

IN THE MATTER OF THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

AND IN THE MATTER OF

**Charline Hurley, Larry Hurley and
Donat Robichaud Residence Inc.**

(Respondents)

MOTION

1. **The following relief is sought by Staff of the New Brunswick Securities Commission:**

An Order pursuant to subsection 184(1)(c)(ii) of the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended, (the "*Securities Act*"), that the Respondents cease trading in securities, either directly or through any agent, corporation or representative, until otherwise ordered by the New Brunswick Securities Commission;

An order pursuant to section 184(1)(d) of the *Securities Act* that any exemptions under New Brunswick securities law do not apply to the Respondents until otherwise ordered by the New Brunswick Securities Commission;

An order pursuant to section 184(1)(i) of the *Securities Act* that Charline Hurley be prohibited from becoming or acting as an officer or director of any issuer, registrant or mutual fund manager until otherwise ordered by the New Brunswick Securities Commission; and

Such other relief as the New Brunswick Securities Commission may determine is in the public interest pursuant to section 184(1) of the *Securities Act*.

2. **The factual and legal grounds for this Motion are:**

The Respondents

- a) Charline Hurley is an individual resident in Dieppe, New Brunswick. Ms. Hurley, who has never been registered with the New Brunswick Securities Commission ("NBSC") to trade in securities, has issued at least three promissory notes to investors in New Brunswick.

- b) Larry Hurley is an individual resident in New Brunswick. Mr. Hurley has issued at least one promissory note to an investor in New Brunswick. Mr. Hurley is the estranged spouse of Charline Hurley and he has never been registered with the New Brunswick Securities Commission to trade in securities.
- c) Donat Robichaud Residence Inc. ("DRRI") is a New Brunswick corporation that operated residential care facilities in Moncton, New Brunswick, for adults living with cognitive impairments. Charline Hurley is a director of DRRI. DRRI has, through Charline Hurley, issued at least one promissory note to investors in New Brunswick.

The 29 October 2009 Promissory Note Issued to Mr. A.

- d) In October of 2009, Charline Hurley approached "Mr. A.", a New Brunswick resident, for a loan for the purported purpose of financing the operations of DRRI. Ms. Hurley represented that funds would soon be available to DRRI to repay the loan.
- e) As part of this solicitation, and in order to provide comfort regarding repayment, Ms. Hurley forwarded certain documents to an adviser of Mr. A. on 27 October 2009. These included two Notices of Remittance originally sent by the Province of New Brunswick concerning certain remittances to DRRI, demonstrating cash-flow.
- f) On or about 29 October 2009, Charline and Larry Hurley issued a promissory note in the amount of \$125,000.00 to Mr. A. (the "29 October 2009 Note"). The note is payable on demand and does not provide for any interest. The note was secured by way of a collateral mortgage registered against the home of Charline and Larry Hurley.
- g) On 10 December 2009, Charline Hurley provided Mr. A. with a personal cheque in the amount of \$125,000.00 representing the repayment of the loan advanced under the 29 October 2009 Note. Mr. A. states that at that time he presented the cheque to the relevant branch of the bank upon which the cheque was drawn, in order to have it certified. The bank refused to certify the cheque due to a hold status on the account.
- h) Charline and Larry Hurley failed to remedy this situation and thereby defaulted on the 29 October 2009 Note. Certain payments have been made against the loan but the majority of the loan remains outstanding.
- i) Contrary to the language of the 29 October 2009 Note, Mr. A. has described that Charline Hurley agreed to pay him a fee of \$10,000 in association with the loan. This agreement is reflected in a second promissory note issued by Charline Hurley to Mr. A. on 6 April 2010.

- j) No prospectus or Report of Exempt Distribution was filed with the NBSC in respect of either promissory note issued to Mr. A. As such, Staff of the New Brunswick Securities Commission ("Staff") alleges that both Charline and Larry Hurley breached section 6.1 of National Instrument 45-106 and section 71(1) of the *Securities Act*.

The 17 November 2009 Promissory Note Issued to Mr. and Mrs. B.

- k) On or about 17 November 2009, Charline Hurley solicited a loan from "Mr. and Mrs. B.", New Brunswick residents, to DRRI. Ms. Hurley represented to Mr. B. that DRRI needed to raise \$75,000.00 to pay for renovations and that without such funds it would be unable to apply for a certain government grant. Ms. Hurley stated that the money was needed that same day.
- l) Charline Hurley further represented that DRRI would be in a position to repay the loan on 18 December 2009. In this regard she presented Mr. B. with a print-out of an email purporting to include a Notice of Remittance from the Province of New Brunswick showing a payment of \$201,629.98 to be made to DRRI on 18 December. This document was in fact a forged version of a Notice of Remittance from August of 2009 in the amount of \$101,629.98.
- m) The original Notice of Remittance was delivered to Charline Hurley by email. It appears that Ms. Hurley effected the adulterations to the document by forwarding the original email to herself, and then changing the text of the original email prior to sending the forwarded email.
- n) Charline Hurley previously provided a true version of this same Notice of Remittance to the adviser of Mr. A. on 27 October 2009 as described in paragraph e above. A comparison of the two documents discloses the adulterations made. For instance, it appears that Ms. Hurley changed the date of the original to "Wednesday, November 10, 2009" when in fact, 10 November 2009 fell on a Tuesday.
- o) Based in part on the purported incoming payment of \$210,629.98, Mr. and Mrs. B. loaned DRRI \$35,000.00 secured by a promissory note issued on 17 November 2009. The note was issued by Charline Hurley on behalf of DRRI (the "17 November 2009 Note"). The funds were provided by cheque payable to Charline Hurley personally which was done at the request of Ms. Hurley.
- p) The 17 November 2009 Note matured on 18 December 2009, the same day as the purported remittance from the Province of New Brunswick in the amount of \$201,629.98 as described in the forged Notice of Remittance.
- q) Charline Hurley provided Mr. B. with a cheque in the amount of \$35,000.00 dated 18 December 2009 in repayment of the principal of the 17 November 2009 Note. The cheque, drawn on her personal account, was refused by the

bank because the account on which it was drawn was closed as of 18 December 2009.

- r) DRRI and Charline Hurley have defaulted on the repayment of the loan made under the 17 November 2009 Note. Certain payments were eventually made but the great majority of the loan remains outstanding.
- s) No prospectus or Report of Exempt Distribution has been filed with the NBSC in respect of the distribution of the 17 November 2009 Note. As such, Staff alleges that Charline Hurley and DRRI breached section 6.1 of National Instrument 45-106 and section 71(1) of the *Securities Act*.
- t) The use of a forged document by Charline Hurley to induce Mr. B. to advance the \$35,000.00 loan secured by the 17 November 2009 Note perpetrated a fraud on Mr. and Mrs. B., contrary to section 69(b) of the *Securities Act*.

Prior Conduct of Charline Hurley

- u) Apart from the issuance of the three promissory notes described above, Charline Hurley has borrowed significant amounts from several other New Brunswick residents. The majority of these loans have not been repaid as originally promised. One couple is owed approximately \$250,000.00 which was financed from advances on numerous credit cards and lines of credit.

The Status of the Investigation

- v) The NBSC issued an Investigation Order, pursuant to section 170(2) of the *Securities Act*, against Charline Hurley and DRRI on 16 November 2011. The investigation is ongoing.

Conclusion

- w) The conduct of the Respondents warrants that they be removed from the capital markets in New Brunswick until such time as the investigation is complete and any related legal proceeding is determined, or until otherwise ordered by the NBSC. This relief is sought in the public interest pursuant to section 184(1) of the *Securities Act*.

3. Evidence to be relied on:

- a) The affidavit of Gordon Fortner, Senior Investigator, sworn the 5th day of December 2011; and

b) Such further and other evidence as Staff may adduce and the Commission permit in support of this motion for an interim Order.

DATED at the City of Saint John this 5th day of December 2011.

"original signed by"

Mark McElman
Counsel to Staff of the Commission

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