Ontario

Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Bridging Finance Inc (Re)*, 2024 ONCMT 23
Date: 2024-10-28
File No. 2022-9

IN THE MATTER OF
BRIDGING FINANCE INC., DAVID SHARPE, NATASHA SHARPE and ANDREW MUSHORE

REASONS AND DECISION

(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: Russell Juriansz (chair of the panel)
Timothy Moseley
Sandra Blake

Hearing: In-person and videoconference: June 26, 27, 28 and 29; July 19, 21, 24, 25, 26, 27 and 31; August 16; September 12 and 13; October 3, 4 and 24; and December 8, 14 and 15, 2023; February 1, 5, and 13; April 23; May 1, 24 and 28; and June 3, 2024

Appearances:

Mark Bailey Adam Gotfried Nicole Fung	For the Ontario Securities Commission
Lawrence Thacker Jonathan Chen Mari Galloway	For Natasha Sharpe
David A. Hausman Jonathan Wansbrough	For Andrew Mushore
Erin Pleet	For the receiver of Bridging Finance Inc.
No one appearing for David Sharpe	

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REASONS AND DECISION

1. OVERVIEW

[1] Bridging Finance Inc. set up and managed various funds as investment vehicles. Investors deposited money in those funds. In turn, the funds provided alternative short-term financing to private borrowers.

[2] In 2021, based on concerns about how investor money was being used, the Ontario Securities Commission successfully applied for a court-appointed receiver over Bridging.

[3] In this enforcement proceeding, the Commission alleges misconduct by Bridging and by the three individual respondents:

a. David Sharpe, Bridging's chief executive officer;

b. Natasha Sharpe, Bridging's chief investment officer; and

c. Andrew Mushore, Bridging's chief compliance officer.

David and Natasha are spouses. We refer to David and Natasha together as "the Sharpes", and often by their first names for clarity.

[4] The Commission alleges three separate frauds:

a. David arranged the transfer of millions of dollars of investor money to benefit himself and Natasha, through loans made to entities associated with Sean McCoshen (the **McCoshen loans**);

b. the Sharpes misappropriated approximately $40 million from one of the funds to acquire a management interest (described in more detail below) from Ninepoint Partners LP (the **Ninepoint loans**), which acquisition benefited Bridging and Natasha; and

c. the Sharpes orchestrated loans to entities associated with Gary Ng (the **Ng loans**) to facilitate the purchase of 50% of Bridging's shares from existing shareholders, including Natasha.

[5] The Commission alleges that Mushore participated in only the second of these frauds, but that he had some involvement in covering up the third.

[6] The Commission also alleges violations of provisions of Ontario securities law relating to conflicts of interest, with respect to all three frauds.

[7] The Commission makes the following additional allegations of obstruction of the Commission's investigation:

a. the Sharpes and Mushore made false statements during examinations by Commission staff;

b. the Sharpes and Mushore created false paper trails or directed others to do the same;

c. David tried to intimidate witnesses; and

d. Natasha improperly allowed David to listen to the Commission's examination of her.

[8] At the hearing of the merits of the Commission's allegations, counsel for the receiver participated on behalf of Bridging. Natasha and Mushore also participated. David chose not to participate.

[9] As we explain below, we find that:

a. with respect to the McCoshen loans, David perpetrated a fraud, in which Natasha participated;

b. with respect to the Ninepoint loans, David and Natasha perpetrated a fraud, in which Mushore participated, and Bridging failed to properly respond to a conflict of interest, for which failure David and Natasha are equally liable;

c. with respect to the Ng loans, Natasha perpetrated a fraud, in which David participated;

d. David and Natasha gave misleading answers in their examinations during the investigation;

e. Bridging provided misleading information to the Commission, for which David and Natasha are equally liable, to differing extents;

f. Mushore participated in some of Bridging's provision of misleading information to the Commission;

g. David attempted to intimidate former Bridging employees who were co-operating with the receiver; and

h. Natasha improperly permitted David to listen to her examination by the Commission's investigators.

2. PRELIMINARY MATTERS

2.1 The use of compelled evidence

[10] Before we analyze the Commission's allegations, we address two procedural matters that arose during the merits hearing. The first was about the use of certain transcripts.

[11] During its investigation, the Commission used summonses issued under s. 13 of the *Securities Act*[1] (***Act***) to compel various witnesses to attend and give evidence about the issues the Commission was examining. At the merits hearing, the Commission sought to enter the transcripts of some of those examinations into evidence. Natasha objected. We did not give effect to that objection, and we allowed the introduction of those transcripts, for the following reasons.

[12] Natasha objected because of the Tribunal's earlier finding that the Commission had improperly disclosed the transcripts to the public in its court application for the appointment of the receiver.[2] The Commission made that application in the spring of 2022, before this proceeding was commenced. The application record was a public document. It contained excerpts and summaries of transcripts, and, for one of the three days on which David was examined, the entire rough transcript.

[13] The Court's order appointing the receiver required that the receiver create a website on which the application materials could be found. The receiver did so. The Commission issued a news release containing a link to that website.[3]

[14] David applied to this Tribunal to revoke the s. 11 investigation order that had authorized the issuance of summonses in the first place. He argued that the Commission was not entitled to disclose the transcripts without an order under

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[1] RSO 1990, c S.5

[2] *Sharpe (Re)*, 2022 ONSEC 3 (***Sharpe***) at para 165

[3] *Sharpe* at paras 23-24

s. 17 of the *Act*, which allows the Tribunal to authorize disclosure of compelled testimony. The Commission had not sought a s. 17 order.

[15] The Tribunal agreed that the Commission was required to obtain a s. 17 authorization order before disclosing the compelled testimony in connection with the court proceeding. However, the Tribunal held that David had not met his burden of showing that revocation of the s. 11 order was an appropriate remedy under the circumstances.[4]

[16] About a month before this merits hearing began, David and Natasha moved to stay this proceeding. They alleged abuse of process arising from the disclosure of the transcripts. We dismissed their motions,[5] finding that the public availability of the compelled evidence would not prejudice the Sharpes' right to a fair hearing. We held that any concerns about witness tainting could be addressed through cross-examination. Further, the Sharpes did not establish that any concerns about the Commission's actions were serious enough to offend society's sense of justice if this proceeding were to continue.

[17] In this merits hearing, Natasha renewed her objection to the admission of her transcript. We did not give effect to her objection, substantially for the reasons set out in our decision on the stay motions.

2.2 Motion to call additional witnesses

[18] The second procedural matter arises from Natasha's request on December 14, 2023, near the conclusion of the Commission's case, that the Tribunal issue summonses for four witnesses from the Commission. We denied the request. These are the reasons for that decision.

[19] Natasha sought summonses for two Senior Litigation Counsel (one of whom represented the Commission in this hearing), the Director of Enforcement, and the CEO of the Commission. Counsel explained that Natasha sought these summonses to support the argument that there had been an abuse of process warranting a stay of proceedings. He acknowledged that on two previous

[4] *Sharpe* at para 162

[5] *Bridging Finance Inc (Re)*, 2023 ONCMT 24

occasions the Tribunal had addressed the Sharpes' efforts to obtain support for their stay motions.

[20] First, the Sharpes had sought the disclosure of documents that may possibly exist and which they hoped would provide support for their then pending motions for a stay of proceedings. They claimed that a stay was warranted because the Commission had failed to obtain a s. 17 order permitting disclosure of certain compelled evidence before filing it in its application to the Superior Court of Ontario for the appointment of a receiver over the Bridging entities. We dismissed that request, concluding that the Sharpes had not demonstrated a tenable case of abuse sufficient to justify their request for disclosure.

[21] Second, after we had dismissed their request for documentary disclosure, the Sharpes requested summonses to compel the testimony of five Commission staff members, whom they wished to examine regarding the internal process behind the Commission's decision to pursue the receivership application without a s. 17 order. In our decision dated May 16, 2023, we refused that request, holding that it constituted an impermissible attempt to relitigate issues which had already been decided on their earlier motion for documentary disclosure. There was nothing new. They had still failed to establish a tenable case for their motions for a stay.

[22] In making the current request, Natasha's counsel acknowledged that the evidence he would seek from the proposed witnesses would relate only to the issue of whether the proceeding should be stayed. He confirmed that no new evidence had arisen during the merits hearing and that he was relying on the same evidence as the Sharpes had relied upon on the previous occasions. In fact, in advancing argument he simply referred to the written submissions he had filed on the earlier occasions.

[23] We refused to issue the summonses for two reasons. First, the evidence he sought to elicit from these witnesses was not relevant to the merits of this proceeding. Second, the request was yet another impermissible attempt to relitigate matters that we had already decided. There was no outstanding motion for a stay or motion for reconsideration before us.

[24] For these reasons, we denied Natasha's request for summonses.

3. ANALYSIS

3.1 Introduction

[25] We turn now to our analysis of the substantive allegations, which center around three groups of loan transactions. For convenience in these reasons, we often refer to the loans as having come from Bridging, when in fact the loans came from two Bridging funds:

a. the Bridging Mid-Market Debt Fund (the **Mid-Market Fund**); and

b. the Bridging Income Fund (the **Income Fund**).

3.2 The McCoshen loans

3.2.1 Introduction

[26] The first group of transactions involves entities associated with Sean McCoshen, a Winnipeg businessperson. David met McCoshen in 2015 through their mutual involvement in First Nations financing. Bridging provided loans of more than $150 million to Alaska-Alberta Railway Development Corporation (**A2A**), an Alberta company that McCoshen owned and controlled. McCoshen also introduced Bridging to Peguis First Nation (**Peguis**), a Manitoba First Nations community to which Bridging provided loans of more than $115 million.

[27] The Commission alleges that Bridging, David and Natasha contravened s. 126.1(1)(b) of the *Act* in relation to these loans, because of transfers of approximately $19.5 million from McCoshen to David between 2016 and 2019, and a transfer of $250,000 from McCoshen to Natasha in 2017. The Commission describes these payments as fraudulent kickbacks that the Sharpes received for their personal benefit. The Commission submits that of the $19.5 million that went to David, $18.2 million can be traced to investor funds.

[28] The Commission also alleges that the transactions violated a provision in Ontario securities law that governs conflicts of interest (s. 13.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**)). That provision, as it existed at the relevant time, required registered firms to take reasonable steps to identify and respond to existing and potential material conflicts of interest.

[29] We deal first with the fraud allegations and conclude David and Natasha contravened s. 126.1(1)(b) but Bridging did not. We then address the conflict of interest allegations and conclude that Bridging did not contravene s. 13.4 of NI 31-103.

3.2.2 Clause 126.1(1)(b) of the *Act* – legal framework

[30] Clause 126.1(1)(b) of the *Act* deals with securities-related fraud. It brings within its reach two categories of actors:

a. those who perpetrate a securities-related fraud; and

b. others who participate, directly or indirectly, in securities-related conduct that they know or reasonably ought to know perpetrates a fraud.

[31] The two categories differ, including with respect to the subjective element, or *mens rea*, that the Commission must prove. We explain further below.

[32] The section provides, in relevant part:

> 126.1(1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities … that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[33] The first step is to determine whether one or more persons or companies have perpetrated a fraud. For that question, we apply the framework that the Supreme Court of Canada set out in *R v Théroux*.[6] This Tribunal has repeatedly adopted that framework,[7] which includes the following elements:

a. the *actus reus*, or objective element, which consists of:

i. an act of deceit, falsehood, or some other fraudulent means; and

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[6] 1993 CanLII 134 (SCC)

[7] See, for example, *First Global Data Ltd (Re)*, 2022 ONCMT 25 (***First Global***) at para 346*; Quadrexx (Re)*, 2017 ONSEC 3 at para 19

ii. deprivation caused by that act, which may come in the form of an actual loss or the placing of the victim's pecuniary interests at risk; and

b. the *mens rea*, or subjective element, which consists of:

i. subjective knowledge of the act referred to above; and

ii. subjective knowledge that the act could have as a consequence the deprivation of another.

[34] Those who perpetrate the fraud may or may not be named as respondents. The first step simply asks whether a person or company has perpetrated a fraud according to the *Théroux* framework.

[35] The second step is to consider whether those named as respondents have, as s. 126.1(1)(b) requires, directly or indirectly, participated in any act or conduct, related to securities, that they knew or reasonably ought to have known perpetrated the fraud.

[36] The second step is straightforward for respondents who perpetrated the fraud. It need only be determined whether the acts or conduct by which these respondents perpetrated the fraud related to securities. The section's "knows or reasonably ought to know" requirement is satisfied because it is a lower standard than the perpetrators' *mens rea* already established applying the *Théroux* framework at step one.

[37] The second step, for respondents who did not perpetrate the fraud themselves, requires consideration of both their objective acts and their subjective knowledge. The objective element is that they must have, directly or indirectly, engaged or participated in acts or conduct that related to securities. The subjective element is that they knew, or ought to have known, their participation in the perpetrators' conduct would result in the fraud.

3.2.3 Step one – has a person or company perpetrated a fraud?

3.2.3.a Introduction

[38] We begin our analysis by asking whether a person or company has perpetrated a fraud with respect to the McCoshen loans. We start with the objective element as it relates to David, the alleged perpetrator of the fraud.

3.2.3.b Fraud – objective element

[39] Bridging made multiple loans to A2A and Peguis. The Commission alleges that some of the loan proceeds flowed to David and Natasha personally. The Commission alleges that David caused this misuse of investor money, and thereby pursued "other fraudulent means". The question is whether a reasonable person would consider his actions a dishonest act. Unauthorized diversions of money generally constitute "other fraudulent means".[8]

[40] For these loans, Bridging followed its usual process, with the loans first having to be approved unanimously by Natasha and by the only other member of Bridging's Investment Committee, Dennis McCluskey. Upon approval by the Investment Committee, the potential loan was passed to the Credit Committee, which included David, Natasha, Mushore, three other individuals, and McCluskey, who was the only independent (*i.e.*, non-Bridging) member of the Credit Committee.

[41] To make its decision, the Credit Committee reviewed a memorandum typically prepared by the relevant managing director. These memoranda included details about the borrower and its financial background, the reason(s) for the loan, risks, and potential exit strategies for the Bridging fund(s). The Credit Committee approved loans on a majority basis, usually by email without an actual meeting.

[42] For the McCoshen loans, the proceeds were transferred first to Bridging's counsel before going to one of two numbered companies that McCoshen owned and controlled:

[8] *First Global* at paras 360-361

a. one transfer of $6.5 million from Bridging's counsel to A2A, following which $6.5 million was deposited to 7047747 Manitoba Ltd (**704 Manitoba**);

b. six transfers totaling $78.1 million to 704 Manitoba; and

c. one transfer of $1.9 million to 5321328 Manitoba Ltd.

[43] On fourteen occasions beginning on July 8, 2016, and ending on June 28, 2019, 704 Manitoba then transferred funds from its account to David's personal account. These transfers totalled $19,553,77.26.

[44] Of those fourteen transfers, 704 Manitoba made nine on the same day as, or within a day of, 704 Manitoba receiving the money from Bridging's counsel.

[45] One alleged kickback involved a Bridging loan, not to A2A or Peguis, but to a company called Growforce Holdings Inc., with which McCoshen had no apparent connection. However, as part of a $10 million loan agreement between Bridging and Growforce, McCoshen personally guaranteed the loan. Then instead of advancing the loan proceeds to Growforce, Bridging transferred them to McCoshen's company 704 Manitoba. The next day, 704 Manitoba paid David $5 million.

[46] We conclude that these transfers to David were investor money that was paid out of the Bridging funds. We reach that conclusion because:

a. 704 Manitoba had to use the loan proceeds from Bridging to pay David at least $18.2 million of the total amount of $19.6 million, as it did not have sufficient funds in its account before receiving the advances; and

b. 704 Manitoba made the transfers to David on the same day as, or the day after, the advances from Bridging.

[47] 704 Manitoba also made a payment to Natasha in September 2017, in the amount of $250,000.

[48] Bank records suggest that of the payments to David and Natasha:

a. approximately $9.6 million was transferred to accounts held by David ($4.6 million) or one or more trusts ($5 million) for which David and

Natasha were settlors and contributors, and for which both David and Natasha received account statements;

b. approximately $7-8 million of that $9.6 million was transferred from the trust to an offshore account;

c. approximately $2 million was transferred to Natasha and David's joint bank account;

d. approximately $1.8 million was used for construction or renovation expenses; and

e. other amounts were used to lease cars, to purchase artwork, and for cash withdrawals.

[49] This use of investor money was wholly inconsistent with the objectives of the Bridging funds, as disclosed to investors. The offering memoranda stated that the two funds would pursue an investment strategy of actively managing a portfolio of fully collateralized asset-based loans, and factoring investments. Nothing in the disclosure would suggest to a reasonable investor that any part of their investment would be paid to Bridging's principals for their personal benefit. David carried out this diversion on his own, surreptitiously. His conduct therefore amounted to "other fraudulent means".

[50] The second part of the objective element asks whether the dishonest act caused a deprivation, which may come in the form of creating a risk of prejudice to the victim's economic interests. In this case, the unauthorized diversion of investor money did create a risk of prejudice to the investors' economic interests, because their money was used in a way to which they had not agreed.[9]

[51] The Commission has proven both parts of the objective element as against David, who engineered the kickback scheme and caused the deprivation. We turn to consider the subjective element.

[9] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 at paras 307-308; *First Global* at paras 360-361

3.2.3.c Fraud – subjective element

[52] We conclude that the Commission has satisfied the two parts of the subjective element of fraud, with respect to David.

[53] The first part asks whether the respondent knew of the dishonest act, *i.e.*, not necessarily that it was dishonest, but simply that the act occurred. We infer that he knew of the payments, because:

a. he had the primary relationship with McCoshen;

b. he received a total of almost $20 million by way of many payments over three years, some of which were in significant amounts ($1 million, $2 million, $5 million, and $8.8 million);

c. as we discuss below at paragraph [269], he instructed others to delete and alter internal records relating to these loans; and

d. the loans were to Bridging's largest borrower, and would therefore have deserved significant attention by Bridging's chief executive officer.

[54] The Commission has proven the first part of the subjective element as against David.

[55] The second part of the subjective element asks whether the respondent knew that the act could result in the deprivation of investors. We do not need direct evidence of such knowledge. We can infer a subjective awareness of the consequences from the dishonest act itself.[10] The only reasonable inference here is that David knew that Bridging was not entitled to pay investor funds to him personally. The Commission has therefore also proven the second part of the subjective element as against David.

3.2.4 Step two – remaining elements of s. 126.1(1)(b)

3.2.4.a Introduction

[56] Having found that David perpetrated a fraud with respect to the McCoshen loans, we turn to the second step in our analysis of the Commission's allegations that David, Bridging and Natasha contravened s. 126.1(1)(b).

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[10] *Théroux* at para 20; *First Global* at para 420

[57] That second step involves an objective element and a subjective element. The objective element requires the Commission to prove that the respondent "directly or indirectly, engage[d] or participate[d] in any act, practice or course of conduct relating to securities". The subjective element requires the Commission to prove that when the respondent did so, the respondent knew or ought to have known that their conduct perpetrated a fraud on a person or company.

3.2.4.b David

[58] The Commission has proven the objective element as against David. He directly engaged in the conduct that formed the fraud. That conduct related to securities, in that it involved investor money obtained by the Bridging funds through the sale of partnership units.

[59] As for the subjective element, it follows from our finding that David perpetrated the fraud that he knew or ought to have known that his conduct was fraudulent.

[60] The Commission has satisfied all the requisite elements and proven that David contravened s. 126.1(1)(b) with respect to the McCoshen loans.

3.2.4.c Bridging

[61] As for the Commission's allegation against Bridging, a corporation cannot by itself have a mental state. We may find Bridging to have contravened s. 126.1(1) only if we attribute to Bridging the conduct of an individual. The Commission submits that we should attribute David's conduct to Bridging since he was a directing mind of the company.

[62] We agree that David was a directing mind of Bridging with respect to the McCoshen loans. David was Bridging's chief executive officer and registered Ultimate Designated Person. By all accounts, David controlled Bridging's activities. David was McCoshen's primary contact and was the driver of the A2A and Peguis loans.

[63] Despite the fact that David was a directing mind of Bridging, it does not necessarily follow that we should attribute his acts to Bridging. The Supreme Court of Canada has held that this "identification doctrine" operates only where it is proven that the directing mind's conduct:

a. was within the directing mind's assigned field of operation;

b. was not totally in fraud of the corporation; and

c. was by design or result partly for the corporation's benefit.[11]

[64] If that test is not satisfied, *e.g.*, because the conduct was "totally in fraud of the corporation", the individual "ceases to be a directing mind of the corporation" and the conduct cannot be attributed to the corporation.[12]

[65] In presenting its case against Bridging, the Commission neither referred to the Supreme Court of Canada's decisions on this topic, nor addressed at all the second and third elements of the above test. There are at least serious questions about whether David's conduct defrauded Bridging, and whether his conduct was partly for Bridging's benefit.

[66] Further, even where the test is satisfied, a court or tribunal retains a discretion to refrain from attributing the conduct to the corporation where it would not be in the public interest to do so.[13] Bridging's being in receivership raises the additional question of what interest would be served by attributing David's conduct to it. There might be such an interest, but the Commission did not address this question.

[67] We determined that these gaps in the Commission's case against Bridging were not ones that would be fair for us to raise with the Commission on our own, because doing so in this instance would be crossing the line from seeking submissions in order to gain a better understanding of a point that was argued, to descending into the arena to help make a party's case.

3.2.4.d Natasha

[68] With respect to the Commission's allegation that Natasha contravened s. 126.1(1)(b) in respect of the McCoshen loans, we begin with the objective element.

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[11] *Canadian Dredge & Dock Co v The Queen*, 1985 CanLII 32 (SCC) (***Canadian Dredge***) at para 66

[12] *Canadian Dredge* at para 66

[13] *Christine DeJong Medicine Professional Corp v DBDC Spadina Ltd*, 2019 SCC 30 at para 2

[69] There is no evidence that Natasha participated in arranging the kickbacks. However, she approved loans to A2A and Peguis from which the kickbacks were derived, both before and after she received the $250,000 payment from 704 Manitoba. By approving those loans, she directly engaged in a course of conduct that related to securities, since the loans were of investor money that the Bridging funds obtained through the sale of partnership units. The Commission has proven the objective element against Natasha.

[70] As for the subjective element, the Commission alleges that she knew or ought to have known of the kickbacks, and knew or ought to have known that those kickbacks perpetrated a fraud.

[71] To support this allegation, the Commission relies on the following:

a. Natasha met McCoshen numerous times, and she was described as having a knack for communicating with him, an advantage given his reportedly difficult demeanour;

b. David and Natasha also had a personal relationship with McCoshen, including that they vacationed together in Europe with their children;

c. she received into her bank account the deposit from 704 Manitoba of $250,000, an amount that ought to have attracted her attention;

d. at least $5 million was transferred to accounts held by trusts of which she was a settlor, and for which she was named on account statements; and

e. $2 million was transferred to a bank account she held jointly with David.

[72] In addition, the Commission submits that she benefited not only from the $250,000 that went directly to her, but also from that portion of the kickbacks that was used to:

a. construct or renovate property ($1.78 million);

b. purchase artwork ($140,000); and

c. lease cars ($228,000).

[73] The Commission acknowledges that there is no evidence that conclusively establishes which property the $1.78 million benefited, or what artwork was purchased or where that artwork ended up. Similarly, there is no evidence that

conclusively proves that Natasha used or otherwise benefited from any of the leased cars. The Commission submits that we should nevertheless infer that she did benefit from these amounts, and that this should lead us to an inference that she knew of the kickbacks.

[74] In our view, the proposed link is too tenuous between a potential benefit and a conclusion that Natasha knew or ought to have known that a fraud was being perpetrated. The circumstances changed significantly, though, when Natasha received the $250,000 deposited to her personal account.

[75] We accept the Commission's submission that from the time of that payment (October 2017), we should infer that she knew or ought to have known of the kickback scheme. In support of that submission, the Commission tendered the statement from Natasha's personal account for the one-year period January 13, 2017, to January 12, 2018. Of the approximately 310 transactions in the account that year, only six were deposits:

a. the $250,000 wire payment from 704 Manitoba, shown as such on the statement;

b. a $250,000 transfer in from David's account;

c. two unidentified deposits of $43,000; and

d. two unidentified deposits of less than $20,000.

[76] The payment from 704 Manitoba was a clear outlier. We cannot accept Natasha's submission to the contrary, especially without supporting evidence. Further, we infer that Natasha either knew at the time who 704 Manitoba was (since the company was named on the loan documents for A2A), or would have inquired upon seeing this uncharacteristic and significant deposit.

[77] It is possible that David arranged the kickbacks, including the $250,000 payment directly to Natasha, without her knowledge. However, even if that were true, it is more likely than not that at least by October 2017, soon after that payment, she would have been aware that a company associated with a Bridging borrower had taken the problematic step of covertly paying her a significant sum. If she did not already know about the kickback scheme before the $250,000 payment, then at a minimum, as a senior Bridging officer, she ought to have conducted a

serious inquiry about it. We infer, and find it to be more likely than not, that at least by October 2017 she was aware of, or ought to have been aware of, the fraudulent kickback scheme that David was perpetrating. The Commission has proven the subjective or mental element of s. 126(1)(b) as against Natasha.

[78] We therefore find that Natasha contravened s. 126.1(1)(b) of the *Act* with respect to the McCoshen loans.

3.2.5 Conflicts of interest

3.2.5.a Introduction

[79] The Commission alleges that the respondents also contravened s. 13.4 of NI 31-103, because they took no steps to manage the conflicts that arose in the approval of loans from Bridging funds, where kickbacks were paid to the Sharpes personally.

[80] In relevant part, and as it existed at the relevant time, s. 13.4 required a registered firm to:

a. take reasonable steps to identify existing and likely conflicts of interest either between the firm and the client or between any individual acting on behalf of the firm and a client;

b. "respond to" such a conflict of interest; and

c. if a reasonable investor would expect to be informed of such a conflict of interest, disclose the conflict in a timely manner.

[81] Section 13.4, on its face, applies only to registered firms and not to registered individuals. The Commission submitted to us that we should apply it to the individual respondents as well. We begin with that issue.

3.2.5.b Does s. 13.4 of NI 31-103 apply to individuals?

[82] Despite the fact that the language in s. 13.4 speaks only of registered firms, the Commission submits that s. 32(1)(g) of the *Act* broadens s. 13.4's reach. The Commission says s. 32(1)(g) makes s. 13.4 applicable to registered individuals as well. We disagree.

[83] Clause 32(1)(g) says that every "person and company registered under this Act shall comply at all times with Ontario securities law, including such regulations

that apply to them as may be made relating to… (g) conflicts of interest [emphasis added]".

[84] It is undisputed that NI 31-103 is a "regulation" as that term is defined in the *Act*.[14] However, we are not persuaded that s. 32(1) of the *Act* imposes any new obligation. Even without s. 32(1), registrants are required to comply with all applicable provisions of Ontario securities law. Non-registrants are too. For example, a registered firm must comply with NI 31-103 whether s. 32(1) exists or not.

[85] Therefore, we cannot accept the Commission's submission. Specifically, we do not read the opening words of s. 32(1) as broadening the reach of the regulations listed in that subsection. Indeed, the words "such regulations that apply to them [emphasis added]" exclude such an interpretation. At best, the existence of s. 32(1) signals an intention by the legislature to highlight the importance of compliance by registrants.[15]

3.2.5.c Did Bridging contravene s. 13.4 of NI 31-103 because of the kickbacks?

[86] Having determined that s. 13.4 applies only to Bridging and not to the individual respondents, we now consider whether Bridging contravened that provision.

[87] In this context, a conflict of interest arises where the interests of the registered firm (or of an individual acting on the firm's behalf) diverge from those of the firm's client. The registered firm in this instance is Bridging.

[88] It is less obvious who the client is. Unfortunately, the Commission's written submissions were unhelpful on this point. The Commission relied on David's statement, in his compelled examination, that "our clients are our investors". However, what David said does not make the investors "clients" in the legal sense for the purpose of assessing a conflict of interest.

[89] We canvassed this issue with counsel during oral closing submissions. We agree with Mushore's submission that Bridging's client is the general partner of each fund. This submission, which the Commission did not challenge in reply, is

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[14] *Act*, s 1(1), "regulations"

[15] *Sterling Grace & Co Ltd (Re)*, 2014 ONSEC 24 at para 263

consistent with the offering memoranda. The memoranda state that the general partner retained Bridging to be the manager of the fund.

[90] We must therefore determine whether there was a conflict of interest between Bridging and the general partner, and if so, whether Bridging adequately responded to that conflict.

[91] The general partner's obligation to manage the fund (through the fund's manager) is outlined in the offering memorandum, which provides that the manager has agreed to exercise its powers "honestly and in good faith and in the best interests of" the fund. Mushore correctly points out that at the relevant time (unlike the present), Ontario securities law did not require registered firms to resolve conflicts in the client's "best interest". However, that fact does not displace the promise, disclosed in the offering memorandum, that the manager would act in the best interests of the fund.

[92] An essential element of this allegation against Bridging, though, is that Bridging take reasonable steps to identify existing and likely conflicts of interest. There was no evidence that any Bridging employee other than David and Natasha was aware of the kickback scheme. Further, the Commission made no allegation that Bridging failed to take reasonable steps to identify the kickback scheme.

[93] As a result, we may find Bridging to have contravened the obligation in s. 13.4 to respond to the conflict arising from the kickbacks only if we attribute David's knowledge of the conflict to Bridging. For the same reasons as set out above regarding the fraud allegation, we decline to do so. Accordingly, we dismiss the allegation that Bridging contravened s. 13.4.

3.2.5.d Did Bridging contravene s. 13.4 of NI 31-103 because of David's payments to Mushore?

[94] The Commission raises a separate alleged conflict, arising from three payments to Mushore in 2019 and 2020 from David's personal account (into which the kickbacks flowed). In unchallenged testimony, Mushore explained the three payments:

a. a $100,000 gift to fund renovations to Mushore's home;

b. a $50,000 contribution to Mushore's daughters' future education (Mushore and his wife had recently asked the Sharpes to be the daughters' godparents); and

c. $30,000, in lieu of a bonus that David felt Bridging should have awarded Mushore, but which Natasha had blocked.

[95] David made these payments personally to Mushore and did not directly involve Bridging. While it is ill-advised for a registered firm's chief compliance officer to accept payments of this nature from the firm's CEO, we cannot find that these payments contravened s. 13.4 of NI 31-103, because the section does not apply to individual registrants.

[96] If the circumstances were different, it might be open to the Tribunal to find that payments from individual to individual in their personal capacities do implicate the firm. However, in this case that there was a pre-existing personal relationship between the Sharpes and Mushore. Mushore regarded David as his mentor, and Mushore and his wife chose the Sharpes as their daughters' godparents. With this blurring of professional and personal relationships, we are not prepared to find that the payments constituted a conflict of interest, let alone the kind addressed by s. 13.4, *i.e.*, a conflict between the firm and a client.

3.2.6 Conclusions relating to the McCoshen loans

[97] We therefore conclude that with respect to the McCoshen loans:

a. David perpetrated a fraud;

b. David and Natasha directly engaged in conduct related to securities, that they knew or ought to have known perpetrated that fraud; and

c. David and Natasha thereby contravened s. 126.1(1)(b) of the *Act*.

[98] We dismiss the allegations that Bridging contravened s. 126.1(1)(b) of the *Act* and s. 13.4 of NI 31-103.

3.3 The Ninepoint loans

3.3.1 Introduction

[99] The second set of transactions relates to Bridging's desire, in 2018, to acquire from Ninepoint Partners LP what we refer to as the **Management Interest**, which consisted of:

a. Ninepoint's 50% interest in the Income Fund's general partner, of which Bridging owned the other 50% and through which Bridging and Ninepoint co-managed the fund; and

b. certain management rights related to that fund.

[100] Bridging agreed to buy the Management Interest for $45 million, $35 million of which was due on closing. Bridging did not have that sum available and had not been able to arrange external financing, so it needed to make other arrangements to borrow. Because Bridging could not borrow from its funds, David approached Rishi Gautam, an individual whose companies were significant borrowers from Bridging. The Commission alleges that:

a. under David and Natasha's direction, Bridging planned a series of transactions that would result in a $40 million loan to Bridging from the Mid-Market Fund, disguised as a loan to Gautam's companies;

b. Mushore assisted in preparing these planned transactions;

c. ultimately, the Mid-Market Fund advanced $35 million directly to Ninepoint to complete Bridging's purchase of the Management Interest; and

d. Bridging, David, Natasha and Mushore all thereby contravened s. 126.1(1)(b) of the *Act*.

[101] The Commission also alleges that these transactions contravened s. 13.4 of NI 31-103, relating to conflicts of interest.

[102] We deal first with the fraud allegations and conclude that David, Natasha and Mushore contravened s. 126.1(1)(b) of the *Act*. We then address the conflict of interest allegations and conclude that only Bridging contravened s. 13.4 of NI 31-103.

3.3.2 Step one – has a person or company perpetrated a fraud?

3.3.2.a Fraud – objective element

3.3.2.a.i Introduction

[103] We begin our analysis by assessing whether the objective element of a fraud is present as it relates to David and Natasha, the alleged perpetrators of the fraud.

[104] The Commission submits that it has proven the first part of the objective element, *i.e.*, an act of deceit, falsehood or other fraudulent means, in the form of either:

a. the diversion of funds to a purpose not permitted by the Mid-Market Fund's offering memorandum; or

b. a conflict of interest that was not addressed in accordance with applicable requirements.

3.3.2.a.ii Steps leading up to the submissions to the Credit Committee

[105] Gautam had been introduced to Bridging in late 2017, at which time Gautam was CEO of MJAR Holdings, LLC. That company later changed its name to Mjardin Group Inc., and then merged with Growforce Holdings Inc.

[106] By October 2018, when the Ninepoint transaction was concluded, Bridging had loaned approximately $144 million to Gautam's cannabis-related business. The loans were for the purchase of various assets and for cannabis facilities.

[107] In the summer of 2018, David approached Gautam for help in arranging financing for Bridging to buy the Management Interest from Ninepoint. In testimony that was not successfully challenged, Gautam stated that:

a. he had several discussions on the topic with David;

b. Natasha was involved in at least one of those discussions;

c. he eventually agreed with David and Natasha that the Mid-Market Fund would provide a loan to River Cities Investment I, LLC, a company that Gautam owned, and to 3319891 Nova Scotia (**331 Nova Scotia**), another company that Gautam owned**;**

d. the loan would be secured by approximately $50 million worth of Mjardin shares held by 331 Nova Scotia;

e. 331 Nova Scotia would use the loan proceeds to fund a loan to Bridging;

f. at David's request, and so that River Cities would show "a tangible commitment to the transaction", River Cities sent a letter to Ninepoint reflecting River Cities' commitment to provide financing to Bridging of up to $45 million to complete the acquisition;

g. David did not intend to provide an economic interest to River Cities or 331 Nova Scotia; and

h. Natasha wrote the transaction structure on a piece of paper that the three of them discussed during a meeting in Bridging's office, and that was discarded after the meeting.

[108] Following these discussions, David had several conversations with Mushore about the plan. Mushore testified that Natasha was present for some of these. Natasha disputed his testimony about one specific occasion. According to Mushore, in mid-August, the Sharpes were on their way to drop off their son at school and offered Mushore a ride to the office. During that drive, Natasha told Mushore the terms of the planned arrangement, and the Sharpes instructed Mushore to prepare a submission to the Credit Committee for their review.

[109] Natasha asks us to reject Mushore's evidence about all of his conversations with Natasha on this topic because his testimony about this occasion is unbelievable. Natasha submits it is unbelievable because the Sharpes' son would not have been on his way to school in August. We cannot accept the premise that there was no reason for the Sharpes' son to be going to the school, even if it was not in regular session. Even if Mushore is mistaken about where the Sharpes were headed at the time, that mistake is irrelevant to the substance of his testimony. Mushore's testimony about the Ninepoint loans was entirely consistent with the documentary record, and we accept it. While the documentary record does not indicate whether Natasha was part of these discussions, Mushore was clear, credible and definitive about his recollection, which is the only evidence in the record. We find that Natasha was present during the discussions about the plan, as Mushore testified.

3.3.2.a.iii Submissions to the Credit Committee

[110] On August 21, Mushore sent the Sharpes a draft Credit Committee submission, as they had instructed him to do. The draft:

a. identifies River Cities as the sole borrower;

b. contemplates a loan of $35 million;

c. identifies as security for the loan a personal guarantee from Gautam and $3 million worth of Mjardin shares that Gautam held; and

d. does not mention that the funds would be routed back to Bridging to fund the purchase of the Management Interest.

[111] David gave Mushore some comments about the draft. On August 27, Mushore sent a revised draft. Natasha and David both gave comments for Mushore to incorporate. Mushore finalized the submission and emailed it to the Credit Committee on August 31. By that time, the submission had changed the loan amount from $35 million to $36.75 million and had identified the intended use of proceeds as being "to fund working capital needs and support general corporate purposes of River Cities." There continued to be no mention of proceeds being used in any other way, including to fund Bridging's purchase of the Management Interest.

3.3.2.a.iv Approvals by the Credit Committee

[112] Mushore's email to the members of the Credit Committee requested approval or denial by email. At least five of the seven committee members sent approval emails on August 31, including David, Natasha and Mushore.

[113] There is some suggestion that the committee held an actual meeting on August 31, to approve the loan:

a. Graham Marr (a Bridging managing director) and Kevin Moreau (Bridging's general counsel at the time) testified that Moreau, Mushore and David were in Bridging's office that day for the meeting;

b. Mushore testified that a meeting to discuss the transaction occurred on or around August 31, with some participants present in person and some participating by phone;

c. a document exists, dated August 31 at 1:30pm titled "CREDIT COMMITTEE MEETING MINUTES", in which the loan to River Cities is discussed, although with a reference to a loan amount of $39.75 million (not the $36.75 million referred to in the initial submission), the proceeds of which would be for working capital and the borrower's general corporate uses, and to fund the purchase of up to $3 million in MJardin shares; and

d. the minutes suggest that the meeting ended 20 minutes later, at "approximately 1:50pm".

[114] In their testimony, committee members Brian Champ (Bridging's head of portfolio management) and McCluskey firmly rejected the suggestion that the committee actually met on that day. Champ had a record of his being out of the city and involved in a family-related activity. He knows that he neither participated in person or by phone.

[115] The minutes state that $3 million would be used to purchase MJardin shares. This explains the discrepancy between the $36.75 million in the submission and the $39.75 million in the minutes. While the submission of August 31 contained no such item, a revised submission created after August 31 did. On September 7, Mushore circulated the revised submission to committee members. It referred to the $39.75 million total amount and the $3 million for MJardin shares. The revised submission, like the earlier versions, made no mention of the proceeds being used to lend to Bridging to buy the Management Interest.

[116] In Mushore's covering email to committee members, he asked for approval or rejection of the "slight increase" by email. David, Natasha, Marr, Champ and McCluskey all sent approval emails on September 7.

[117] After the committee had already approved the loan, first at $36.75 million and then at $39.75 million, David raised additional considerations with committee members. McCluskey testified that:

a. on September 8, David and Natasha called him and David told him for the first time that River Cities was potentially investing in Bridging;

b. David said for that reason they wanted minutes for a Credit Committee meeting about the loan, a step that was not consistent with Bridging's usual practice;

c. McCluskey told David he had concerns about conflicts, about whether the loan was a proper use of investor funds, and about the appearance of self-dealing by Bridging;

d. David said that Bridging had a legal opinion that addressed his concerns; and

e. later that day, McCluskey was on a further phone call that included David, Mushore, Moreau, and possibly Natasha.

[118] There is disagreement about whether Natasha was on the calls with McCluskey and others. On the first call, David told McCluskey that Natasha was with him. However, McCluskey testified that he greeted Natasha but she did not respond. In fact, she never spoke. Despite David's assertion, in the absence of any evidence that Natasha participated in the calls, we infer that Natasha was not on the calls with McCluskey.

[119] McCluskey later received draft minutes from Mushore purporting to reflect the discussion. Champ testified that the first time he saw the minutes was after the receiver was appointed. Despite the inclusion of his name on the minutes, he had no recollection of any meeting to discuss the loan.

[120] It is more likely than not that the minutes were prepared sometime after the September 8 phone call that McCluskey mentioned, and that the discussion they purport to reflect, and that the meeting start and end times, are a fiction. David told McCluskey that the minutes needed to be dated at month-end for accounting purposes. Emails among Moreau, McCluskey, David, and Mushore establish that the minutes were still being finalized on September 10.

[121] The minutes state that "River Cities is contemplating a transaction with [Bridging] that would result in a significant portion of the proceeds… being utilized to acquire 50% of [the general partner of the Income Fund]." The minutes say that this fact was "previously disclosed to the committee", although

the evidence is overwhelming that no such disclosure had previously been made to the committee.

[122] Further, the above-quoted excerpt is silent about who would acquire the 50% interest in the general partner. One could reasonably read the words as implying that River Cities itself would be the purchaser. What is clear, though, is that the already agreed-upon plan that Bridging would acquire the interest is not expressly reflected.

3.3.2.a.v References to a legal opinion supporting the transaction

[123] The minutes also appear to be silent about whether Bridging had legal advice to support the transaction. We say "appear to be", because a brief portion of the minutes has been redacted and marked "Privileged". We do not know whether the redacted portion relates to this question. We have only the following evidence about a possible legal opinion:

a. Mushore testified that David assured him that a major national law firm (which David named, and which had previously done work for Bridging) had provided such an opinion. Mushore never saw any opinion, if one existed. He now believes David misled him and that the opinion never existed; and

b. McCluskey testified that when he raised his concerns on September 8, David told him the same as he told Mushore; like Mushore, McCluskey never saw an opinion.

[124] Natasha urged us to infer that such an opinion existed, including because the named law firm had previously provided legal services to Bridging. We cannot draw that inference. It is possible David had discussions with lawyers about the design of the transaction, but we cannot conclude there was an opinion. We have nothing other than David's statements to Mushore and McCluskey that an opinion existed. That is insufficient.

[125] A respondent who asserts the defence of due diligence based on legal advice must establish that:

a. the lawyer had sufficient knowledge of the facts on which to base the advice;

b. the lawyer was qualified to give the advice;

c. the advice was credible given the circumstances under which it was given; and

d. the respondent made sufficient enquiries and relied on the advice.[16]

[126] The evidence here falls far short of the test for reliance on legal advice. Even if an opinion did exist, we have no basis to conclude that it supported the intended structure of the River Cities loan. We do not know what questions were asked of counsel (if any were asked at all), and we do not know anything about what answers or advice were given.

[127] In addition, as we explain below, the actual flow of funds ended up bypassing River Cities and 331 Nova Scotia. A legal opinion endorsing the originally planned structure and flow of funds would not have applied after this significant change.

[128] Natasha submits that the Commission could have asked the receiver to produce the legal opinion. She argues that the Tribunal should draw an adverse inference and conclude that the Commission's failure to request the opinion reflects the Commission's belief that the opinion would not support the Commission's allegations.

[129] We disagree. It is Natasha who wants to rely on the legal advice. It was for her to request production of the advice, and to seek the waiver of privilege if necessary. There is insufficient evidence that an opinion even exists for us to draw an adverse inference from the Commission's choice not to request it.

3.3.2.a.vi Flow of funds and repayment of the loan

[130] The transactions were reflected in:

a. a September 12, 2018, commitment letter from Bridging to River Cities and 331 Nova Scotia, undertaking to grant a loan of up to approximately $40.4 million to provide working capital, to permit the purchase of up to $3 million of MJAR Holdings Corp. shares, and to support other permitted general corporate purposes of River Cities and 331 Nova Scotia; and

[16] *Solar Income Fund (Re),* 2022 ONSEC 2 at paras 241-243

b. an October 14, 2018, loan agreement between 331 Nova Scotia as lender and Bridging as borrower, for a loan of $35 million in connection with Bridging's agreement to buy the Management Interest from Ninepoint.

[131] The proceeds were ultimately advanced from the Mid-Market Fund on September 11 and 12, 2018. The flow of funds was inconsistent with the original plan, which called for the proceeds to go to River Cities, and for 331 Nova Scotia to then lend to Bridging. Instead, Bridging transferred $39.75 million from the Mid-Market Fund to its counsel, who then transferred $38 million to counsel for River Cities, who:

a. held $35 million in trust until October 15, at which time it paid that amount to Ninepoint to close the acquisition of the Management Interest; and

b. paid the remaining $3 million to River Cities for Gautam to purchase additional shares.

[132] In addition to the $39.75 million, Bridging paid itself a $400,000 "work fee" from the Mid-Market Fund, for the transaction.

[133] Bridging repaid the Mid-Market Fund's loan to River Cities and 331 Nova Scotia just over one year later, in November 2019, with proceeds from a new loan from a BlackRock Inc. affiliate. The BlackRock affiliate required a payout statement to confirm Bridging's repayment to 331 Nova Scotia. The BlackRock affiliate evidently believed that 331 Nova Scotia, not the Mid-Market Fund, had been the lender for the acquisition of the Management Interest. A payout statement was prepared as requested, purporting to reflect a payment from Bridging to 331 Nova Scotia of almost $30 million in outstanding principal, plus approximately $3.4 million of accrued interest.

[134] Gautum testified 331 Nova Scotia never received any repayments from Bridging. He was not aware Bridging had purported to have repaid any money to 331 Nova Scotia. While the payout statement appears to bear his signature, he testified that he did not sign it. He said he first saw the payout statement during the Commission's investigation. Moreau testified that David instructed him to use Gautam's signature page on file from the December 1, 2018, loan amendment to

complete the payout statement. We conclude Gautum's signature on the payout statement is an unauthorized copy of his signature on the loan amendment.

[135] These artifices maintained the appearance, on paper, that 331 Nova Scotia was the lender for the acquisition of the Management Interest. However, the economic reality is that the Mid-Market Fund financed the acquisition.

3.3.2.a.vii Analysis of the objective element

[136] It is undisputed that from the outset, the purpose of the loan from the Mid-Market Fund was to finance Bridging's acquisition of the Management Interest. We find that the commercial reality and substance of the loan were consistent with this purpose, and with this direct connection between the Mid-Market Fund and Bridging.

[137] Natasha submits that the actual flow of funds was what Gautam expected and authorized, and was consistent with all the loan agreements and related documents.

[138] In analyzing the objective elements to determine whether a fraud was perpetrated, we must focus not on the form of the transactions as reflected in the documentation, but on the commercial reality. It would be perverse to allow parties to defeat important constraints on conduct in the capital markets simply by creating a paper trail that has misleading elements and that does not accurately reflect the underlying reality.

[139] In this case, Bridging's insertion of River Cities and 331 Nova Scotia into the scheme was an artifice that not even Bridging seemed to be fully committed to maintaining through the series of events. This is most strikingly evidenced by the fact that no part of the $35 million used to acquire the Management Interest passed to or from River Cities or 331 Nova Scotia, other than being temporarily parked in their counsel's trust account. While it is true that, in general, a borrower may direct the payment of loan proceeds to a third party, such a step ordinarily reflects a commercial purpose, such as a transfer of assets. In this case, there was none.

[140] If there was a sound legal basis for the structure that Bridging used, it was open to the respondents to introduce that. They did not do so. Instead, we were

presented with many pieces of evidence which, when taken together, paint a clear picture of deceitful and dishonest conduct, including:

a. the use of commercial leverage over Gautam to secure his participation;

b. David's express intention not to provide Gautam's companies with any economic interest despite the September 13, 2018, commitment letter indicating the economic interests of River Cities and 331 Nova Scotia that the loan would serve;

c. the absence, in the Credit Committee submissions, of any mention of Bridging's intended acquisition of the Management Interest;

d. the various substantive and misleading elements in the minutes;

e. the failure, in discussions with Credit Committee members, to disclose the true purpose of the loan, with the disclosure being limited to a suggestion that River Cities might wish to acquire an interest in the general partner;

f. David's failure to show anyone the legal opinion he claimed he had obtained that supported the transaction;

g. the papering of the loan to suggest that River Cities and 331 Nova Scotia were principal parties to the transactions; and

h. the payout statement, which misrepresented the source of the funds and falsely purported to bear Gautam's signature.

[141] This use of investor money was contrary to the fund's objectives, as disclosed to investors. The offering memorandum stated that the fund would pursue an investment strategy of actively managing a portfolio of fully collateralized asset-based loans, and factoring investments. Nothing in the disclosure would suggest to a reasonable investor that their investment would be used for Bridging's own purposes. A reasonable observer would view this diversion, and the subterfuge surrounding it, as being deceitful and dishonest. Together, they amount to "other fraudulent means".

[142] Even if the diversion were not dishonest, the transaction presented a clear conflict of interest. The Mid-Market Fund's offering memorandum imposes a fiduciary standard for the management of conflicts by providing that "potential

conflicts will not be resolved through arm's length dealing and instead through the exercise of judgment consistent with fiduciary responsibilities to the [Fund] and its Unitholders generally."

[143] Mushore submits that we have insufficient evidence about the details of the loans to assess whether Bridging complied with its fiduciary obligations. We disagree. The fiduciary standard required a full disclosure of the conflict, and assurance that all steps were in the best interests of the fund's unitholders, including measures to ensure that Bridging did not benefit directly.

[144] Bridging's management of the clear conflict of interest fell far short of that standard. The best Bridging could say is that it sought McCluskey's approval. However, he was initially deceived about the use of funds and subsequently was convinced to agree to the minutes documenting the transaction by being deceived about a legal opinion.

[145] We are not persuaded by Mushore's submissions that:

a. had the Bridging funds been reporting issuers, the Ninepoint transactions would have been approved by an Independent Review Committee as required by National Instrument 81-107 *Independent Review Committee for Investment Funds*; and

b. that approval would have been sufficient to manage the conflict of interest.

[146] Both submissions require impermissible speculation.

[147] Investor money was used in a manner inconsistent with the requirements of the offering memorandum. This unauthorized diversion created a risk of prejudice to the investors' economic interests, since their money was invested in a way to which they had not agreed. David and Natasha caused Bridging to take the actions it did.

[148] The Commission has proven the objective element of fraud as against them. We turn to consider the subjective element.

3.3.2.b Fraud – subjective element

[149] We conclude that the Commission has satisfied the two parts of the subjective element of fraud with respect to David and Natasha.

[150] David had the necessary subjective knowledge that the above actions were occurring. Most of the actions were his own, and of those that he did not carry out himself, he directed many. We also infer from the circumstances that he knew the actions would cause a deprivation, in that they would expose investors to a risk they had not bargained for. The Commission has therefore proven the subjective or mental element of fraud as against David.

[151] As for Natasha, we have already found that she participated in the development of the plan. She knew the purpose of the loan was to advance funds to Bridging to acquire the Management Interest.

[152] Natasha does not dispute that she was aware of the loan. Instead, she defends the series of transactions. She submits that the funds flowed exactly as described in the loan agreement. She asserts a defence of due diligence, in reliance on the purported legal opinion, but we disposed of that factual issue above. Natasha did not meet the test for such a defence.

[153] Natasha also attempts to distance herself from some aspects of the transactions, *e.g.*, by asserting that she was not involved in drafting the Credit Committee minutes. That may be so, but she:

a. participated in designing the series of transactions and wrote the structure down during a discussion with Gautum;

b. commented on the Credit Committee submission that did not fully disclose the intended use of the proceeds;

c. gave her email approval despite knowing the true purpose of the loan;

d. was aware of a potential conflict and was therefore part of the process in requiring the transaction to be approved by the Credit Committee's only independent member; and

e. saw the minutes that did not fully disclose the intended use of the proceeds, and that included the substantively misleading aspects we set out earlier.

[154] We therefore conclude that Natasha knew of the dishonest act, and knew that it would cause a deprivation. The Commission has therefore proven the subjective or mental element of fraud as against Natasha, and therefore that she perpetrated the fraud along with David.

3.3.3 Step two – remaining elements of s. 126.1(1)(b)

3.3.3.a Introduction

[155] Having found that David and Natasha perpetrated a fraud with respect to the Ninepoint loans, we turn to the second step in the analysis of the Commission's allegations that they, Bridging and Mushore contravened s. 126.1(1)(b).

3.3.3.b David and Natasha

[156] The Commission has proven the objective element of s. 126.1(1)(b) against David and Natasha. They directly engaged in the conduct that formed the fraud. That conduct related to securities, in that it involved investor money that the Mid-Market Fund obtained through the sale of partnership units.

[157] As for the subjective element, it follows from our finding that David and Natasha perpetrated the fraud that they knew or ought to have known that their conduct was fraudulent.

[158] The Commission has satisfied all the requisite elements and proven that David and Natasha contravened s. 126.1(1)(b) with respect to the Ninepoint loans.

3.3.3.c Bridging

[159] As for Bridging, the Commission says that David and Natasha were directing minds of Bridging and caused Bridging to carry out these acts. We find that David and Natasha were directing minds of Bridging with respect to the Ninepoint loans, but as with the McCoshen loans, the Commission did not address all the elements of the test or the public interest aspect in making a finding that Bridging contravened s. 126.1(1)(b). While the Ninepoint loans might well have benefited Bridging, the Commission did not address how that

was the case. We therefore decline to attribute David's or Natasha's conduct to Bridging and we dismiss the allegation that Bridging contravened s. 126.1(1)(b).

3.3.3.d Mushore

[160] With respect to the Commission's allegation that Mushore contravened s. 126.1(1)(b) in respect of the Ninepoint loans, we begin with the objective element.

[161] We set out above Mushore's involvement in the Ninepoint transactions. That involvement included preparing the Credit Committee submissions and minutes, his role as a member of the Credit Committee, and his signature on the September 13, 2018 commitment letter on behalf of Bridging. By taking these steps, he participated indirectly in David and Natasha's fraud. His conduct related to securities, since the loans were of investor money that the Mid-Market Fund obtained through the sale of partnership units. The Commission has proven the objective element against Mushore.

[162] As for the subjective element, Mushore was fully aware of the planned structure of the transactions, and of the true purpose of the loans. Mushore testified that David put the letter in front of him to sign, and that he did not read it, apart from "the first couple of paragraphs". That explanation is unsatisfactory, particularly given that Mushore was the sole signatory on behalf of Bridging. It would be unusual for a chief compliance officer to be the sole signatory on such a document, and Mushore did not explain why David did not sign the letter himself.

[163] Mushore countered by submitting that the transactions had no inherently fraudulent characteristics of which he was or ought to have been aware.

[164] We cannot accept Mushore's submission that there was nothing inherently fraudulent about the Ninepoint transactions, of which he ought to have been aware. We listed above, in paragraph [140], a series of characteristics that ought to have been red flags for any senior employee, particularly one employed in an independent oversight role, as Mushore was. He knew that the documentation did not honestly reflect the structure of the transaction, including the clear conflict. He knew or ought to have known that the conflict was not being managed appropriately, and knew or ought to have known that the

transaction was fraudulent, in that it effected an unauthorized use of investor funds. The Commission has proven the subjective element of s. 126.1(1)(b) against Mushore.

[165] We therefore find that Mushore contravened s.126.1(1) of the *Act* with respect to the Ninepoint loans.

3.3.4 Conflicts of interest

[166] The Commission alleges that the loan from the Mid-Market Fund to Bridging represented an egregious conflict of interest. Bridging caused the fund to make a significant loan, in which Bridging had a direct interest. Bridging knew of the conflict, and the only step it took to respond to that conflict was to seek approval from the Credit Committee. However, the only independent member of that committee was McCluskey, and none of the committee members knew that the intended River Cities loan was to be used in the way that it was.

[167] In causing the fund to make a significant loan to Bridging without taking any meaningful steps to respond to the conflict of interest, Bridging acted contrary to the interests and obligations of the general partner. Bridging thereby contravened s. 13.4 of NI 31-103.

[168] As we explained in our analysis of the McCoshen loans, we find that s. 13.4 of NI 31-103 applies only to registered firms. We therefore dismiss the allegations that David, Natasha and Mushore breached that provision.

3.3.5 Individual respondents' potential liability for authorizing, permitting or acquiescing in Bridging's non-compliance

[169] We turn now to the allegation that David, Natasha and Mushore authorized, permitted or acquiesced in Bridging's non-compliance with Ontario securities law, and should therefore be deemed to also not have complied with Ontario securities law, under s. 129.2 of the *Act*. Because we did not find that Bridging contravened s. 126.1(1)(b) of the *Act*, we are concerned only with Bridging's non-compliance with s. 13.4 of NI 31-103.

[170] David was the driving force behind the Ninepoint loans, and he caused (and therefore authorized) Bridging's misconduct. David is therefore deemed by

s. 129.2 to also not have complied with Ontario securities law to the same extent as Bridging.

[171] As for Natasha's involvement, we accept Mushore's and Gautum's evidence, which was neither contradicted nor successfully challenged on cross-examination. Natasha played a central role in the design of the scheme. She authorized Bridging's non-compliance and is therefore deemed by s. 129.2 to also not have complied with Ontario securities law to the same extent as Bridging.

[172] As for Mushore, we cannot accept the Commission's submission that he ought to be liable under s. 129.2. We reach that conclusion because Mushore was indisputably not a director of Bridging, and we reject the proposition put forward by the Commission that he was an officer of Bridging, as defined in the *Act*.[17]

[173] That definition has three parts, and an individual can be found to be an officer if they satisfy any one of the parts.

[174] The first of the three parts lists a series of titles, which we quote in full:

> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager

[175] There was no evidence that Mushore held any of these titles at the relevant time.

[176] The second of the three parts (paragraph (b)) brings in individuals who are designated as an officer under the firm's by-law or similar authority. It is undisputed that Mushore was not so designated.

[177] The third part of the definition includes "every individual who performs functions similar to those normally performed by an individual referred to" in either of the first two parts. Did Mushore perform functions similar to anyone in (a) or (b)?

[178] Generally speaking, a chief compliance officer does not perform functions similar to those performed by the officers listed in (a). In fact, the role carries an

[17] *Act*, s 1(1), "officer"

important distinction from those functions, in that it calls for independent oversight of the business that those functions carry on.

[179] With respect to Mushore in particular, we cannot conclude that he performed functions similar to those normally performed by an individual designated as an officer of the firm. We heard no evidence that he did so.

[180] Accordingly, we find that Mushore was not an officer of Bridging. He cannot be deemed liable under s. 129.2 of the *Act* for Bridging's non-compliance with Ontario securities law.

3.3.6 Conclusions relating to the Ninepoint loans

[181] We therefore conclude that:

a. David and Natasha perpetrated a fraud with respect to the Ninepoint loans;

b. David and Natasha's conduct related to securities, and they knew or ought to have known that their conduct perpetrated a fraud;

c. David and Natasha thereby contravened s. 126.1(1)(b) of the *Act*;

d. Mushore indirectly participated in David and Natasha's fraud;

e. Mushore's conduct related to securities, and he knew or ought to have known that it perpetrated a fraud;

f. Mushore thereby contravened s. 126.1(1)(b) of the Act;

g. it was not established that Bridging contravened s. 126.1(1)(b) of the *Act*;

h. Bridging contravened s. 13.4 of NI 31-103; and

i. David and Natasha authorized Bridging's non-compliance with s. 13.4 of NI 31-103 and are therefore deemed, under s. 129.2 of the *Act*, to also have not complied.

3.4 The Ng loans

3.4.1 Introduction

[182] The third and final set of loans relates to the purchase of Bridging shares by Gary Ng, a Winnipeg businessperson. In May 2019, Ng agreed to purchase 50% of Bridging. In June 2019, Bridging lent an Ng-owned company $32 million. Ng

used $30 million of that to close the purchase. As part of the transaction, Natasha sold her Bridging shares to Ng for $16.6 million.

[183] After that transaction closed, Bridging loaned Ng's companies a further $47 million. That amount included a $35 million loan that the Sharpes caused Bridging to make without Credit Committee approval and without the committee being informed. In November 2019, Ng paid $1 million to the Sharpes personally.

[184] The Commission alleges that:

a. the purpose of these loans was not disclosed;

b. investor funds were diverted to the purchase of Bridging shares;

c. the loans constituted a fraud;

d. the loans were made despite impermissible conflicts of interest; and

e. through their involvement in these loans, Bridging, David and Natasha contravened s. 126.1(1)(b) of the *Act*, and they and Mushore contravened s. 13.4 of NI 31-103.

[185] We first address the allegations regarding s. 126.1(1)(b) of the Act, and conclude that Natasha perpetrated a fraud in which David participated. We dismiss the allegation that Bridging contravened s. 13.4 of NI 31-103.

3.4.2 Step one – has a person or company perpetrated a fraud?

3.4.2.a Fraud – objective element

[186] We begin by assessing the objective element of fraud as it relates to Natasha.

[187] The Sharpes first met Ng when he was looking for financing to purchase an investment dealer. In March 2018, Chippingham Capital Corp., an Ng-owned company, borrowed $21 million from Bridging for that purpose.

[188] Beginning in November 2018, Ng had conversations with the Sharpes about his purchasing an interest in Bridging. While the discussions were ongoing (the transaction closed in July 2019) and documents were prepared, Bridging made three loans totaling $31 million to Ng's company 10029947 Manitoba Inc. (**1002 Manitoba**), ostensibly to provide regulatory capital to an investment dealer that Ng owned.

[189] In April 2019, Ng filed with the Ontario and Manitoba Securities Commissions written notice of his agreement to purchase the interest in Bridging. The notice, which attached a verification that David signed on behalf of Bridging:

a. stated that Ng's acquisition would not give rise to a conflict of interest;

b. stated that Ng's acquisition would not hinder Bridging's ability to comply with securities legislation;

c. omitted to state that Ng owned Chippingham and 1002 Manitoba, each of which owed approximately $21 million to Bridging funds.

[190] In June 2019, while negotiations continued, and immediately after the Sharpes returned from a lunch meeting with Ng, the Sharpes informed Lekan Temidire, a Bridging portfolio manager, that Bridging was to make a $32 million loan to Ng's company 10034889 Manitoba (**1003 Manitoba**). The Sharpes told Temidire that the loan would be secured by an investment account worth approximately $90 million in Ng's name at PI Financial, an investment dealer that Ng owned.

[191] Temidire asked some questions and recommended that an arm's-length third party conduct due diligence. After some discussion, the Sharpes said that they were comfortable with the account's legitimacy and no due diligence was required. Temidire's inquiries about what business 1003 Manitoba was in were met with varying answers, including that the company was a cannabis company, or that it was a commercial real estate company.

[192] The Sharpes asked Temidire to draft the Credit Committee submission, and they gave him the information to include. They instructed him not to mention Ng in the submission. Temidire was unaware that Ng and Bridging had signed an agreement for Ng to acquire 50% of Bridging.

[193] The submission described the purpose of the loan as "for the acquisition of strategic targets, working capital and general corporate purposes". During the Investment Committee review of the submission, McCluskey noticed that the owner of the borrower, 1003 Manitoba, was not mentioned. Temidire relayed to McCluskey the Sharpes' advice that the borrower was well known to Bridging. McCluskey approved the loan and the same submission was then forwarded to the Credit Committee for approval.

[194] The Credit Committee approved the loan by email, although three committee members withheld their approval.

[195] Champ and Mushore withheld theirs because of concerns about potential conflicts of interest arising from the fact, known among the senior management team, that Ng was potentially investing in Bridging. Champ went further, documenting his concerns in an email from his personal account to Mushore's personal account. Neither Champ nor Mushore did anything else to object to the loan.

[196] Marr withheld his approval because he knew that 1003 Manitoba was an Ng-owned company, he had been the main point of contact on previous Ng loans, and he was "miffed" that he had not been involved.

[197] Ng opened a bank account for 1003 Manitoba on June 21, 2019, on which day the loan was funded. The loan proceeds were deposited into that account, which had no other money in it.

[198] Before the acquisition was finalized, Ng incorporated 2693405 Ontario Inc. to be the acquiring entity. The acquisition agreement was changed accordingly. On July 5, 2019, three days before the closing date, the numbered company received $50 million into its account, $30 million of which came from 1003 Manitoba, and $20 million of which came from a third-party lender. There was no other money in the numbered company's account before these deposits.

[199] The transaction closed. On July 31, 2019, by which time Ng was Bridging's largest shareholder, he emailed the Sharpes and advised of his desire to "upsize" the $32 million by an additional $35 million as soon as possible, ostensibly as seed capital for a joint venture with a third party.

[200] Bridging funded the additional $35 million on August 8, 2019, without any review or approval by the Credit Committee. An internal Bridging email giving instructions for wiring the funds attached a modified version of the June promissory note that had formed the basis for the original $32 million loan. The modified version described the June loan as being for $32 million, "with an option to draw" an additional $35 million.

[201] According to Temidire, Natasha initiated the modification of the promissory note. She told Temidire that 1003 Manitoba would require an additional $35 million,

and that Temidire should change the original promissory note to provide for an option for the further amount. Temidire testified that he raised the need for Credit Committee approval, to which Natasha replied that she would be able to get the necessary approvals.

[202] The original Credit Committee submission was also altered to show that the total commitment was $32 million "with an option of an additional $35 million". Further, under "risks", an additional sentence was added, saying "Account and holdings were verified by Natasha Sharpe with …"

[203] Temidire testified that Natasha asked him to alter the promissory note and he told her he would not do it. He added that in any event, he did not have the necessary permissions on the document. He said Natasha instructed Bruno Novo (Bridging's head of operations) to make the original promissory note editable. He said he then witnessed Natasha type the changes herself. When Novo was asked whether either Temidire or Natasha had asked for him to edit or alter a document, Novo did not rule out the possibility, but answered that he did not recall that ever happening.

[204] Natasha submitted that we should reject Temidire's testimony on this point and find she did not alter the document. Natasha pointed out Novo had testified that as far as he understood, there were no restrictions on editing loan documents on Bridging's shared drive. This was put to Temidire on cross-examination, but Temidire was adamant that while he was able to save documents to the shared drive, he was unable to alter documents at all, including PDF documents (such as the promissory note), for which he did not have the software needed to edit.

[205] Mushore was not present for the discussion that Temidire testified about having had with Natasha and Novo, but Mushore does remember Temidire telling him about that discussion after it happened. Mushore's testimony is hearsay to the extent it describes the discussion he was not part of, and we must therefore be cautious with it, but we note that it is consistent with Temidire's version of the event.

[206] We find that it is more likely than not that the event happened as Temidire described. We found him to be a credible witness and accept his testimony. We

consider it unlikely that he told Mushore a concocted false story a long time ago, and then repeated it in his sworn testimony.

[207] Natasha also submits that the metadata associated with the documents suggests that the documents were altered on June 17, 2020. We do not accept that submission. The electronic versions of the documents tendered at the hearing do have that date in the metadata. However, we are satisfied there are other possible explanations for that, unrelated to the issues in this case, *e.g.*, it is the date on which the receiver produced the documents to the Commission, or the date on which the Commission assigned identification numbers to the documents. Moreover, there was no evidence that the June 17, 2020, date in the metadata established that the documents were not altered in 2019 as Temidire testified.

[208] Within months of Bridging advancing the further $35 million, Bridging went on to provide two further loans to Ng – a $2 million loan in October 2019 and a $10 million loan in February 2020. Additionally, each of David and Natasha received a payment of $500,000 from Ng in November 2019. We have no evidence that David or Natasha took any steps to address the conflict of interest presented by these payments.

[209] The 2019 financial statements of the Income Fund and the Mid-Market Fund, the two Bridging funds that advanced the loans, commented inaccurately on the relationship between Bridging and Ng. They stated that:

a. agreements for Ng's loans were entered into prior to Ng becoming a Bridging shareholder, an assertion that was partially true but partially false, given the loans that came after the closing of the acquisition;

b. Ng's loans were approved by the Investment and Credit Committees, which was false; and

c. no further loans were made to Ng after he became a Bridging shareholder, which was false.

[210] David and Natasha both signed the Income Fund's financial statements. The Mid-Market Fund's financial statements were approved by its general partner, of which Natasha was president and a director. Further, David and Mushore signed

a letter on behalf of Bridging, to the Funds' auditor, representing that all information about transactions with related parties had been provided.

[211] The use of investor money to enable Ng to purchase a 50% interest in Bridging, including by paying Natasha a substantial sum for her shares, was contrary to the funds' objectives, as disclosed to investors. The dishonesty surrounding these loans is evidenced by the following:

a. the misleading April 2019 filing with the Ontario and Manitoba Securities Commissions, which David certified;

b. the choice not to conduct the customary due diligence;

c. the lack of transparency about the business the borrower was in;

d. the instruction not to mention Ng in the Credit Committee submission;

e. the choice not to disclose to the Credit Committee the purpose of the loan;

f. the choice not to disclose to Temidire that Ng and Bridging had signed an agreement for Ng to acquire 50% of Bridging;

g. the choice to fund an additional $35 million without obtaining the necessary internal approvals;

h. the false comments in the funds' financial statements;

i. the payments of $500,000 to each of David and Natasha; and

j. the surreptitious alteration of loan documents.

[212] We are satisfied that the diversion was dishonest. In addition, the conflict of interest was a central characteristic of the loans. There can be no suggestion that there was any proper response to this conflict, let alone in a manner consistent with fiduciary responsibilities to the funds (as called for by the offering memoranda).

[213] Investor funds were therefore used in an unauthorized way, causing a deprivation, because investors were subjected to a risk they had not bargained for. That deprivation was compounded by the subsequent discovery (as admitted by Ng in February 2020) that the investment account he had identified as collateral for the loans to 1003 Manitoba was fraudulent.

[214] Natasha submits that she took immediate steps, to her detriment, to repay the fund the $10 million February 2020 loan to Ng. The loan was reclassified as a dividend, and the debt owed to the unitholders was repaid in full. This payment does not, however, change the fact that the unauthorized diversion and accompanying deprivation happened in the first place.

[215] Natasha engaged in the dishonest acts and thereby caused a deprivation. The Commission has successfully proven the objective element of the fraud as against her. We turn to consider the subjective element.

3.4.2.b Fraud – subjective element

[216] We have found that Natasha orchestrated the Ng loans, participated in all the significant related steps, altered a document, and instructed Bridging staff to conceal important information and to refrain from having due diligence carried out.

[217] Natasha submits that she did not know that Ng would use the loan to purchase an interest in Bridging. There is no evidence before us to support that submission. The best evidence we have, which we accept, is that Natasha not only knew of the scheme but engineered it. She knew that the process she engineered to approve the loan was dishonest, and that following that process would divert investor funds to an unauthorized use.

[218] We also conclude that Natasha knew that the dishonest acts would cause a deprivation. The Commission has therefore proven the subjective or mental element of fraud as against Natasha, and therefore that she perpetrated the fraud.

3.4.3 Step two – remaining elements of s. 126.1(1)(b)

3.4.3.a Introduction

[219] Having found that Natasha perpetrated a fraud with respect to the Ng loans, we turn to the second step in the analysis of the Commission's allegations that she, Bridging and David contravened s. 126.1(1)(b).

3.4.3.b Natasha

[220] The Commission has proven the objective element of s. 126.1(1)(b) against Natasha. She directly engaged in the conduct that constituted the fraud. That conduct related to securities, in that it involved investor money that the Bridging funds obtained through the sale of partnership units.

[221] As for the subjective element, it follows from our finding that Natasha perpetrated the fraud that she knew or ought to have known that her conduct was fraudulent.

[222] The Commission has satisfied all the requisite elements and proven that Natasha contravened s. 126.1(1)(b) with respect to the Ng loans.

3.4.3.c Bridging

[223] As for Bridging, the Commission submits that Natasha was a directing mind and that we should attribute her conduct to Bridging. We agree that Natasha was a directing mind of Bridging with respect to the Ng loans. She was the firm's chief investment officer. She was one of two members of the Investment Committee, from which unanimous approval of the loans was required. She gave instructions to Bridging staff about effecting the transactions and she altered loan documents to portray a false sequence of events.

[224] However, when deciding whether we should attribute Natasha's acts to Bridging, we encounter the same difficulty as described above with the McCoshen and Ninepoint loans. In presenting its case, the Commission did not address the identification doctrine, and whether that doctrine should apply with respect to the Ng loans, particularly given the benefit to Natasha as a selling shareholder. We therefore decline to attribute Natasha's conduct to Bridging and we dismiss the allegation that Bridging contravened s. 126.1(1)(b).

3.4.3.d David

[225] As for David, we begin with the objective element of the allegation that he contravened s. 126.1(1)(b). David was involved in arranging at least the original $32 million loan to Ng. By doing so, he directly engaged in a course of conduct that related to securities, since the loan was of investor money that the Bridging

funds obtained through the sale of partnership units. The Commission has proven the objective element against David.

[226] As for the subjective element, we infer that he was fully aware of the purpose for the loan, and we have no evidence to the contrary. He knew of the dishonesty that permeated the approval process, knew that this investor money was being used in an unauthorized way, and knew or ought to have known that this use was fraudulent. His knowledge satisfies the subjective element.

[227] We therefore find that David contravened s. 126.1(1)(b) of the *Act* with respect to the Ng loans.

3.4.4 Conflicts of interest

[228] Bridging and Natasha had material interests at stake in enabling Ng to purchase the 50% interest in Bridging. Those interests did not align with those of the general partner. Instead of taking steps to disclose or otherwise address that conflict, Natasha engineered the scheme by which the conflict was concealed.

[229] As we have explained above, s. 13.4 of NI 31-103 does not apply to the individual respondents. Only Bridging might be found to have contravened s. 13.4. The Commission makes no allegation that Bridging failed to take necessary steps to identify the conflict presented by the Ng loans. We can find Bridging to have contravened s. 13.4 only if we fix Bridging with knowledge of the conflict. To do so, we would have to attribute Natasha's knowledge to Bridging. For the same reasons as set out above regarding the fraud allegation, we decline to do so. Accordingly, we dismiss the allegation that Bridging contravened s. 13.4 of NI 31-103.

3.4.5 Conclusions relating to the Ng transactions

[230] We therefore conclude that:

a. Natasha perpetrated a fraud with respect to the Ng loans;

b. Natasha and David directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud; and

c. Natasha and David thereby contravened s. 126.1(1)(b) of the *Act*.

[231] We dismiss the allegations that Bridging contravened s. 126.1(1)(b) of the *Act* and s. 13.4 of NI 31-103.

3.5 Obstruction of the Commission's investigation

3.5.1 Introduction

[232] We turn now to the Commission's allegations that the respondents improperly attempted to obstruct its investigation in four ways:

a. the Sharpes and Mushore made false or misleading statements during their compelled examinations;

b. Bridging, the Sharpes and Mushore created, or directed others to create, false paper trails by altering, deleting or concealing records;

c. David attempted to intimidate witnesses; and

d. Natasha allowed David to listen in when the Commission was examining her.

[233] We address each of these in turn.

3.5.2 False or misleading statements during compelled examinations

[234] Clause 122(1)(a) of the *Act* states that it is an offence to make a misleading or untrue statement to an OSC investigator. The provision also applies to omitting a fact that is necessary to make a statement not misleading. The statement must be materially misleading or untrue at the time and under the circumstances in which it is made. It is a defence if the person accused of making a misleading or untrue statement did not know, and could not have known through reasonable diligence, that the statement was misleading or untrue.

[235] The Commission alleges that David, Natasha, and Mushore, during their compelled examinations in the investigation, made misleading or untrue statements, or omitted facts necessary to make their statements not misleading. If the Commission succeeds in proving its allegations, that may provide a basis for an order under s. 127(1) of the *Act*.[18]

[18] *Wilder v Ontario Securities Commission*, 2001 CanLII 24072 (ON CA) at paras 15-24

[236] We have considered the contested statements in light of the time and circumstances in which they were made. We are satisfied that all the Commission's allegations relate to matters that are material.

3.5.2.b David

[237] We begin with David. The Commission alleges that he provided false or misleading answers on several matters during his examination, which took place over three separate days, in October 2020 and April 2021.

[238] The first impugned series of answers relates to the Ninepoint loans. Commission staff's questions of David on this topic asked whether Gautam had received any benefits beyond what was outlined in the "loan document." However, the transcript excerpts do not specify which document was being referenced, and in the hearing before us, the Commission did not link that reference to a specific document in the record. As a result, the Commission has not established this allegation.

[239] The second impugned series of answers relates to the source of funds used to purchase the Management Interest. David testified that he understood that Gautam had arranged the loan by raising money from "a bunch of investors in the United States". When the investigator later asked "At the end of the day, do you know exactly how Mr. Gautam funded the loan from [331 Nova Scotia] to [Bridging]?" David answered "Yes. Well, he told me it was these individuals that he had met with …". These answers were misleading because David knew Gautam did not raise funds for the loan, since the funds originated from the Mid-Market Fund and not from a Gautam-related company.

[240] Most telling is David's examination on April 29, 2021, after the Commission had learned that the funds originated from the Mid-Market Fund. Commission counsel told David that the Commission was "aware of a loan that had been extended from the [Bridging] funds to companies related to Mr. Gautam that you have not disclosed to us and that Bridging Finance has not disclosed to us. Do you know what I'm talking about?" David's answer of "No, I don't" was untrue, because, as we have found, David knew all about the fraud that he perpetrated.

[241] David also testified that the BlackRock loan was used to repay 331 Nova Scotia. In fact, the proceeds of the BlackRock loan were used to repay the Mid-Market Fund.

[242] To some extent, David's answers accurately reflected the paperwork, which showed that it was 331 Nova Scotia that originally loaned the money. However, we are satisfied David's answers were intentionally misleading.

[243] Third, the Commission alleges that David told the Commission he had no relationships with any Bridging borrowers, or their officers, directors, or shareholders, that could be seen as creating a potential conflict of interest. However, the most direct question asked was, "To your knowledge, are there other business or personal relationships that could be perceived as creating a potential conflict of interest?" This question, using the word "other," clearly builds on prior discussion. The question is found at the top of page 412 of David's October 27, 2020, transcript, but the Commission did not file page 411. The other excerpts filed by the Commission do not provide the necessary context. Without the preceding context, we cannot conclude that the Commission has met its burden to prove this allegation.

[244] Fourth, and with respect to the McCoshen loans, the Commission alleges that David misled the Commission by denying that he received 14 transfers, totaling $19.5 million, from McCoshen and 704 Manitoba. Staff asked David if any companies related to McCoshen ever transferred money to him directly. David responded, "To the best of my knowledge, no." We previously found that 704 Manitoba transferred $19.5 million into David's personal bank account as part of the fraud David perpetrated. David had ruled out the possibility that the funds came from McCoshen personally earlier in his testimony. David's denial that he received the kickbacks was false.

[245] Fifth, and with respect to the Ng loans, the Commission alleges that David misled its investigator by stating that the purpose of the June 2019 loan was for Ng to purchase real estate in Hong Kong, and that the second loan was an additional tranche, granted due to a "contractual obligation". David knew the June advance was used to fund Ng's acquisition of 50% of Bridging and neither tranche was intended for real estate in Hong Kong. We conclude that David's answers were

an attempt to cover up the real purpose of the advances. We find his answers were untrue.

[246] Finally, the Commission alleges that David misled Commission staff by failing to tell them about:

a. a $2 million loan to Ng's company 1002 Manitoba in October 2019;

b. a $10 million loan to 1002 Manitoba in February 2020; and

c. the $500,000 he received from Ng in November 2019.

[247] The Commission failed to provide adequate context to enable us to assess the first two allegations. The investigator stated "I am going to put a summary, very high level, of the transactions we have discussed in connection with Mr. Ng, and then I am going to ask you some questions to confirm that there is nothing else we haven't discussed. Okay?" In subsequent questions the investigator referred to "the schedule at tab 3 of Exhibit 1" saying "…we can always pull that up." The Commission did not identify either of those documents to us. Without this context, the Commission has failed to meet its onus to establish these allegations.

[248] In regard to the $500,000 payment from Ng to David, David was asked whether "[Bridging] and/or any of its officers, directors, or shareholders" had other dealings with Ng. David answered "No, to the best of my knowledge." Later, David was asked if he was aware of any other payments from Ng to Bridging officers, directors, or shareholders. He answered "No, to the best of my knowledge, but no as it relates to me."

[249] David was an officer of Bridging. David's failure to admit Ng paid him $500,000 was deliberately untrue.

3.5.2.c Natasha

[250] The Commission alleges that Natasha misled it in four ways during her examination.

[251] First, Natasha stated that Bridging approved the $67 million loan to Ng's company 1003 Manitoba in June 2019 for him to purchase real estate in Hong

Kong. We find that she knew that the purpose of the loan was to allow Ng to acquire Bridging, based on the following:

a. Natasha and David had had conversations with Ng about his purchasing an interest in Bridging before the loan was arranged;

b. the share purchase agreement was signed in May 2019;

c. in June 2019 the loan was arranged quickly after Natasha and David, returned from lunch with Ng;

d. Natasha and David instructed Temidire to prepare a term sheet for the loan, telling him "it had to go out and get approved in a couple of hours";

e. Temidire was not allowed to follow his usual practice in preparing proper documentation; instead, David and Natasha told him what to include in the term sheet, initially directing him to state that the purpose of the loan was for the acquisition of cannabis companies, a sector in which Ng had an interest;

f. Natasha told Temidire not to follow up on his suggestion to verify the legitimacy of the collateral for the loan;

g. Natasha told Temidire to leave Ng's name out of the documentation;

h. after Temidire sent the first draft of the term sheet, the Sharpes then instructed him to revise it to state that the purpose was the acquisition of commercial real estate (without any mention of Hong Kong);

i. Bridging approved the loan to Ng's company on June 10, 2019; and

j. Ng's acquisition of 50% of Bridging closed on July 8, 2019.

[252] We consider it more likely than not that if Natasha believed the purpose of the loan was investment in Hong Kong real estate, she would have mentioned that to Temidire. She would not have approved the first draft of the term sheet, which stated that the loan's purpose was investment in the cannabis industry, nor would she have approved the second draft, which made no reference to Hong Kong. Considering all the available evidence in the context of the timing of the loan and the closing of Ng's acquisition of 50% of Bridging, we infer

Natasha's answer was untrue. We are satisfied she knew all along that the purpose of the loan was to fund Ng's acquisition of 50% of Bridging.

[253] Second, Natasha claimed she did not know how Gautam funded the loan from 331 Nova Scotia. The Commission submits that this statement was misleading because Natasha participated in discussions with David and Gautam about using funds from the Mid-Market Fund to purchase the Ninepoint interest.

[254] We noted above that Gautam testified Natasha was involved in one or two of his discussions with David. We accept Gautam's testimony that Natasha wrote the structure of the plan to finance the Ninepoint purchase "on a piece of paper, … it was written down and discarded after the meeting." We are satisfied that Natasha knew how Gautam funded the purported loan from 331 Nova Scotia. Her statement that she did not know was untrue.

[255] Third, Natasha said she was not aware of:

a. the $2 million loan to Ng's company 1002 Manitoba in October 2019;

b. the $10 million loan to 1002 Manitoba in February 2020; and

c. the $500,000 she received from Ng in November 2019.

[256] While we have evidence that Natasha approved these loans, we cannot find the Commission has met its burden to establish the first two matters. The investigator showed Natasha a schedule of loans and asked her whether she knew of other loans. The Commission did not identify the schedule to us and consequently we cannot conclude her answer was untrue.

[257] We find Natasha misled the Commission about the $500,000. Before asking her if she knew whether Bridging officers, directors or shareholders had received other payments from Ng, the investigator provided context for the question. The investigator first referred to the loans Bridging made to Ng and Ng's acquisition of the interest in Bridging. The investigator asked if that was the extent of the relationship between Bridging and Ng. The investigator then asked whether any Bridging officers, directors, or shareholders had other dealings with Ng, and finally, whether any of them had received additional payments from him. Natasha responded, "Not to my knowledge" to the final question. We are

satisfied that Natasha was aware she had received $500,000 from Ng, making her answer misleading.

[258] Finally, Natasha stated that she drafted the 2019 year end review of the status of 1003 Manitoba loan before she learned Ng's collateral was fraudulent. The Commission submits that she became aware of Ng's fraud in February of 2020 and drafted the review in March 2020. The review reports the loan was in good standing.

[259] The memo, which is undated, reports the outstanding balance of the loan as of December 31, 2019. During her examination, Natasha stated that she wrote the memo before identifying Ng's fraud, claiming, "It would never have been written like that otherwise." However, the Commission did not provide any evidence indicating when the memo was actually written.

[260] The Commission has not met its burden to establish this allegation.

3.5.2.d Mushore

[261] The Commission alleges that Mushore misled its staff in two ways during his examination.

[262] First, the Commission alleges that Mushore told Staff that Bridging borrowed $35 million from 331 Nova Scotia to acquire the Ninepoint interest. The Commission supports its allegation with the following responses from Mushore:

> Q. You are aware that [Bridging] borrowed $35 million from 3319891 Nova Scotia company to complete this purchase of Ninepoint's share of the Income Fund. Correct?
>
> A. I am.
>
> Q. Do you recall when you first learned that [Bridging]was borrowing $35 million from 3319891 Nova Scotia?
>
> A. [Sometime around October 2018.]
>
> ...
>
> Q. Do you know why [Bridging] borrowed this $35 million from 3319891 Nova Scotia as opposed to a more traditional lender?

> A. I don't know. I know there was effort made to get a loan from a more traditional lender, as you describe. ... As I understand, this is where it landed.

[263] The Commission submits that Mushore failed to disclose that Bridging had used capital from the Mid-Market Fund to purchase the Management Interest.

[264] As we have found, Mushore was fully aware of the planned structure of the transactions. However, we are not persuaded that the Commission has established Mushore's answers were misleading. The Commission's first two leading questions do not indicate they are intended to elicit the substance rather than the form of the transaction. We are not persuaded that Mushore, by agreeing with what was put to him, intended to mislead the Commission.

[265] It is not clear to us that the intended import of the third question would have been clear to Mushore. We are not persuaded his answer was misleading.

[266] Second, the Commission alleges that Mushore stated that Bridging approved a $67 million loan to Ng's company 1003 Manitoba in June 2019 and "that he remembered reviewing a falsified Credit Committee Submission at that time even though at that point it did not exist." This allegation is based on the following exchange:

> Q. Okay. Let's look at the credit committee submission for this loan to 889 Manitoba. That is at tab 11, and it is page 161. Do you recall reviewing this credit committee submission?
>
> A. Yes, at the time of submission.
>
> Q. In or around June 2019?
>
> A. Yes.

[267] The transcript does not indicate the submission the investigator showed to Mushore was the one that approved $67 million. While the excerpt identifies the document in materials used on the examination, the Commission did not establish which of the submissions filed in evidence it was. Nor does the transcript indicate that Mushore was taken through the document or allowed to examine its it details. It seems Mushore merely agreed with the leading questions put to him.

[268] The Commission did not satisfy its onus to establish this allegation.

3.5.3 False paper trails

3.5.3.a Introduction

[269] The Commission alleges that Bridging, the Sharpes and Mushore created, or directed others to create, false paper trails by altering, deleting or concealing records. The Commission submits that such conduct is contrary to s. 122(1)(a) of the *Act*.

[270] The Commission specifically alleges that:

a. David intentionally deleted emails, and Mushore was involved in that deletion;

b. David, with Mushore's knowledge and involvement, directed that Bridging withhold documents that were required to be produced to Commission investigators in response to a summons; and

c. Natasha and Mushore, with David's knowledge, mischaracterized the $10 million loan to 1002 Manitoba in February 2020.

[271] We address each of these in turn.

3.5.3.b Deletion of emails

[272] Following its appointment, the receiver took immediate steps to secure Bridging's information technology systems. A senior member of the receiver's team involved in that work testified that he met with Bruno Novo (a member of Bridging's portfolio management team, and the receiver's principal IT contact) and the owner of the firm to which Bridging's IT functions were largely outsourced.

[273] During those discussions, the external firm's owner recalled a concerted effort in October 2020 to delete a mass quantity of emails. The firm produced a ticket that had instructed it to two things. First, the firm was to (and did) change a setting on all of Bridging's electronic mailboxes. The effect of the change was to disable a standard feature that preserves deleted emails for between 14 and 30 days so that an administrator could recover and restore those emails if

necessary. Second, the firm was instructed to delete any emails that were identified according to 18 predefined searches.

[274] Between October and December 2020, that instruction resulted in the deletion of about 34,200 emails. The process was necessarily manual to a significant degree, and required searches to be run multiple times. The search terms used correspond significantly with individuals or entities at the core of this proceeding, *e.g.*, "Gary Ng", "Gautam", "River cities [*sic*]", "3319891", "182 Crescent Road Trust".

[275] Novo (the principal IT contact at Bridging) and Mushore both testified that David provided the search terms and gave the instructions to delete the emails. Novo testified that it was made clear to him that this was to be done urgently. He did not have the authority to delete the emails, so he created the ticket with the external firm. Moreau (Bridging's general counsel) testified that David told him certain emails relating to Ng "had been killed".

[276] We agree with the Commission's submission that this deletion of emails in the face of the investigation obstructed that investigation, by creating the false appearance that the emails had never existed. The evidence is unchallenged that Bridging effected this deletion at David's instruction. We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

[277] The basis for the Commission's allegation that Mushore directed the deletion of emails is unclear. On Mushore's own testimony, he was present for some of the discussions in which Novo received instructions. Novo does not clearly implicate Mushore as having done anything other than asking Novo to come into an office to discuss the topic with David and Mushore, and to copy (but not delete) identified emails into new folders. In fact, Novo expressly testified that he did not remember whether it was David or Mushore who instructed him to carry out the searches.

[278] There is no clear evidence, from Novo or otherwise, that Mushore was anything other than a bystander to the instructions and a participant in copying certain emails. In its written submissions, the Commission asserts that David and

Mushore asked Novo to run searches, but it cites no evidence in support of the conclusion that Mushore gave any such instructions. We saw none in the record.

[279] We make no finding against Mushore.

3.5.3.c Alteration and exclusion of documents

3.5.3.c.i Introduction

[280] The Commission alleges that David, Natasha and Mushore took various steps to alter documents, and to exclude documents from those being produced to the Commission during its investigation.

[281] Below, we address each specific allegation in turn. Before doing so, we note David's active role in the process of Bridging responding to the Commission's document production requirements. Unchallenged testimony from Moreau (Bridging's general counsel at the relevant time), which we accept, establishes that:

a. David insisted on reviewing and approving the sending of every document to the Commission; and

b. David frequently and repeatedly instructed Mushore and Moreau to alter and exclude documents that were to be produced to the Commission.

3.5.3.c.ii McCoshen loans

[282] The Commission alleges that Bridging provided, on David's instructions to Mushore and others, altered documents relating to the McCoshen loans, to falsely reflect that A2A, rather than McCoshen's numbered company 704 Manitoba, actually received the loan funds.

[283] The Receiver obtained two sets of documents relating to these loans. One set, from Bridging's counsel, showed that the loan proceeds would be paid to McCoshen's company 704 Manitoba. The other set, from Bridging's own records, showed that the proceeds would be paid to A2A.

[284] Moreau testified that when the loan documents were gathered in preparation for production to the Commission, David instructed him (in Mushore's presence) to alter the documents to show the recipient of the proceeds as A2A rather than

704 Manitoba. Moreau objected, but David overruled him and instructed him and Mushore to make the changes. They did so.

[285] We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

3.5.3.c.iii Ninepoint loans

[286] On April 30, 2020, the Commission sent Bridging a direction under s. 19(3) of the *Act* that required Bridging to produce all loan agreements and other documents that recorded a wide range of information about any loans that had been made by the Income Fund or the Mid-Market Fund since January 1, 2017. None of the loan schedules that Bridging produced during the investigation listed the Ninepoint loans.

[287] The Commission alleges that:

a. David directed and ensured that Bridging would provide no records relating to the Ninepoint loans to the Commission; and

b. David and Mushore instructed others to remove the Ninepoint loan from schedules that were provided to the Commission, which schedules purported to list all loans made from the funds.

[288] Moreau testified that David gave him instructions as the Commission alleges, and that Moreau complied with those instructions. Mushore's testimony was similar. He stated that David instructed Novo, in front of Mushore, to exclude the Ninepoint loans from any loan schedules produced to the OSC. We accept Moreau's and Mushore's testimony that David instructed that the Ninepoint loans be excluded. Whether Moreau or Novo carried out that instruction is of no consequence.

[289] We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

[290] The Commission did not pursue a similar allegation against Mushore, other than to note his presence when David instructed Novo. We make no finding against Mushore.

3.5.3.c.iv Loan approval process

[291] The Commission alleges Bridging provided inaccurate documents about the loan approval process, as a result of David's instructions to:

a. Mushore to alter Bridging's policies and procedures manual before Bridging produced it to the Commission, to omit references to the Credit Committee approving loans by email;

b. Mushore not to produce to the Commission emails from Credit Committee members approving loans; and

c. "others" to remove a column from a spreadsheet that listed which members voted to approve specific loans.

[292] Moreau testified that at David's direction, Bridging produced to the Commission a version of its policies and procedures manual that was altered in 2020 to delete references to the Credit Committee approving loans by email. Bridging also withheld a corresponding controls document that referred to email approvals by committee members.

[293] In response to the Commission's direction that Bridging identify the individual Credit Committee members who had approved the various loans, Bridging responded only by saying that the loans were authorized by the Investment Committee and the Credit Committee. Bridging did not identify the members who approved. The Commission asked a second time, but once again Bridging withheld the names of the members and copies of the emails by which the members had approved the loans.

[294] David instructed Novo to exclude from productions to the Commission emails that would have been responsive to the Commission's direction. David also directed Novo to delete the emails from Bridging's servers.

[295] Further, Champ had prepared a schedule of loans that listed the committee members who had approved each loan. When David saw that schedule, he instructed Mushore to direct Champ to remove the names of the committee members, purportedly to protect the integrity of the committees and their members. Champ complied.

[296] We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

3.5.3.c.v Loans to Ng's company 1003 Manitoba

[297] The Commission alleges that when it required that Bridging produce the submission to the Credit Committee for the June 2019 loan to Ng's company 1003 Manitoba, David instructed Mushore first to alter the submission so that it appeared the committee had also approved the $35 million August 2019 advance at the same time.

[298] Mushore testified that David gave him that instruction and that he complied with it. Mushore's testimony is consistent with the documentary record and with Temidire's testimony. Bridging produced the altered record to the Commission, and told the Commission's investigators that the loan that had been approved was for $67 million, payable in two parts, of $32 million and $35 million.

[299] Bridging also produced a term sheet dated June 20, 2019, (more than a month before Ng requested the additional $35 million) purporting to reflect a loan of up to $67 million to 1003 Manitoba. The term sheet appears to bear Temidire's initials, although Temidire testified that he had not seen the term sheet until after the Receiver was appointed.

[300] We find that by engaging in this conduct, Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

[301] We also find that Mushore should be held accountable for his role in altering the records. Because he was not an officer of Bridging, s. 129.2 does not apply to him. However, we conclude that his conduct as a senior member of Bridging's management, and as Bridging's chief compliance officer, substantially undermines the clear animating principle, set out in s. 122(1)(a), that no one may make a material misstatement in information provided to the Commission or to someone appointed by the Commission to investigate. Mushore's conduct therefore justifies an order under s. 127(1).

3.5.3.c.vi $2 million loan to Ng's company 1002 Manitoba

[302] The Commission alleges that Bridging, on David's and Mushore's instructions to Champ, provided altered accounting records deleting any reference to the $2 million loan made to Ng's company 1002 Manitoba in October 2019.

[303] Bridging originally produced a ledger that showed only a $6 million disbursement, in 2018, to 1002 Manitoba. After the receiver was appointed, the Commission obtained another version of the same ledger, which included a $2 million disbursement in October 2019.

[304] Champ testified that Mushore relayed to him David's instruction to remove the $2 million loan from the ledger. Moreau corroborated this testimony, recalling that Bridging's productions deleted the $2 million loan from the ledger and excluded documents relating to that loan.

[305] We find that by providing the altered record, Bridging contravened the prohibition in s. 122(1)(a) of the *Act*, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

3.5.3.c.vii $10 million loan to Ng's company 1002 Manitoba

[306] The Commission alleges that Natasha and Mushore, with David's knowledge, tried to cover up the $10 million loan to Ng's company 1002 Manitoba in February 2020. The Commission alleges that Natasha:

a. concocted a story that the loan was an "advance dividend" that Bridging owed to Ng; and

b. instructed Mushore to work with Bridging's accounting team to have Bridging itself (and not the Mid-Market Fund, which had made the loan) "repay" the loan using Bridging's own money, and to falsify accounting records to align with this characterization.

[307] The Commission sent its first direction to Bridging to produce documents in February 2020, just after the $10 million loan to 1002 Manitoba was advanced. On receipt of that direction, the Sharpes met with Mushore. Even though the direction called for records relating to all loans from the Income Fund and Mid-Market Fund, Natasha's only instructions related to the Ng loan.

[308] In that meeting, Natasha suggested that they classify the loan as an advance dividend to Ng as shareholder, and that they cause Bridging itself to reimburse the Mid-Market Fund for the $10 million loan it had just made. Natasha told Mushore to instruct Bridging's finance team to arrange for the payment from Bridging to the fund. The payment was effected on February 27.

[309] Moreau corroborated this version of events.

[310] The Sharpes exerted pressure on Mushore and others to misrepresent the nature of the payments, if the Commission were to ask questions. The Sharpes insisted that Mushore not mention that the $10 million was originally intended to be a loan from the fund.

[311] Mushore acknowledged on cross-examination that he knew the Sharpes were trying to cover up the $10 million loan, and that he participated in the cover-up.

[312] We find that Bridging contravened the prohibition in s. 122(1)(a) by producing the altered records. Under s. 129.2, Natasha and David are equally liable for having authorized Bridging's non-compliance. For the same reasons set out earlier, we find that Mushore's conduct justifies an order under s. 127(1).

3.5.4 Intimidating witnesses

[313] The Commission alleges that in June and July 2021, while the investigation was ongoing, David sent intimidating texts to, and left intimidating voicemail messages for, Bridging employees including Mushore. The Commission alleges that David knew that the Commission would likely interview these individuals. The Commission submits that in doing so, David engaged in conduct that justifies an order under s. 127 of the *Act*.

[314] Unchallenged testimony and documentary evidence supports these allegations:

a. in June 2021, Novo received three profanity-laden, insulting and threatening text messages (which are in evidence) from what was then an anonymous source. Two were later determined to have come from David;

b. in June or July of 2021, Mushore received several communications in various forms from David, including profanity-laden, insulting and threatening voice mail messages (which are in evidence); and

c. in the summer of 2021, Moreau became aware that David was repeatedly viewing Moreau's LinkedIn profile, and Moreau received a text message from David cryptically saying "See you soon".

[315] We find that David knew that Novo, Mushore and Moreau were co-operating with the receiver, that David engaged in this conduct in an effort to intimidate them, and that his conduct justifies an order under s. 127(1).

3.5.5 Natasha permits surreptitious monitoring of her compelled interview

[316] The Commission's investigators conducted an examination of Natasha by telephone in October 2020. The examination was pursuant to a summons issued under s. 13 of the *Act*. Section 16 of the *Act* provides that no person shall disclose to any other person the nature or content of any questions asked under s. 13, or any testimony given under s. 13.

[317] The Commission alleges that Natasha impermissibly allowed David to listen in to her examination. We agree.

[318] In testimony that was neither contradicted nor successfully challenged on cross-examination, Mushore stated that Natasha was in a Bridging office during her examination. In Natasha's presence, David instructed Mushore to turn on the speaker on the phone Natasha was using, and to dial David's cell number from that office so that David could hear the call. David sat in his office and listened to the examination. During breaks in the examination, the Sharpes would confer with each other.

[319] We find that Natasha knowingly permitted David to listen in to her examination, contrary to s. 16 of the *Act*.

4. CONCLUSION

[320] For the above reasons, we find that:

a. with respect to the McCoshen loans:

i. David perpetrated a fraud; and

ii. David and Natasha directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud, and thereby contravened s. 126.1(1)(b) of the *Act*;

b. with respect to the Ninepoint loans:

   i. David and Natasha perpetrated a fraud;

   ii. David and Natasha directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud, and thereby contravened s. 126.1(1)(b) of the *Act*;

   iii. Mushore indirectly participated in that fraud;

   iv. Mushore's conduct related to securities, he knew or ought to have known that it perpetrated a fraud, and he thereby contravened s. 126.1(1)(b) of the *Act*;

   v. Bridging failed to properly address the conflict of interest and thereby contravened s. 13.4 of NI 31-103; and

   vi. David and Natasha authorized Bridging's non-compliance with s. 13.4 of NI 31-103 and are therefore deemed, under s. 129.2 of the *Act*, to also have not complied;

c. with respect to the Ng loans;

   i. Natasha perpetrated a fraud; and

   ii. Natasha and David directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud, and thereby contravened s. 126.1(1)(b) of the *Act*;

d. David contravened the prohibition in s. 122(1)(a) of the *Act* by making false or misleading statements to the Commission, as we found in paragraphs [242], [244], [245] and [249] above;

e. Natasha contravened the prohibition in s. 122(1)(a) of the *Act* by making false or misleading statements to the Commission, as we found in paragraphs [252], [254] and [257] above;

f. Bridging contravened the prohibition in s. 122(1)(a) of the *Act* by providing misleading information to the Commission, as we found in paragraphs [276], [285], [289], [296], [300], [305] and [312] above;

g. David authorized Bridging's contraventions set out in subparagraph (f) immediately above, and under s. 129.2 is deemed to also have not complied with Ontario securities law;

h. Natasha authorized Bridging's contravention set out in paragraph [312] above, and under s. 129.2 is deemed to also have not complied with Ontario securities law;

i. an order under s. 127(1) is justified against Mushore in respect of his role in Bridging providing the Commission with misleading information regarding the Ng loans, as we found in paragraphs [301] and [312] above;

j. an order under s. 127(1) is justified against David in respect of his efforts to intimidate Novo, Mushore and Moreau; and

k. Natasha contravened s. 16 of the *Act* by permitting David to listen to her examination.

[321] The parties shall contact the Registrar by 4:30pm on November 15, 2024, to arrange for a case management hearing in preparation for a hearing regarding sanctions and costs. The case management hearing is to take place on a date that is mutually convenient, that is fixed by the Registrar, and that is no later than December 6, 2024.

[322] If the parties are unable to present a mutually convenient date for the case management hearing to the Registrar, then each party may submit to the Registrar, for consideration by a panel of the Tribunal, one-page written submissions regarding a date for the case management hearing. Any such submissions shall be submitted by 4:30pm on November 15, 2024.

Dated at Toronto this 28th day of October, 2024

"Russell Juriansz"

Russell Juriansz

"Timothy Moseley"

Timothy Moseley

"Sandra Blake"

Sandra Blake