

IN THE MATTER OF THE SECURITIES ACT, SNB 2004,

AND

IN THE MATTER OF

**JAMES K. HANLEY**, respondent

**FILED WITH/DÉPOSÉ AVEC**  
the Secretary to the Commission  
la secrétaire de la Commission

OCT 03 2006

  
**NBSC/CVMNB**

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**STATEMENT OF ALLEGATIONS**

(of Staff of the New Brunswick Securities Commission)

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**The respondent**

1. James K. Hanley ("Mr. Hanley") resides at [REDACTED], Quispamsis, New Brunswick.
2. Mr. Hanley was registered with the Administrator of the Securities Branch and then the New Brunswick Securities Commission, from 1982 until January 2006.
3. Mr. Hanley was employed as a salesperson with the following registered broker firms/dealers:
  - a. Investors Syndicate Ltd., from March 1982 to March 1990
  - b. Investors Group Financial Services Inc., from January 1991 to August 1994
  - c. Midland Walwyn Canada Inc., from August 1994 to September 1998
  - d. Merrill Lynch Canada Inc., from August 1998 to September 1999
  - e. DPM Securities Inc., from September 1999 to November 2000
  - f. Assante Capital Management Ltd., from November 2000 until January 2006.

**The clients, DG and GP**

4. DG was born in 1915 and worked as a telephone operator until her retirement in 1980. Mr. Hanley started acting as the sole financial advisor to DG in the mid 1980's.

5. GP was born in 1918 and worked for Shell Oil as administrative staff until her retirement in 1971. Mr. Hanley has been her sole financial advisor since the mid 1980's.

### **Mr. Hanley's dealings with DG and GP**

#### **June 1999**

6. On 11 June 1999, Mr. Hanley redeemed \$8,313 worth of DG's investments. He then caused a cheque to be issued to DG in the amount of \$7,500.
7. On 14 June 1999, DG wrote a cheque to Mr. Hanley for \$7,500.
8. On 21 June 1999, Mr. Hanley provided the \$7,500 cheque written by DG, to his personal banking institution, and then took \$1,000 cash and deposited the remaining \$6,500 into his personal chequing account. The funds do not re-appear in DG's account or investment holdings.
9. Between 21 June 1999 and 24 June 1999, Mr. Hanley made 6 ATM withdrawals totaling \$1,100 from the said personal chequing account. In addition, the said account was subsequently debited \$3,600 as a result of cheques written to the account.
10. Staff allege that Mr. Hanley appropriated the \$7,500 provided to him by DG, for his own use.

#### **August 1999 - DPM Securities**

11. On 10 August 1999, Mr. Hanley incorporated 510003 NB Ltd. and opened a bank account for this company at the Bank of Montreal. This account was subsequently operated under the name of DPM Securities ("the Bank of Montreal account").
12. On 20 September 1999, Mr. Hanley transferred employment from Merrill Lynch to DPM Securities Inc.
13. During October and November 1999, DG and GP's accounts were transferred to DPM Securities Inc.

#### **November 1999**

14. On 18 November 1999, Mr. Hanley redeemed \$20,000 worth of DG's investments and caused a cheque to be issued to DG in the amount of \$19,000.
15. On 24 November 1999, DG wrote a cheque to DPM Securities in the amount of \$19,000, for reinvestment.

16. On 18 November 1999, Mr. Hanley redeemed \$10,000 worth of GP's investments and caused a cheque to be issued to GP in the amount of \$10,000.
17. On 24 November 1999, GP wrote a cheque to DPM Securities in the amount of \$10,000, for reinvestment.
18. On 29 November 1999, Mr. Hanley deposited the \$19,000 and \$10,000 cheques written by DG and GP, into the Bank of Montreal account.
19. Between 30 November 1999 and 2 December 1999, Mr. Hanley wrote cheques from the Bank of Montreal account to himself in the amounts of \$24,000, \$2,000 and \$5,000.
20. The funds withdrawn from DG and GP's investments did not reappear in DG or GP's bank accounts or investment holdings.
21. Staff allege that Mr. Hanley appropriated the \$29,000 provided to him by DG and GP, for his own use.

#### **July 2000**

22. On 18 July 2000, Mr. Hanley redeemed \$17,611 worth of DG's investments and caused a cheque to be issued to DG in the amount of \$16,500.
23. On 27 July 2000, DG wrote a cheque to DPM Securities in the amount of \$15,000, for reinvestment.
24. On 18 July 2000, Mr. Hanley redeemed \$18,749 of GP's investments and caused an electronic transfer to be issued to GP's bank account in the amount of \$18,000.
25. On 27 July 2000, GP wrote a cheque to DPM Securities in the amount of \$18,000, for reinvestment.
26. On 28 July 2000, Mr. Hanley deposited the \$15,000 and \$18,000 cheques written by DG and GP, into the Bank of Montreal account.
27. Between 31 July 2000 and 15 August 2000, Mr. Hanley issued cheques from the Bank of Montreal account to himself in the amounts of \$23,000, \$5,000, \$2,500 and \$2,500.
28. The funds withdrawn from DG and GP's investments do not reappear in DG or GP's bank accounts or investment holdings.
29. Staff allege that Mr. Hanley appropriated the \$33,000 provided to him by DG and GP, for his own use.

### **January 2001**

30. On 11 January 2001, Mr. Hanley redeemed \$8,566 of DG's investments and caused an electronic transfer to be issued to DG's bank account in the amount of \$6,000.
31. On 16 January 2001, DG wrote a cheque to James Hanley in the amount of \$6,000, for reinvestment. This cheque was subsequently certified by Mr. Hanley. Later that day the said cheque was presented at the Hong Kong Bank by Mr. Hanley and converted into cash. The funds do not re-appear in DG's account or investment holdings.
32. Staff allege that Mr. Hanley appropriated the \$6,000 provided to him by DG, for his own use.

### **April 2005**

33. On or about 24 April 2005, EG, daughter of DG, reviewed the financial affairs of her mother and her aunt GP and asked Mr. Hanley to provide a list of DG's and GP's current investments.
34. On 25 April 2005, Mr. Hanley provided a document entitled "Assante Capital Statement", which appeared to be an account statement, dated 25 April 2005, to DG. The document referenced contained a section entitled "Off-Book" under which was an entry for "Segreated [sic] Funds", in the amount of \$28,960.40
35. Mr. Hanley advised EG that the Off-Book funds were investments which had been put aside to avoid detection by the government should DG have to go to a nursing home.
36. DG has never instructed Mr. Hanley to hide part of her investments from the government.
37. On 25 April 2005, Mr. Hanley also provided a document entitled "Statement on Demand", which appeared to be an account statement, dated 25 April 2005, to GP. The document referenced "Segregated Funds" in the amount of \$27,328.11 as forming part of GP's portfolio holdings.
38. Staff allege that the statements and information provided by Mr. Hanley to DG and GP were false and misleading.

### **January 2006**

39. On 18 January 2006, Mr. Hanley provides DG with a cheque in the amount of \$39,899.41 and advised her that this "represents the balance of the loan, plus accrued interest, at the agreed upon interest rate of 3%, extended by you to 510003 NB Ltd. operating as DPM Securities".

40. On 18 January 2006, Mr. Hanley provided GP with a cheque in the amount of \$32,943.77 with the same advice.
41. DG and GP have never lent money to Mr. Hanley or any company.
42. Staff allege that Mr. Hanley's suggestion that certain of the funds appropriated by him from DG and GP were loans, was false and misleading.

#### **June 2006**

43. On 28 June 2006, Mr. Hanley provided a voluntary statement to Staff during which he stated that:
  - a. DG and GP loaned money to him in 1999 and 2000;
  - b. He had not received any other money from DG or GP; and
  - c. The reference to "Off Book" funds in the statements provided to DG and GP in April 2005, referred to funds controlled by DG or GP and over which he had no control.

#### **Violations of New Brunswick securities law**

44. Staff allege that Mr. Hanley violated section 54 of the *Securities Act*, SNB 2004 c. S-5.5, and acted contrary to the public interest by:
  - a. Providing GP and DG with false and misleading account statements and information in April 2005;
  - b. Making representations to GP and DG in January 2006, suggesting that certain of the appropriated monies were in fact loans, which representations were false and misleading and designed to cover up the fact that these funds had been appropriated by Mr. Hanley; and
  - c. Such other particulars as may appear from the evidence.
45. Staff allege that Mr. Hanley violated section 69 of the *Securities Act* and acted contrary to the public interest by:
  - a. Continuing to deceive GP and DG after July 1, 2004 as to the whereabouts of monies provided to Mr. Hanley, by GP and DG;
  - b. Providing GP and DG with false and misleading account statements and information in April 2005;

- c. Making representations to GP and DG in January 2006, suggesting that certain of the appropriated monies were in fact loans, which representations were false and misleading and designed to cover up the fact that these funds had been appropriated by Mr. Hanley; and
  - d. Such other particulars as may appear from the evidence.
46. Staff allege that Mr. Hanley violated section 179 of the *Securities Act* and acted contrary to the public interest by:
- a. Making misleading or untrue statements to Staff of the Commission on 28 June 2006, including:
    - i. Making representations that certain of the monies appropriated from GP and DG were loans;
    - ii. Denying that funds other than those characterized as loans had been received from DG and GP;
    - iii. Mischaracterizing the "Off Book" funds referenced in the April 28 statements to Staff; and
    - iv. Such other particulars as may appear from the evidence.

DATED at the City of Saint John this 2<sup>nd</sup> day of October, 2006.

  
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