrative Penalties

The Panel determined that an Administrative Penalty be assessed against the Respondents. A penalty of \$50,000. was requested by MSC staff. The Panel noted that Brenda Andre ignored Mr. Pich's lack of investment knowledge and knowingly ignored the fact that he was not qualified to purchase the limited partnership units under the Family and Friends Exemption. Mr. Pich was clearly not a good prospect for such an investment.

The Panel accepts that an administrative penalty should deter others from engaging in similar improper conduct as opposed to being punitive in nature. There was no fraudulent activity. The Family & Friends exemption does not apply to Mr. Pich. The Public Interest demands an administrative penalty. The Panel orders a penalty of \$25,000. be assessed against the respondents to be paid within 30 days of this decision.

Compensation

We conclude that Mr. Pich is an unsophisticated investor and should not have been offered the Limited Partnership investment. The Panel was surprised when he admitted to signing the subscription agreement where he indicated he was a close friend of Brenda Andre when he was clearly not, that he did not read the subscription

agreement, and that he did not seek advice other than from a friend. It appears that Mr. Pich was very impulsive with this investment.

The Panel finds that Mr. Pich does not fall under any of the exemptions for registration under the Act and is eligible for compensation.

The Panel finds that Mr. & Mrs. Braccio fell under the Family and Friends exemption and are not eligible for compensation.

The MSC staff are seeking a \$100,000. compensation award for Mr. Pich's loss. The Panel believes that investors need to show some due diligence before investing. Mr. Pich relied solely on his friend and Brenda Andre. We are not aware of any outside parties being consulted. The Panel orders the respondents to pay financial compensation in the amount of \$78,000. to Mr. Pich.

We conclude that it is in the public interest and we so order the respondents to pay costs of \$15,428.80, to pay an administrative penalty of \$25,000. and to pay compensation to Mr. Pich of \$78,000. Payment is to be made within 30 days of this order.

This order is to be read in conjunction with the decision of this Panel dated August 13th, 2019.

"J.T. McJannet, Q.C."

J.T. McJannet, Q.C.

Panel Chair

"C.D. Burns"

C.D. Burns

Member

"D.A. Huberdeau-Reid"

D.A. Huberdeau-Reid

Member

Schedule "A"

Ex. 15 Date NOV 29/1
Exam of ANDRE
ATB

Tom Bruce
Court Reporter

Bill of Costs

A. <u>Fees for Hearing as set out in Securities Regulation s. 50 - M.R. 491/88R</u>		
Dates: May 28 - 31, 2019		
Commission Panel Fees: 3.5 days x \$600 per half day		\$ 4,200.00
Commission Staff: attendance for 3.5 days X 400.00 per day		\$ 1,400.00
	SUBTOTAL =	<u>\$ 5,600.00</u>
B. <u>Staff Investigation and Hearing Preparation</u>		
Staff counsel preparation for hearing including file review; correspondence; preparation of submissions; communications with counsel; preparation and communications with witnesses; review of legislation (7 days @ \$400.00/day)		\$ 2,800.00
	SUBTOTAL =	<u>\$ 2,800.00</u>
C. <u>Disbursements</u>		
Court Reporter Attendance Fees and Transcripts [See Schedule "A" attached]		\$ 5,958.00
Panel Accommodations and Expenses [See Schedule "B" attached]		\$ 949.24
Conduct Money to Witnesses [See Schedule "D" attached]		\$ 121.80
DISBURSEMENTS:	SUBTOTAL =	<u>\$ 7,028.80</u>
HEARING DAYS:	=	<u>\$ 5,600.00</u>
INVESTIGATION AND HEARING PREPARATION:	=	<u>\$ 2,800.00</u>
	TOTAL =	<u>\$15,428.80</u>