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Citation: Money Gate Mortgage Investment Corporation (Re), 2021 ONSEC 10
Date: 2021-04-01
File No. 2017-79

IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP., MORTEZA KATEBIAN
and PAYAM KATEBIAN

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	July 14 and 23, 2020	
Decision:	April 1, 2021	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	M. Cecilia Williams	Commissioner
	Lawrence P. Haber	Commissioner
Appearances:	Dihim Emami	For Staff of the Commission
	James Camp	For Money Gate Corp., Morteza Katebian and Payam Katebian
	No one appearing for Money Gate Mortgage Investment Corporation	

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REASONS AND DECISION

I. OVERVIEW

[1] Following a hearing on the merits, we found (in what we will describe as the **Merits Decision**)[1] that from August 2014 to December 2017, Morteza ("Ben") Katebian and his son Payam Katebian raised approximately $11 million from more than 150 investors, by continuously selling preferred shares in Money Gate Mortgage Investment Corporation (**MGMIC**). In doing so, each of Ben, Payam[2] and MGMIC engaged in unregistered trading and effected illegal distributions of securities. We further found that MGMIC, Ben, Payam and Money Gate Corp. (**MGC**, a related mortgage brokerage firm) perpetrated fraud on MGMIC's investors, thereby contravening Ontario securities law.

[2] At the sanctions and costs hearing in this proceeding, Staff of the Commission asked that:

a. Ben, Payam, MGMIC and MGC be subject to permanent trading, acquisition and exemption bans, and that Ben and Payam be subject to permanent director and officer bans;

b. Ben, Payam and MGC each pay an administrative penalty of $1,000,000;

c. Ben, Payam and MGC jointly and severally disgorge to the Commission $11,009,571; and

d. Ben, Payam and MGC jointly and severally pay costs to the Commission of $597,122.58.

[3] For the following reasons, we find that it is in the public interest to order:

a. the non-monetary sanctions requested, subject to limited carve-outs that we describe below;

b. that each of Ben and MGC pay an administrative penalty of $750,000;

c. that Payam pay an administrative penalty of $600,000;

d. that Ben, Payam and MGC jointly and severally disgorge to the Commission $8,711,138; and

e. that Ben, Payam and MGC jointly and severally pay costs to the Commission of $597,122.58.

II. PARTICIPATION IN THE HEARING

[4] MGMIC has been in receivership throughout this proceeding. MGMIC withdrew from active participation early in the proceeding after being advised by Staff that Staff did not intend to seek any monetary sanctions against MGMIC.

[5] The three remaining respondents, Ben, Payam and MGC (collectively, the **Remaining Respondents**) appeared at the sanctions and costs hearing with counsel.

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[1] 2019 ONSEC 40

[2] Throughout these reasons, we refer to Messrs. Katebian by their first names, solely for convenience in distinguishing between them. We mean no disrespect in doing so.

III. ANALYSIS

[6] This hearing presents two principal issues:

a. Is it in the public interest to order sanctions against the respondents, and if so, what sanctions would be appropriate?

b. Should the respondents be ordered to pay costs for the investigation and hearing?

A. Sanctions

1. Legal framework

[7] The Commission may impose sanctions under s.127(1) of the *Securities Act* (the **Act**)[3] where it finds that it is in the public interest to do so. The Commission must exercise this jurisdiction in a manner consistent with the Act's purposes, which include the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets.[4]

[8] The Supreme Court of Canada has held that the sanctions listed in s. 127(1) of the Act are protective and preventative, and are intended to be exercised to prevent future harm to Ontario's capital markets.[5]

[9] The Commission has identified a non-exhaustive list of factors to be considered for sanctions generally. These factors include:

a. the seriousness of the misconduct;

b. the size of the profit made from the misconduct;

c. whether the misconduct was isolated or recurrent;

d. any mitigating factors;

e. the respondent's ability to pay any monetary sanctions; and

f. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").

[10] Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[6]

[11] Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case. We refer below to decisions of the Commission in other cases, which are helpful but of limited value when determining the appropriate length of a market ban or the amount of an administrative penalty.[7]

[12] We now turn to consider each of the above-enumerated factors in the context of this case.

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[3] RSO 1990, c S.5

[4] The Act, s 1.1

[5] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[6] *Bradon Technologies Ltd. (Re),* 2016 ONSEC 19, (2016) 39 OSCB 4907 (***Bradon***) at para 28; and at para 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60; *Sabourin (Re),* 2010 ONSEC 10, (2010) 33 OSCB 5299 (***Sabourin***), at para 59

[7] *Re Quadrexx Hedge Capital Management Ltd.,* 2018 ONSEC 3, (2018) 41 OSCB 1023 at para 20

2. Application of the sanction factors

(a) Seriousness of the misconduct

[13] The respondents' misconduct was serious. They violated registration and prospectus requirements, which are cornerstones of Ontario's securities regulatory regime.

[14] They also committed fraud, which is one of the most egregious securities regulatory violations and which causes direct harm to investors and undermines confidence in the capital markets.[8]

[15] The amount the respondents obtained as a result of their non-compliance with Ontario securities law was approximately $8.7 million, as we explain below. That is a significant sum. Its magnitude contributes to the seriousness of the misconduct.

[16] Without diminishing the seriousness of the fraud, we must put it in perspective. Some who commit fraud intend that their victims will lose their money. Others are well-intentioned but misguided or reckless. The respondents in this case are closer to the latter end of the spectrum.

(b) Size of the profit made from the misconduct

[17] As we found in the Merits Decision, MGMIC diverted $1,115,000 to Ben for his benefit. MGMIC diverted a further $435,196 to various entities owned or controlled by Ben, Payam, or individuals associated with them.

(c) Whether the misconduct was isolated or recurrent

[18] The respondents' breaches were not isolated. The respondents engaged in a continuous course of conduct that involved many separate transactions over more than three years. During that time, they raised approximately $11 million from more than 150 investors.

[19] Each separate contravention showed the respondents' disregard for the representations made in the offering memoranda and other communications to investors. Each contravention was therefore inconsistent with the bargain that the respondents made with the investors. At each turn, the respondents defeated the reasonable expectations of those investors.

(d) Mitigating factors

[20] No mitigating factors were advanced on behalf of Ben or on behalf of the corporate respondents.

[21] Payam submits that he is less culpable than his father. He argues that at the relevant time, he was a young man who was inexperienced in corporate governance and in running a business and who respected his father.

[22] Staff urges us not to consider these claims as mitigating factors for Payam. Staff submits that Payam and Ben are equally culpable.

[23] We have some sympathy for Payam's submissions. We consider his age, his stage in life, and the fact that he was working closely with this father, who was undoubtedly a strong influence. Having said that, Payam is an educated and

[8] Merits Decision at paras 140, 168 and 200

independent adult, so these considerations do not absolve him of responsibility for his actions. They do act as mitigating factors.

[24] Payam also submits that he is remorseful. He says that he has demonstrated that remorse by co-operating with the receiver and participating in this proceeding.

[25] Staff disagrees. Staff argues that Payam has denied allegations and has expressed no remorse for his conduct. Staff points out that even after Payam read the Merits Decision and reflected on our findings, his "biggest regret" (according to his testimony at the sanctions hearing) was "ever meeting those guys",[9] a reference to the individuals that he maintains are the truly fraudulent parties.

[26] Payam testified that his intention was "to act in the best interests" of MGMIC and the investors.[10] We accept this evidence but do not consider an absence of malice to be a mitigating factor. Instead, it is the lack of an aggravating factor. In summary, we heard no satisfactory demonstration of remorse by Payam.

(e) Ability to pay

[27] Payam submits that his personal situation should be taken into account when considering appropriate sanctions, including that his financial circumstances are "quite, quite dire"[11] and that he is under a significant amount of personal stress in having to care for a family member.

[28] In the sanctions hearing, he provided evidence in the form of screenshots of various bank accounts. He testified that his plans for work in the future are uncertain because this has been his "whole life for the past few years, nothing else."[12]

[29] While one's ability to pay can be a relevant factor, it is not a predominant or determining factor.[13] Further, we agree with Staff's submission that Payam's evidence supporting this submission is inadequate for this purpose. Simple screenshots, without supporting records that can be adequately reviewed, are not sufficient, particularly in light of our findings that the respondents improperly diverted funds.

(f) Need for specific and general deterrence

[30] Staff submits that specific deterrence is necessary in this case because: (i) the respondents have failed to recognize the seriousness of their conduct; (ii) the requested sanctions would impress upon Ben and Payam the seriousness of their misconduct and the consequences for inflicting this kind of harm on investors; and (iii) the requested sanctions would protect other investors from similar behaviour by Ben and Payam in the future.

[31] Staff also submits that general deterrence is an important factor, so that other like-minded individuals see clearly that this kind of conduct will not be tolerated.

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[9] Hearing Transcript, Money Gate Corp. (Re), July 14, 2021, at 24, line 9
[10] Hearing Transcript, Money Gate Corp. (Re), July 14, 2021, at 23, lines 16-17
[11] Hearing Transcript, Money Gate Corp. (Re), July 23, 2021, at 78
[12] Hearing Transcript, Money Gate Corp. (Re), July 14, 2021, at 55
[13] *Sabourin* at para 60

[32] The Remaining Respondents agree that we must consider general deterrence as a relevant factor. However, they submit that we should weigh this factor equally with the other sanctioning factors, including the impact of any sanction on the respondent.

[33] We accept Staff's submissions. We are cautious not to overemphasize the need for deterrence. However, misconduct that is of the most egregious kind, as we have found this to be, must carry with it significant sanctions to achieve the necessary deterrent effect.

3. Non-Monetary Sanctions

[34] With the above factors in mind, we turn to consider the appropriate non-monetary sanctions.

[35] The Remaining Respondents concede that the non-monetary sanctions requested by Staff (*i.e.*, permanent market bans) are appropriate based on our findings.

[36] Staff and the Remaining Respondents agree that MGMIC should be permitted a carve-out so that it may acquire securities, or trade in securities or derivatives, to complete the MGMIC receivership. We agree that this requested carve-out is appropriate. It presents no risk to the capital markets, and it may further the interests of harmed investors.

[37] Ben and Payam submit that they should be permitted to trade in one or more accounts once they have paid any monetary sanctions and costs awarded against them. Staff submits that no carve-outs are appropriate for them because they cannot be trusted to participate in the capital markets even in a limited capacity.

[38] We disagree with Staff. Ben's and Payam's misconduct was serious, but the carve-out they seek would not enable them to engage in similar misconduct in the future. It is in the public interest to allow them to invest in the capital markets in a limited way once they have satisfied their monetary obligations to the Commission. We prescribe the limited carve-out in our concluding paragraph below and in the order we will issue along with these reasons.

[39] Staff also seeks a reprimand against Ben and Payam, under paragraph 6 of s.127(1) of the Act. A reprimand is unnecessary, duplicative and not in the public interest where, as here, there are explicit findings of breaches of Ontario securities law, and the reasons for decision include clear denunciation of the conduct. Treating a reprimand as an automatic add-on to significant sanctions can diminish the value of reprimands in cases where they are better suited.[14]

[40] We will now consider monetary sanctions, beginning with disgorgement, followed by administrative penalties.

4. Disgorgement

(a) Introduction

[41] Paragraph 10 of s.127(1) of the Act authorizes the Commission to make an order requiring a person or company who has not complied with Ontario securities law "to disgorge to the Commission any amounts obtained as a result of the non-compliance."

[14] *Hutchinson (Re)*, 2020 ONSEC 1 at para 49

[42] The Remaining Respondents concede that a disgorgement order would be fitting. They disagree with Staff about how we should calculate the amount.

[43] We begin by examining the general principles applicable to disgorgement. We then calculate the appropriate amount in this case.

[44] The purpose of disgorgement is to ensure that respondents do not retain any financial benefit from their misconduct, in order to fulfill the goals of specific and general deterrence.[15]

[45] The Commission has previously set out various factors that it will consider in determining whether a disgorgement order is appropriate, and if so, in what amount:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to individual investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and other market participants.[16]

[46] We addressed the second and fifth of these factors above in our discussion of sanctioning factors generally. The serious and harmful nature of the respondents' misconduct in this case, and the need for both specific and general deterrence, support a disgorgement order. Investment fund managers and others who raise funds from investors must have no incentive to obtain and use the investors' funds in a manner that is inconsistent with Ontario securities law and the promises made to those investors. This must be so even where those who raise funds believe that they will manage the funds well and will be able to meet their financial obligations to the investors.

[47] We begin our calculation of the appropriate amount by addressing the first and third factors together. We consider whether there are reasonably ascertainable amounts obtained by the respondents as a result of non-compliance with Ontario securities law. We then address the remaining fourth factor by considering whether the investors are likely to obtain redress.

(b) Were reasonably ascertainable amounts obtained by the respondents as a result of non-compliance with Ontario securities law?

[48] In this case, there is no difficulty ascertaining the actual amounts involved in various transactions. However, the parties differ in two ways about how we should determine what amounts were obtained as a result of non-compliance with Ontario securities law.

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[15] *Sabourin* at para 65

[16] *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 (**PFAM**) at para 56

[49] One difference arises from Staff's request that we require the Remaining Respondents to disgorge funds on a joint and several basis. The Remaining Respondents submit that we should treat each respondent differently and look to the specific amounts that flowed to a particular respondent.

[50] We cannot accept that submission. As we found in the Merits Decision, "Ben, Payam and MGC were inextricably wound up in all of MGMIC's frauds".[17] Given the nature of the fraud in which they all engaged together, and given our lack of confidence in any assumptions about how they moved funds around, only a joint and several order would be in the public interest.

[51] The second difference between the parties is about what proportion of the funds obtained should be disgorged. Staff submits that we should order disgorgement of the total raised through the distribution of preferred shares, *i.e.*, $11,009,571. We note that this total does not include dividends that were automatically reinvested by MGMIC, when directed by investors. That additional sum of $277,824 could, arguably, be added to the disgorgement amount since those dividends would otherwise have been paid to investors in cash. However, Staff does not seek disgorgement of that additional amount.

[52] The Remaining Respondents dispute that the amount ought to be the total raised. They begin by asking us to distinguish this case from some of the cases where the Commission has ordered disgorgement of the total amount raised. They then ask us to focus on how the respondents in this case used the funds raised.

[53] We agree with the distinction that the Remaining Respondents suggest, in that unlike some other fraud cases, this is not a case where there was no legitimate underlying business and the funds raised were used simply to enrich the respondents. In this case, there was an underlying business.

[54] However, we would be skipping an important step if we were to move directly from that distinction to examining how the funds were used, as the Remaining Respondents would have us do. The Act requires that we determine what funds were obtained as a result of non-compliance with Ontario securities law. As we found in the Merits Decision, the respondents' non-compliance was twofold. First, they raised the funds in a manner that contravened ss. 25(1) and 53(1) of the Act. Second, they did not operate the enterprise (*i.e.*, use the funds) as promised.

[55] While the respondents did sometime use the funds in a way that conformed to the representations made to investors, that does not change the fact that they first obtained the funds as a result of their non-compliance with Ontario securities law. As the Commission has previously held, it does not matter how the funds were used after they were obtained in contravention of the Act.[18]

[56] Further, a particular investor's funds paid to acquire preferred shares did not flow directly to a specific mortgage. Funds were raised and then pooled. This fact reinforces the appropriateness of calculating disgorgement based on the inflow rather than the use.

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[17] Merits Decision at para 309
[18] *Phillips (Re)*, 2015 ONSEC 36, (2015) 38 OSCB 9311 at para 19

[57] Having said that, although we are authorized to order disgorgement in the full amount obtained by the Remaining Respondents, we need not do so. We consider it to be appropriate in this case to exercise our discretion to reduce the disgorgement amount by the amounts loaned in conformance with the promises made to investors:

Loan number	Amount
2013-30	$75,500
2014-10	$21,500
2014-22	$77,000
2014-27	$550,000
2015-03	$62,500
2015-04	$170,000
2015-06	$226,542
2015-09	$43,000
2015-11	$207,500
2015-16	$41,500
2015-17	$69,500
2015-19	$90,000
2015-22	$85,000
2016-01	$68,891
2016-03	$60,000
2016-05	$450,000
Total	**$2,298,433**

[58] We deduct $2,298,433 (the total of conforming loans) from $11,009,571 (the total funds raised) to arrive at a disgorgement amount of $8,711,138.

(c) Are the investors likely to be able to obtain redress?

[59] The Remaining Respondents submit that we should reduce any disgorgement amount by the amount returned to investors following the misconduct. We agree with this submission in principle.

[60] However, the MGMIC receivership is ongoing. The most recent receiver's report provided to us was current to April 24, 2020. According to that report, the receiver had recovered an estimated $1,515,316. We cannot clearly ascertain the uses to which those funds will be put and whether the receiver will pay the total recoveries to investors without any deductions. Accordingly, we are unable to determine the precise amount that will be returned to investors.

[61] Under these circumstances, it is appropriate for us to order disgorgement according to the usual principles and without regard to potential recoveries, given the uncertainty. Any party may apply to the Commission to vary our order,

based on more current information regarding the receiver's ability to repay funds to investors.

(d) Conclusion regarding disgorgement

[62] Considering all the above factors, we find that Ben, Payam and MGC should be jointly and severally liable to disgorge to the Commission the sum of $8,711,138.

5. Administrative penalties

[63] We turn now to administrative penalties. Paragraph 9 of s. 127(1) of the Act provides that if a person or company has not complied with Ontario securities law, the Commission may require the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

[64] Given our finding that each of the Remaining Respondents is responsible for numerous failures to comply with Ontario securities law, over more than three years, each Remaining Respondent is potentially liable for administrative penalties totalling many millions of dollars.

[65] Despite this, Staff submits that each of Ben, Payam and MGC should pay an administrative penalty of $1 million. Staff submits that such an order would be proportionate and appropriate in the circumstances of this case and that it would be consistent with sanctions imposed by the Commission in comparable cases.

[66] The Remaining Respondents submit that $1 million is not an appropriate amount for an administrative penalty as this is not the most serious of cases the Commission has considered.

[67] An administrative penalty should be sufficient to ensure effective specific and general deterrence. Factors to be considered in determining an appropriate administrative penalty include:

a. the scope and seriousness of a respondent's misconduct;

b. whether there were multiple or repeated breaches of the Act;

c. whether the respondent realized any profit as a result of his or her misconduct;

d. the amount of money raised from investors;

e. the harm caused to investors; and

f. the level of administrative penalties imposed in other cases.[19]

[68] We discussed above the first five of these six factors. For context regarding administrative penalties imposed by the Commission in other cases, we refer to the following recent decisions cited by Staff, all of which involved findings of fraud:

a. *Natural Bee Works Apiaries Inc. (Re)*[20] (2019) – Approximately $300,000 was raised over nine months. The funds were used for purposes

[19] *Re Rowan,* 2009 ONSEC 46, (2009) 33 OSCB 91 at paras 67, 70 and 73, aff'd 2010 ONSC 7029 (Div Ct), aff'd 2012 ONCA 208; *Re Limelight Entertainment Inc,* 2008 ONSEC 28, (2008) 31 OSCB 12030 at paras 67, 71 and 78

[20] 2019 ONSEC 31

inconsistent with those promised to investors. All investors lost their funds. The Commission ordered that the corporate respondent and one of its principals be jointly liable for an administrative penalty of $500,000.

b. *Meharchand (Re)*[21] (2019) – The respondents raised approximately $1.65 million over five years and used the funds for improper purposes. Virtually all investor funds were lost. The Commission imposed an administrative penalty of $550,000 on the principal.

c. *Sino-Forest Corporation (Re)*[22] (2018) – The corporate respondent perpetrated a US$3 billion fraud over five and a half years. The Commission also found that each of the respondents had misled Staff. The Commission ordered that four individual respondents pay administrative penalties ranging from $2 million (for two of them) to $5 million (for one of them).

d. *Quadrexx Hedge Capital Management Ltd. (Re)*[23] (2017) – The respondents raised approximately $3.4 million from investors over four and a half years. Investors suffered substantial losses. The Commission ordered the two individual respondents to pay administrative penalties of $600,000 each.

[69] We also note that Payam provided letters of support, which he advises speak to some of his circumstances and how he has behaved in other aspects of his life. We take these into account but do not attribute significant weight to them. Most individuals who commit fraud can find friends or acquaintances who can speak to their good character. We have some sympathy for the circumstances in which Payam found himself. Still, as we have concluded, Payam's misconduct was deliberate and repeated, and it caused serious losses for innocent investors. It also undermined the integrity of the capital markets. These significant facts cannot be overcome by his previous conduct or his behaviour in other aspects of his life.

[70] Finally, Payam submits that we must consider whether any administrative penalty would have a disproportionate effect on his ability to earn a living. Once again, we are mindful of the consequences that can flow from a significant penalty. However, we must weigh those consequences against the serious consequences for the many victims of the fraud. Any penalty will cause difficulties for a respondent. If that were not the case, the penalty would lack the necessary specific and general deterrent effect, thereby defeating the purpose of the penalty and exposing the capital markets to a much greater risk of future misconduct.

[71] Considering all of the above, we find that administrative penalties of $750,000 and $600,000 are appropriate against Ben and Payam, respectively. We distinguish between them because of Payam's age and stage in life and because he was working closely with this father, who was undoubtedly a strong influence. These mitigating factors do not absolve Payam, who is an educated and

[21] 2019 ONSEC 7
[22] 2018 ONSEC 73
[23] 2018 ONSEC 3

independent adult, of responsibility for his actions. But the factors do support different treatment of the two individuals, and $600,000 is a significant penalty.

[72] We should not apply any deduction to MGC. We will order that MGC pay an administrative penalty of $750,000. Although we are told that MGC has no assets, the penalty we impose should reflect the sanctioning factors even where the Commission may not be able to recover the amount ordered.[24] Further, even where a respondent is currently unable to pay, an order remains in place in case assets are located.[25]

B. Costs

[73] Finally, we consider Staff's request that the Remaining Respondents pay costs.

[74] Section 127.1 of the Act permits the Commission to order a person or company to pay the costs of an investigation or hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.

[75] Staff requests that the Remaining Respondents jointly and severally pay costs to the Commission of $597,122.58. Staff supports this request with uncontradicted evidence regarding the time spent by various members of Staff during: (i) the investigation leading up to this proceeding, and (ii) preparation for and conduct of the hearings in the proceeding.

[76] Staff begins by applying hourly rates that the Commission has previously adopted, based on the positions of, and roles played by, members of Staff. Staff excluded from its initial calculation time spent by:

a. assistant investigators;

b. members of Staff who recorded 35 or fewer hours; and

c. members of Staff in the Technology and Evidence Control unit.

[77] Applying these exclusions results in a total attributable to Staff time of $1,331,221.25.

[78] Staff then limits its request regarding time to that of only three individuals: the lead investigator and two counsel. Staff excludes time spent by litigation counsel before the issuance of the Statement of Allegations. Staff also excludes time spent by counsel on the receivership application and other related tasks. After these reductions, Staff reaches a claimed amount of $547,344.50.

[79] Staff then adds approximately $50,000 in respect of disbursements, representing a discount from a total disbursement amount of approximately $80,000.

[80] Overall, Staff's claim represents a discount of approximately 57% on the actual costs it incurred during its investigation, its work before the hearing and the conduct of the hearing.

[81] The Remaining Respondents submit that the costs requested by Staff are too high and that the materials provided to support the costs were insufficient. The Remaining Respondents dispute certain items in Staff's claim. We note, however, that the amounts of the disputed items are not material and that the 57%

[24] *Gold-Quest International, Re*, 2010 ONSEC 30, (2010) 33 OSCB 11179 at para 99
[25] *Lehman Cohort Global Group Inc., Re*, 2011 ONSEC 8, (2011) 34 OSCB 2999 at para 19

discount more than overcomes the disputed amounts. Staff's claimed amount is eminently reasonable. The level of detail was sufficient to support the claim.

[82] Staff was entirely successful in proving its allegations against the Remaining Respondents. The investigation and the proceeding were long and complex, and they consumed many hours of Staff time. Respondents who engage in this kind of misconduct should bear a substantial portion of Staff's costs so that the burden is lessened for other market participants.

[83] We will order that the Remaining Respondents be liable, jointly and severally, to pay costs in the claimed amount of $597,122.58.

IV. CONCLUSION

[84] For the above reasons, we will issue an order that provides that:

a. pursuant to paragraphs 2 and 2.1 of s.127(1) of the Act:

   i. trading in securities of MGMIC shall cease permanently, except for trades effected by the receiver of MGMIC;

   ii. MGC and MGMIC are permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except for any trades or acquisitions effected by the receiver of MGMIC;

   iii. Ben and Payam are permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that each may, after he has fully paid all monetary sanctions and costs that we order, trade securities or derivatives, and acquire securities, for any Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*[26]), of which he, his spouse or his children are the sole legal and beneficial owners, through a registered dealer in Canada to whom he has given a copy of our order and a certificate from Staff confirming that he has paid the monetary sanctions and costs as required;

b. pursuant to paragraph 3 of s.127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to any of the respondents, permanently, except to the extent necessary for the receiver of MGMIC to carry out its duties;

c. pursuant to paragraphs 7 and 8.1 of s.127(1) of the Act, Ben and Payam shall resign any positions that they hold as directors or officers of any issuer or registrant;

d. pursuant to paragraphs 8 and 8.2 of s.127(1) of the Act, Ben and Payam be prohibited permanently from becoming or acting as directors or officers of any issuer or registrant;

e. pursuant to paragraph 8.5 of s. 127(1) of the Act, the respondents are prohibited permanently from becoming or acting as a registrant or as a promoter;

[26] RSC, 1985, c 1 (5th Supp)

f. pursuant to paragraph 9 of s.127(1) of the Act, Ben and MGC shall pay administrative penalties of $750,000 each, and Payam shall pay an administrative penalty of $600,000, which amounts shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act;

g. pursuant to paragraph 10 of s.127(1) of the Act, Ben, Payam and MGC shall, jointly and severally, disgorge to the Commission $8,711,138, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and

h. pursuant to s.127.1 of the Act, Ben, Payam and MGC shall, jointly and severally, pay $597,122.58 for the costs of the investigation and hearing.

Dated at Toronto this 1st day of April, 2021.

"*Timothy Moseley*"
Timothy Moseley

"*M. Cecilia Williams*"
M. Cecilia Williams

"*Lawrence P. Haber*"
Lawrence P. Haber