

IN THE MATTER OF THE SECURITIES ACT, SNB 2004, c. S-5.5

AND

IN THE MATTER OF

JAMES K. HANLEY, Respondent

I certify this to be a true copy of the original. / J'atteste que la présente est une copie conforme à l'original.

DATED/DATÉE AT/à Saint John, NB this/ce

26 day of/jour de February 2007

Monica Lowe
Secretary/Secrétaire

NBSC/CVMNB

ORDER

WHEREAS on 3 October 2006, Staff of the New Brunswick Securities Commission (the "Commission") issued a Notice of Hearing in respect of the Respondent;

AND WHEREAS the Respondent entered into a Settlement Agreement dated 15 February 2007 (the "Agreement") in which he agreed to a proposed settlement of this proceeding, subject to the approval of the Commission;

AND UPON REVIEWING the Agreement and the Agreed Statement of Facts filed in this matter;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order.

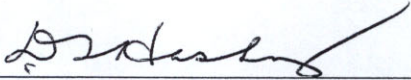
NOW THEREFORE IT IS HEREBY ORDERED THAT:

1. Pursuant to section 191(1)(a) of the Act, the Settlement Agreement, a copy of which is attached to this Order, is hereby approved.
2. Pursuant to section 184(1)(a) of the Act, the respondent is barred from being granted registration under New Brunswick securities law for a period of twenty years from the date of this order;
3. Pursuant to section 184(1)(d) any exemptions contained in New Brunswick securities law do not apply to the respondent, for a period of twenty years from the date of this order;
4. Pursuant to section 186(1) of the Act the respondent pay an administrative penalty for failing to comply with New Brunswick securities law, in the amount of \$45,000.00 (forty five thousand dollars), by 1 July 2007 ; and
5. Pursuant to section 185(1) of the Act that the respondent pay the fees and expenses for the costs of investigation, in the amount of \$5,000.00 (five thousand dollars), by 1 July 2007.

6. If payment of the administrative penalty and costs is not made by July 1, 2007, then Staff of the Commission may, in its discretion, pursue any proceeding to enforce the settlement agreement, including contempt proceedings.

DATED at the City of Saint John this 26th day of February, 2006. 7

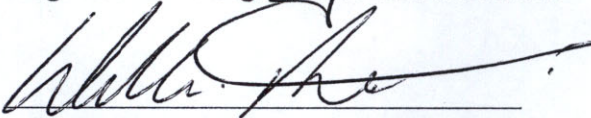
DRB
D2r
WTA



David T. Hashey, Q.C., Panel Chair



Hugh J. Flemming, Q.C., Panel Member



William D. Aust, Panel Member

New Brunswick Securities Commission
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IN THE MATTER OF THE SECURITIES ACT, SNB 2004, c. S-5.5

AND

IN THE MATTER OF

JAMES K. HANLEY, respondent

SETTLEMENT AGREEMENT

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Securities Commission ("Staff") agree to recommend approval of settlement of this matter to a panel of the New Brunswick Securities Commission pursuant to section 191(1)(a) of the *Securities Act*, in accordance with the following terms and conditions:

- a. The Respondent agrees to the Statement of Facts set out in Part II hereof, and consents to the making of an order on the basis of those facts, as set out in Schedule "A"; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

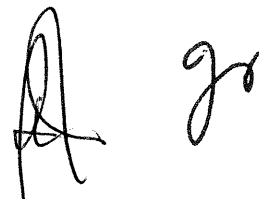
2. RESPONDENT'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondent undertakes to:

- a. Not make any statement which is inconsistent with the Statement of Facts attached hereto;
- b. Pursuant to the Order as set out in Schedule "A", to pay by 1 July 2007, a penalty of \$45,000; and
- c. Pursuant to the Order as set out in Schedule "A", to pay by 1 July 2007, an amount of \$5,000 for the costs of the investigation.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Respondent, Staff will apply to the Commission for an order approving the



Settlement Agreement.

- b. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter and the Respondent agrees to waive any right to a hearing and/or appeal with respect to this matter.
- c. If, for any reason whatsoever, this settlement is not approved by the Commission, or the order set forth in Schedule "A" is not made by the Commission:
 - i. Staff and the Respondent will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or the settlement negotiations;
 - ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and the Respondent or as may be required by law; and
 - iii. The Respondent further agrees that it will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Commission.

4. DISCLOSURE OF SETTLEMENT AGREEMENT

- a. The terms of the Settlement Agreement will be treated as confidential by the parties thereto until approved by the Commission and forever if, for any reason, the Settlement Agreement is not approved by the Commission; and
- b. upon the approval of the Settlement Agreement by the Commission, any obligation as to confidentiality shall terminate and the Settlement Agreement will become public information.

5. STAFF COMMITMENT

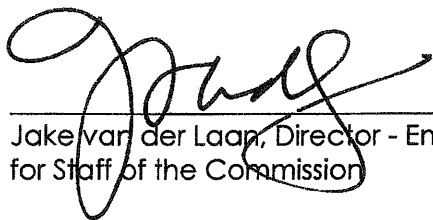
If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondent in relation to the facts set out in Part II of this Settlement Agreement.

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6. EXECUTION OF SETTLEMENT AGREEMENT

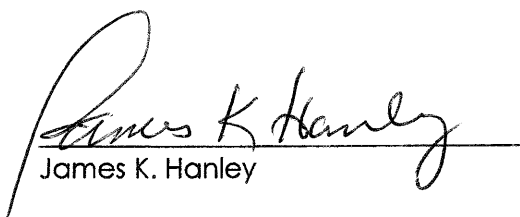
The Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED at the City of Saint John this 15 day of February, 2007.

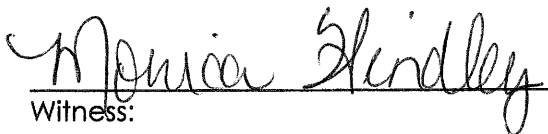


Jake van der Laan, Director - Enforcement
for Staff of the Commission

DATED at the City of Saint John this _____ day of February, 2007.



James K. Hanley



Witness:



Part II
STATEMENT OF FACTS

Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and the Respondent agree with the facts set out herein.

The respondent

1. James K. Hanley ("Mr. Hanley") is a financial advisor. He was registered with the Administrator of the Securities Branch and then the New Brunswick Securities Commission, from 1982 until January 2006. During that time he was 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, and
 - f. Assante Capital Management Ltd., from November 2000 until January 2006.



The clients, DG and GP

2. DG was born in 1915 and worked as a telephone operator until her retirement in 1980. Mr. Hanley started acting as her sole financial advisor in the mid 1980's and continued to so act until 2005.
3. GP was born in 1918 and worked for Shell Oil as administrative staff until her retirement in 1971. Mr. Hanley was her sole financial advisor from the mid 1980's until 2005.

Mr. Hanley's dealings with DG and GP

June 1999

4. On 11 June 1999, Mr. Hanley redeemed \$8,313 worth of DG's investments with Merrill Lynch. The proceeds were placed in her cash account with Merrill Lynch. A cheque was subsequently requested and issued by Merrill Lynch to DG on 14 June 1999, in the amount of \$7,500. This cheque was deposited into the personal bank account of DG.



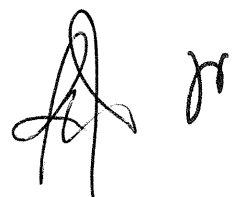
5. On 14 June 1999, DG wrote a cheque to Mr. Hanley for \$7,500. This cheque was subsequently certified.
6. On 21 June 1999, the certified cheque for \$7,500 written by DG was presented to Bayview Credit Union by Mr. Hanley. \$1,000 cash was obtained and the remaining \$6,500 deposited to Mr. Hanley's personal bank account with Bayview Credit Union.

August 1999 - DPM Securities

7. On 10 August 1999, Mr. Hanley incorporated 510003 NB Ltd. and opened a bank account for this company at the Bank of Montreal, Market Square Branch, in Saint John, New Brunswick. This account was subsequently operated under the name of DPM Securities ("the BOM account").
8. On 20 September 1999, Mr. Hanley transferred employment from Merrill Lynch to DPM Securities Inc. DPM Securities Inc. is a national investment firm and an entity distinct from 510003 NB Ltd. which operated a bank account under the name "DPM Securities".
9. During October and November 1999, DG and GP's investment accounts were transferred from Merrill Lynch to DPM Securities Inc.

November 1999

10. On 18 November 1999, \$18,983.69 worth of DG's investments (after redemption fees) with DPM Securities Inc. were redeemed. The proceeds were placed in her cash account with DPM Securities Inc. A cheque was requested the same day from her cash account and issued to DG, in the amount of \$19,173.97.
11. This cheque was subsequently deposited into the personal bank account of DG.
12. On 24 November 1999, DG wrote a cheque to "DPM Securities" in the amount of \$19,000, for reinvestment.
13. On 18 November 1999, \$9,482.40 worth of GP's investments (after redemption fees) with DPM were redeemed. The proceeds were placed in her cash account with DPM Securities Inc. A cheque was thereafter requested from her cash balance with DPM Securities Inc., and issued to GP, in the amount of \$10,000, on the same day.
14. This cheque was subsequently deposited into the personal bank account of GP.
15. On 24 November 1999, GP wrote a cheque to "DPM Securities" in the amount of \$10,000 for reinvestment.
16. On 29 November 1999, the \$19,000 and \$10,000 cheques written by DG and GP

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were deposited into the BOM account by Mr. Hanley.

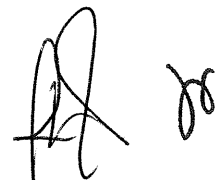
17. Between 30 November 1999 and 2 December 1999, cheques were written from the BOM account to Mr. Hanley in the amounts of \$24,000, \$2,000 and \$5,000.

July 2000

18. On 18 July 2000, \$16,583.29 worth of investments (after redemption fees) were redeemed from DG's holdings with DPM Securities Inc. The proceeds were placed in her cash account with DPM Securities Inc. A cheque was subsequently requested and issued on July 24, payable to DG, in the amount of \$16,500.
19. This cheque was subsequently deposited into DG's personal bank account.
20. On 27 July 2000, DG wrote a cheque to "DPM Securities" in the amount of \$15,000, for reinvestment. This cheque was subsequently certified on 28 July 2000.
21. On 18 July 2000, \$17,978.85 worth of investments (after redemption fees) were redeemed from GP's holdings with DPM Securities Inc. An electronic funds transfer was subsequently effected from DPM Securities Inc. to GP's bank account in the amount of \$18,000.
22. On 27 July 2000, GP wrote a cheque to "DPM Securities" in the amount of \$18,000, for reinvestment. This cheque was subsequently certified.
23. On 28 July 2000, the \$15,000 and \$18,000 cheques written by DG and GP were deposited into the BOM account by Mr. Hanley.
24. Between 28 July 2000 and 15 August 2000, cheques were issued from the BOM account to Mr. Hanley in the amounts of \$23,000, \$5,000, \$2,500 and \$2,500.
25. The \$23,000 cheque, dated 28 July 2000, was deposited into the personal bank account of Mr. Hanley with Bayview Credit Union on 28 July 2000.
26. On 28 July 2000, a bank draft in the amount of \$19,468.48, was issued from Mr. Hanley's personal bank account, payable to "Estate of Mabel Wade".

January 2001

27. On 11 January 2001, \$8,261.10 of DG's investments (after redemption fees) with DPM Securities Inc. were redeemed. The proceeds were placed in her cash account with DPM Securities Inc. An electronic funds transfer was subsequently effected to DG's personal bank account in the amount of \$6,000, on the same day.

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28. On 16 January 2001, DG wrote a cheque to James Hanley in the amount of \$6,000, for reinvestment. This cheque was certified on the same day. Later that day this 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.
29. Mr. Hanley continued to act as financial advisor to DG and GP thereafter.
30. On 27 May 2002, Mr. Hanley completed an Assante Capital Management Ltd. Annual Certificate for Advisors and Registered Assistants. In response to the question "Do you, or your spouse, any partnership, corporation or other business entity in which you or your spouse have any interest, have any financial dealings with your clients including, but not limited to, borrowing money from, lending money to, or other business relations?", Mr. Hanley checked "No".

April 2005

31. 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.
32. On 25 April 2005, Mr. Hanley provided a document called "Assante Capital Statement" to DG. The document was dated 25 April 2005 and was represented by Mr. Hanley to contain a summary of DG's investments being managed by Mr. Hanley. The document contained a section entitled "Off-Book" under which was an entry for "Segreated [sic] Funds", in the amount of \$28,960.40
33. 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, and that they were accessible at any time.
34. DG states that she has never instructed Mr. Hanley to hide part of her investments from the government.
35. On 25 April 2005, Mr. Hanley also provided a document entitled "Statement on Demand" to GP. The document was dated 25 April 2005, and was represented by Mr. Hanley to contain a summary of GP's investments being managed by Mr. Hanley. The document referenced "Segregated Funds" in the amount of \$27,328.11 as forming part of GP's investment portfolio.
36. On 29 April 2005, DG appointed her daughter EG as her power of attorney.
37. On 3 May 2005, GP appointed her niece EG as her power of attorney.
38. In May 2005, Assante Capital Management Ltd., Mr. Hanley's employer commenced an investigation into the handling of DG and DP's accounts.

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January 2006



39. On 18 January 2006, Mr. Hanley provided 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. On 2 February 2006, Mr. Hanley's engagement with Assante Capital Management Ltd., was terminated by Assante.

June 2006

42. On 28 June 2006, Mr. Hanley provided a voluntary statement to Staff during which he stated that:
 - a. DG and GP loaned money to DPM, through him, for business purposes, in 1999 and 2000, as referenced in his letters to them of 18 January 2006;
 - b. He had not received any other loans from DG or GP; and
 - c. The reference to "Off Book" funds in the statements provided to DG and GP in April 2005, in fact referred to funds controlled by DG or GP and over which he had no control.

Violations of New Brunswick Securities Law

43. Mr. Hanley agrees that he has violated New Brunswick securities law, specifically section 54 of the *Securities Act*, SNB 2004 c. S-5.5, and acted contrary to the public interest by:
 - a. Failing to apprise GP and DG as to the whereabouts of monies provided to him by GP and DG;
 - b. Providing GP and DG with misleading account statements and information in April 2005 and January 2006;
 - c. Making misleading statements to Staff of the Commission on 28 June 2006, including:
 - i. representations that certain of the monies provided by GP and DG were business loans to 510003 NB Ltd. when that was not the case;
 - ii. Denying that funds other than those characterized as loans had been received from DG and GP, when that was not the case;



- iii. Characterizing funds received from DG and GP as "Off Book" investments.

Cooperation

- 44. Mr. Hanley has cooperated with Staff's investigation in this matter.

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