

In the Matter of
The Securities Act, 1988, S.S. 1988, C. 5-42.2

and

in the Matter of

Alena Marie Pastuch
Teamworx Productions Ltd.
Idendego Inc.
101114386 Saskatchewan Ltd.
101115379 Saskatchewan Ltd.
Cryptguard Ltd.

(the Respondents)

Decision

The Hearing Panel, appointed by the Chair of the Financial and Consumer Affairs Authority to hear the evidence and arguments in this matter, was comprised of Peter Carton, Gordon Hamilton and Paul Robinson. This decision was written by Panel Chairperson Gordon Hamilton, and is the unanimous decision of the Hearing Panel (hereafter the “Panel”).

1. The Notice of Hearing (hereafter “Notice”) was issued August 27, 2010. The particulars contained in the Notice included many allegations of breaches of *The Securities Act, 1988* (hereafter the “Act”) by the Respondents.
2. The allegations included in the Notice of Hearing were:
 - i. Contraventions of registration and prospectus requirements in sections 27 and 58;
 - ii. Contravention of subsection 44.1 - unfair practice;
 - iii. Contravention of section 55.1 – fraud;
 - iv. Contravention of subsection 135.7 -- withholding information;

3. In assessing the evidence in relation to these allegations, the Panel has reached its conclusions on the basis of the balance of probabilities. It has not adopted the “beyond a reasonable doubt” standard as proposed by the Respondents. These proceedings are not criminal in nature, and so the ‘beyond a reasonable doubt’ standard is not appropriate.

The Scope of the Decision

4. The jurisdiction of the Panel is to examine whether there were breaches of its governing statute, *The Securities Act, 1988*. It does not intend to examine whether there are grounds for criminal charges or to summarize the evidence for the convenience of other parties. Nor is it necessary to explain this decision by recounting every piece of evidence that would support its findings. The volume of evidence and representations submitted by both parties was extensive. The Panel considered whether the decision should act as a record of the entire proceedings by including every detail of the evidence and representations presented. It decided that this approach was unnecessary.
5. The Panel received a large volume of exhibits, comprising 34 binders of documents that required six boxes to hold them all. The representations and evidence of the Respondents were generally confined to arguments and procedural objections instead of attempting to refute the facts presented through other witnesses. In part, this focus was the result of the Respondents refusal to be present and to cross-examine the witnesses. It is entirely possible that the Respondents had no idea what evidence they had to rebut, since they walked out of the hearings after announcing that they were refusing to be present to cross-examine any witnesses. The Panel confirmed that written notice had been provided to the Respondents so that the consequences of their absences had been communicated to them. The Respondents indicated that the reasoning behind their refusal to participate was a belief that they had not been provided with full and complete disclosure, thereby making it impossible to cross-examine the witnesses. They declined the Panel’s request and ruling that it would rely upon the Respondents to advise on any particular gaps in

disclosure as each witness testified. The Panel had previously received representations in 2011 and conducted a hearing in November-December 2012 concerning the Respondents' allegations about incomplete disclosure and had provided reasons on December 4, 2012 for dismissing the allegations.

6. In fashioning its decision, the Panel determined that in assessing whether there was irrefutable evidence that would support a finding of a contravention of one of the cited sections of the *Act*, its findings should be structured simply and in a straightforward manner. The Panel's decision would outline its review of any potentially incriminating evidence, the implications of its evidentiary findings, and its conclusions in relation to the alleged breaches of the *Act*.
7. In every instance where an alleged breach of the *Act* is found, the evidentiary foundation was unshakeable. On that basis, there was no need to enumerate other examples that would support the same conclusion.
8. While the Panel respects the Respondents' right to challenge its decisions, both substantive and procedural, whether through procedural applications or judicial review, rights can be abused. At times, abuse of process was the only possible explanation for the Respondents' conduct. For example, on December 5, 2012, the Panel was faced with a repetitive application at the outset of the day's hearing challenging a reasoned written decision issued just the evening before on the Respondents' preliminary objections. The only basis for the challenge was a stated assertion that the Panel was simply wrong. Then, when the Panel refused to reconsider its decision and indicated an intention to proceed with the hearing, the Respondents refused to participate in the cross-examination of witnesses and left the hearing room without any notice to the Panel. The Respondents' absence from the hearing continued while successive witnesses were called, without anyone to question them on their examination-in-chief testimony except for the Panel. Then, the Respondents complained when they were not permitted to recall these same witnesses at a later date so they could be questioned.

Preliminary and Interim Matters

9. The Respondents filed numerous preliminary motions, interim requests and interlocutory applications, such that it became necessary to prohibit any further motions or requests. The Panel issued decisions on many of the more complex motions, requests and applications, in the hopes that the clarity in its reasons would assist the Respondents in focusing on the allegations they had to rebut, rather than on largely procedural objections. There is no purpose in repeating or incorporating those decisions herein.
10. To provide a sense of the extent and frequency of those motions, requests and applications, the following is a partial listing with the relevant details surrounding them:
 - a. December 14, 2010 – neither Respondents nor interim counsel attend a scheduled conference call;
 - b. January 4, 2011 – adjournment request because no counsel retained yet by Respondents;
 - c. February 2, 2011 – hearing rescheduled because Respondents had not made necessary arrangements to receive disclosure through counsel or otherwise;
 - d. February 15, 2011 – parties unable to agree on disclosure terms, so Panel required to impose terms;
 - e. February 22, 2011 – request to remove Notice of Hearing from website (granted on April 11, 2011)
 - f. April 29, 2011 – Respondents request reconsideration of February 15, 2011 terms imposed on parties concerning disclosure;
 - g. June 20, 2011 – inadequate disclosure alleged by Respondents; considered and denied by Panel;
 - h. June 27, 2011 – adjournment request granted in part; subsequently granted completely;
 - i. September 8, 2011 – temporary adjournment request granted for medical reasons;
 - j. October 19, 2011 – indefinite adjournment request denied and hearing dates

scheduled;

- k. November 18, 2011 – Respondents challenge scheduling order through application to Court of Appeal; hearing dates subsequently adjourned by Panel on interim basis;
- l. April 12, 2012 – Panel issues a new notice of hearing;
- m. June 11, 2012 – Court of Appeal grants Respondents’ request to postpone hearing pending the perfection of their appeal;
- n. September 5, 2012 – Respondents file Motion to Dismiss;
- o. September 13, 2012 – Court of Appeal strikes the Respondents’ appeal because it had not been perfected by Court’s deadline;
- p. September 20, 2012 – Respondents file Motion to Recuse with Panel;
- q. October 23, 2012 – Panel sets new hearing dates, including dates to deal with preliminary motions filed by Respondents;
- r. December 4, 2012 – Panel dismisses preliminary motions with reasons, after conducting hearing into preliminary motions (Respondents fully participated);
- s. December 5, 2012 – Panel rejects oral motions to dismiss and to recuse at outset of the day’s hearing on the same stated grounds as denied in its decision issued the previous day;
- t. December 5, 2012 – Respondents leave hearing without notice to Panel after indicating they cannot cross-examine any witnesses because they have not received full disclosure;
- u. December 11, 2012 – Respondents seek a stay of proceedings through Court of Queen’s Bench (dismissed on December 31, 2012);
- v. January 10, 2013 – Respondents request for an adjournment for medical reasons granted;
- w. May 28, 2013 – Respondents request for an adjournment granted; hearing rescheduled to dates in June 2013;
- x. June 13, 2013 – Respondents request for an indefinite adjournment to the Court of Queen’s Bench (to halt the proceedings by the Panel) is denied. as is a request for a publication ban;
- y. June 24, 2013 – Respondents appeal to the Court of Appeal seeking a stay of

proceedings, inter alia, is denied;

- z. June 24, 2013 – Panel issues Notice of Continuation of the Hearing;
- aa. July 24, 2013 – Respondents request for an adjournment for medical reasons is granted;
- bb. August 3, 2013 – Respondents submit Motion for Recusal; motion denied by Panel in written reasons on September 9, 2013;
- cc. September 10, 2013 – Panel grants Respondents’ request for an adjournment for medical reasons;
- dd. October 21, 2013 – Panel directs that written arguments be filed by parties;
- ee. October 21, 2013 – Respondents file application for a stay and a publication ban in the Court of Appeal;
- ff. December 15, 2013 – Court of Appeal dismisses the application for a stay and a publication ban;
- gg. December 16, 2013 – Panel directs deadlines for both parties for their filing of written submissions.

- 11. To ensure that there is clarity on behalf of the Panel’s views on those numerous and often repetitive matters placed before it, the Panel confirms that it does not resile from any portion of its interim rulings and decisions after having heard subsequent, additional evidence.

The Hearing

- 12. The Panel received representations, evidence and testimony in open, public hearings in 2012 on November 16, December 3, 4, and 10. The hearings continued into 2013, when the Panel conducted public hearings on January 3, 4, 10, June 21, 26, 27, 28 and July 12. In between hearing dates, and afterward, the Panel received frequent and extensive correspondence, requests and submissions from the Respondents, some of which required rulings and directions to the parties. The Respondents’ written submissions included many allegations and statements criticizing the investigators, the witnesses whose

testimony was contrary to their interests, and the Panel itself.

13. The Panel received evidence and testimony from the following witnesses:

[REDACTED]

[REDACTED] Ed Rodonets, [REDACTED] Sandy Novak,
[REDACTED] Brian Pederson, and Alena Pastuch.

14. This decision will not attempt to catalogue and record every detail of the evidence received from each witness. The evidence presented was extensive and often times repetitive. The witnesses frequently confirmed each other's stories, either in terms of specifics or themes. The Panel will instead evaluate the allegations in relation to the evidence received, and either confirm or refute the allegations based on the evidence presented to the Panel.
15. The best evidence received by the Panel was from witnesses directly, which included the investigators. The Panel was able to evaluate their demeanor and candor (or lack thereof) in response to questions. The Panel was also able to rely upon transcripts from the investigations, where the recorded interviews were transcribed and certified as accurate transcripts. In some cases, the interviewee was accompanied by legal counsel, which increases the weight to be accorded to the recorded answers.

The Respondents

16. The evidence confirmed that while there are several corporate respondents listed, all of the Respondents were directed and controlled by Alena Pastuch. This conclusion is supported by both the corporate records and the instructions to her lay representative, Brian Pederson, throughout the course of the hearing.
17. Corporate records were produced and filed with the Panel. The records of 101114386

Saskatchewan Ltd. listed Alena Pastuch as the President of this corporate entity. The records of 101115379 Saskatchewan Ltd. also listed Alena Pastuch as the President. Strikeback Ltd. would later change its name to Indendego Inc. and then to Idendego Inc. There was no change to the sole director of this corporation throughout its history of name changes. Alena Pastuch was that sole director. She was also the sole director and President of Teamworx Productions Ltd. and Cryptguard Ltd.

18. In all of these proceedings, no one else came forward besides Alena Pastuch as representing the interests of any of the corporate respondents. The only other participant to appear on behalf of the Respondents was Brian Pederson. He acted as lay representative at various points in the hearings, taking instructions from Alena Pastuch. He also testified as a witness. He indicated that he was merely a paid employee, hired as the Chief Technology Officer for Strikeback Ltd., which became Idendego Inc. The Panel was unable to confirm whether or not he had a greater formal role than this, although he frequently acted as agent for the Respondents in dealings with investors, and provided information directly to investors at various times.

19. The submissions of the Respondents were helpful to the Panel. It provided additional information on the intentions and an explanation of some of their activities. For example, the Respondent's written submissions stated that they relied upon advice from legal and financial advisors:

Our own law firms and financial professionals did not even lead us to think, tell us or imply that we were doing anything outside of the regulations or laws despite us personally asking them... (page 7)

20. However, the evidence was clear that, in several instances, the Respondents had not retained some of the named professional advisors to assist them. Instead, the Respondents sought out preliminary or casual advice from a professional (often verbal in nature), which was touted as a solid professional opinion. In other cases, the professional advisor who was allegedly relied upon by the Respondents had been retained by an investor, not by the Respondents. There was clearly evidence of the Respondents shopping for as much free professional advice as possible, and once they received an

answer to a question that was advantageous to their interests, they would advise existing or potential investors that ‘our accountant’ or ‘our lawyer’ had stated “...”. There was clear evidence that the Respondents did retain legal advice at one point. The evidence on retaining a financial advisor was less clear in regards to the scope of the retainer.

21. The Respondents did present a substantial amount of information in their written submissions. However, this information did not have the benefit of being tested in the normal course of a hearing for reliability, where a witness’ evidence would be subject to the rigors of cross examination.
22. The contradictory material supplied by the Respondents, primarily through written submission, failed to focus on the key elements of the allegations against them as contained in the Notice of Hearing. Too often it contained general statements or a singular example, while failing to address the large number of detailed particulars that supported the allegations against them. In order for the Panel to dismiss the large volume of evidence that was presented in an effort to prove the allegations, it would have to conclude that the investigators were both incompetent and unethical, and that the majority of witnesses were lying to the Panel during their testimony. In addition, the Respondents’ submissions ranged from requests that the Panel accept a medical diagnosis of “legal abuse syndrome” to an allegation that *The Securities Act, 1988* was unconstitutional. Having heard the direct testimony of a significant number of witnesses, the Panel is unwilling to jump to the bizarre conclusions of both fact and law that were proposed by the Respondents.

Allegation #1: Contraventions of Registration and Prospectus Requirements in Sections 27 and

58

23. These two sections deal exclusively with registration and other documentary formalities, albeit important ones, that are required before a company may undertake specific regulated activities.
24. Section 27(2) of the *Act* states:

No person or company shall:

- (a) act as a dealer or underwriter unless the person or company:*
 - (i) is registered as a dealer; or*
 - (ii) is registered as a representative of a registered dealer and is acting on behalf of the dealer;*
- (b) act as an adviser unless the person or company:*
 - (i) is registered as an adviser; or*
 - (ii) is registered as a representative of a registered adviser and is acting on behalf of the adviser; or*
- (c) act as an investment fund manager unless the person or company is registered as an investment fund manager.*

25. This section prohibits anyone from engaging in, or holding herself out as engaging in, the business of trading in securities unless that person is registered as a dealer. A dealer is a “person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities or exchange contracts as principal or agent” (as per Section 2(1)(n) of the *Act*). Section 2(1)(vv) of the *Act* stipulates that a ‘trade’ would include a transfer or sale of a security for valuable consideration (e.g. money), as well as any solicitation or negotiation to effect a trade.

26. Section 2(1)(ss) describes a security as:

(ss) “security” includes:

- (i) any document, instrument or writing commonly known as a security;*
- (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;*
- (iii) any document constituting evidence of an interest in an association of legatees or heirs;*
- (iv) any document constituting evidence of an option, subscription or other interest in or to a security;*
- (v) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of a share or interest, preorganization certificate or subscription...*

27. Based on the evidence of numerous witnesses and the evidence of Brian Pederson and Alena Pastuch, there is no doubt that the Respondents were trading in securities in accordance with the definition under the *Act* without being registered to do so For

example, [REDACTED] testified that he invested a large sum of money in Cryptguard. He received 28.5 common shares in the company for the first portion of his investment. Once he was advised that Cryptguard had ceased operations and had no assets, he was offered 80,000 Class B shares in another unnamed company through Alena Pastuch's counsel. However, neither the company name nor the shares ever materialized.

28. Section 58(1) of the *Act* states:

(1) No person or company shall trade in a security on the person's or the company's own account or on behalf of any other person or company where the trade would be a distribution of the security unless:

- (a) a preliminary prospectus relating to the distribution of that security has been filed and the Director has issued a receipt for it; and*
- (b) a prospectus relating to the distribution of that security has been filed and the Director has issued a receipt for it.*

29. The key definition arising from Section 58 involves the term, 'distribution' which is referenced in Section 2(1)(r)(i) as "a trade in a security of an issuer that has not been previously issued".

30. The initial attempt to describe the transactions as loan agreements secured by promissory notes became more transparent over time as they evolved into share purchase arrangements, even though in some instances the shares were never issued and the paper trail to confirm the transition to the new arrangements was weak or non-existent. The initial structure of the arrangements between the Respondents and investors were clearly designed to evade the requirements of the Act. In the 2011 decision issued by the predecessor to the current Financial and Consumer Affairs Authority, *In the Matter of West African Industries, et al.* (dated December 8, 2011), another panel reached a similar conclusion at paragraph 3 when it held that, where "personal loans were secured by promissory notes" with the promise of receiving future shares or "significant profits", such financial instruments were "in fact securities."

31. In their closing submission, the Respondents did not directly address the alleged breach

of Sections 27 and 58. However, they appeared to place the burden on the investors to conduct a due diligence into the legality of their investment proposal. On page 10 of their submission, the Respondents wrote:

It should also be noted that every single investor - prior to investing with the Defendants - was told to have their lawyer speak to both our lawyer and/or financial advisor/accountant, to conduct due diligence with their own legal teams prior to investing.

32. The obligation to comply with the *Act* rests with the Respondents whether or not investors obtained the necessary legal advice to validate the legal compliance of the investment. It is not a valid defense to assert that, had the investors done a better job in evaluating the investment and the Respondents' noncompliance with the *Act*, no one would have lost any funds. The requirements of Section 27 and 58 are strict and necessary requirements for anyone engaging in the activities of a dealer, unless they qualify for an exemption under the *Act*.
33. Sandy Novak, a witness and investigator, confirmed that she had conducted a search of the Financial and Consumer Affairs Authority's database and there were no registrations by any of the Respondents. She also testified that while some of the trades may have qualified for an exemption under the *Act*, the vast majority of the trades would not have qualified for any exemption. There was no prospectus on file for any of the Respondents, and there were no receipts issued by a Director of the Financial and Consumer Affairs Authority that would suggest otherwise.
34. Neither Brian Pederson nor Alena Pastuch refuted this allegation with their testimony and submissions. Alena Pastuch's testimony was that she relied upon legal advice that was obviously wrong. In the Panel's view, this is tantamount to an admission of a breach of Sections 27 and 58.
35. On the basis of the clear and uncontroverted evidence of Sandy Novak, the evidence of numerous witnesses who invested in the businesses of the Respondents, the evidence of

Alena Pastuch, and the submissions of the Respondents, the Panel concludes that the Respondents traded in securities in a manner that breached Sections 27(2) and 58 of the *Act*, as alleged in the Notice of Hearing.

Allegation #2: Contravention of subsection 44.1

36. Section 44.1(1) states:

In this section, “unfair practice” includes:

(a) putting unreasonable pressure on a person to purchase, hold, or sell a security;

(b) taking advantage of a person’s:

(i) inability or incapacity to reasonably protect their own interests

because of physical or mental infirmity, ignorance, illiteracy or age; or

(ii) inability to understand the character, nature or the language of any matter relating to a decision to purchase, hold or sell a security; and

(c) imposing terms, conditions, restrictions or limitations with respect to transactions that are harsh or oppressive.

37. The Respondents are alleged to have engaged in ‘unfair practices’ in relation to investors.

The allegations set out in the Notice of Hearing include threats and pressure statements in relation to the purchase, holding or sale of a security.

38. Section 44.1(2) states:

No person or company shall engage in an unfair practice with the intention of advising or effecting the purchase or sale of a security.

39. The Panel heard numerous examples of the tactics used by Alena Pastuch, who was the principal officer of the Respondents. The tactics are best described as overly aggressive threats combined with misinformation whenever someone questioned the authenticity of the investment.

40. The following examples illustrate the common tactics used by the Respondents when

dealing with investors. Similar stories were recounted by other witnesses.

41. In October 2008, [REDACTED] were told that there was a risk that their investment would be bought out by other investors because their investment was too small. The Panel heard from several other investors who received similar news from the Respondents. To avoid the buy-out, they had to either combine their investment with other investors to ensure that their investment was safe, or risk being bought out (which would result in a return of their original investment with no profit or interest payments). The email advising [REDACTED] of the buy-out risk included the subtle phrase: 'I "wanted, out of respect, to allow you to up your investment."' [underline added] This was another strategy to encourage existing, unsophisticated investors to send the Respondents more investment funds, either personally or through friends, in order to avoid being bought out. [REDACTED] advised Alena Pastuch that their investment would be in "Strikeback (or changed company name as appropriate)".
42. The same tactic was used successfully with another investor, [REDACTED] who also appeared as a witness. In an email dated October 29, 2008, Alena Pastuch issued a second reminder to [REDACTED] about the need to deal with her small investment amount. She would risk being bought out unless she partnered with an existing investor, or found another [REDACTED] from her personal assets or from someone else. [REDACTED] asked for an explanation. The explanation was that an investor's cheque bounced twice (meaning the required investment funds were short), and a new investor had approached Alena Pastuch with a proposal to buy out the smaller investors. [REDACTED] agreed to top up her initial investment with more money and Alena Pastuch acknowledged the increased investment while she was "on the road with Madonna".
43. A review of the "Loan / Share Issuance Agreement" and Promissory Note, which were signed by [REDACTED] as investors and by Alena Pastuch in her personal and corporate capacities, confirms that there was no provision that would permit the buy-out of the investment without the returns stipulated in the documents.

44. Similarly, there was no provision in any of the documents that supported or permitted an investor from being removed. Yet, investors were informed by Alena Pastuch in 2008 that:

You are NOT allowed to ask other investors how much they put in, what their compensation is and when it is!!! If you do you are automatically tossed from this investment and LOSE ALL INTEREST!!

45. [REDACTED] invested a large amount of money but never received the share certificates he was promised. When his father discussed the investment opportunity with a local investment advisor, the advisor suggested that the investment was very risky. Upon his disclosure to Alena Pastuch that he had received such negative advice, [REDACTED] testified that Alena Pastuch threatened to kick him out of the investment. He further testified that Alena Pastuch informed him that the police were investigating him for releasing confidential information.

46. In an email dated June 19, 2009, Alena Pastuch makes threatening comments to [REDACTED] and others:

There is a strong likelihood that next week you will all have to give Truthful [sic] and honest accounts of the exact encounter between yourselves and [the advisor] to legal counsel and the police.

I am pursuing this to the full extent as this is a serious and grave matter – for [the advisor] to be falsely accusing me or this company of any wrongdoing. It is slanderous and defamation of character.

This will NOT be going away.

(...)

[The advisor] has crossed the line legally and will now have to pay the consequences of his direct actions. I do feel bad that you had to be exposed to such lies and poisonous venom spewing from [the advisor's] mouth. [The advisor] should look into his own affairs and make sure they are clean as opposed to pretending to know others.

47. Shortly after this email exchange, [REDACTED] requested the return of his investment funds on June 19, 2009. He did not receive them. Later in 2009, he sued for the return of his funds and obtained a court judgment in 2010. He has not been able to recover

anything more than a nominal amount through enforcement of the judgment, and his investment funds are essentially lost.

48. [REDACTED] testified that he understood that if investors asked too many questions (or suggested that the investment was not sound), Alena Pastuch would remove them as an investor.

49. Numerous documents and witness testimony confirmed that Alena Pastuch advised existing and potential investors that the investment funds were guaranteed. She also advised investors that their funds were being held in a trust account. The time limit on the guarantee was used as a pressure tactic to induce investors to act quickly. For example, [REDACTED] testified that she was told that if she invested now, her investment would be guaranteed. If she waited for the next group of investors, that investment would not be guaranteed. She responded by investing quickly so that her investment was guaranteed. Unfortunately, the evidence was clear that Alena Pastuch's representations about guarantees and trust accounts were not accurate, and constituted a deliberate misrepresentation by her in order to obtain investment funds and to reassure investors that their investments were safe and secure.

50. The preceding examples confirm the tactics used by Alena Pastuch in dealing with investors. For those investors who did not seek and obtain third party advice, she took advantage of their limited knowledge of investment contracts and financial instruments to extract additional funds wherever possible. For those investors who sought and obtained independent third party advice, or dealt with other interested investors who sought out such advice, Alena Pastuch would threaten them with legal action or police investigations. Similar or the same approaches were recounted by other witnesses throughout the hearing.

51. On the basis of the provisions of Section 44.1, the following findings have been established in support of a conclusion that unfair practices took place:

- The Respondents placed unreasonable pressure on investors to make an initial

purchase as quickly as possible, to hold onto their investment or to increase their investment;

- The Respondents took advantage of some individuals who failed to protect their interests or who lacked the basic understandings associated with securities, financial instruments and investment contracts. It was well known among some of the investors what would happen to an investor who decided to seek independent advice which might question the appropriateness of the investment being presented by Alena Pastuch;
- The Respondents imposed restrictions and limitations on the continued validity of the transaction that constituted the investment, even though there was no basis in the signed agreements to permit such restrictions or limitations.

52. It is the conclusion of the Panel that Section 44.1(2) was breached by the Respondents. The unfair practices ranged from blatant misrepresentation to threats of dire consequences. The unfair practices were designed to encourage initial or additional investment, to encourage the retention of an investment, or to discourage anyone with limited understanding of investments to seek independent investment advice.

Allegation #3: Contravention of section 55.1 and 55.11

53. Section 55.1 of the *Act* states:

No person or company shall, directly or indirectly, engage or participate in any act, practice or course of action relating to securities or exchange contracts that the person or company knows or reasonably ought to know:

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract; or*
- (b) perpetrates a fraud on any person or company.*

54. Section 55.11 of the *Act* states:

No person or company shall make a statement if that person or company knows or reasonably ought to know that:

- (a) the statement either:*

(i) is misleading or untrue in a material respect and at the time and in the light of the circumstances under which it is made; or
(ii) does not state a fact required to be stated or that is necessary to make the statement not misleading in a material respect and at the time and in the light of the circumstances under which it is made; and
(b) the statement would reasonably be expected to have a significant effect on the market price or value of a security or exchange contract.

55. The Notice of Hearing did not specifically reference Section 55.11. Instead, it cited Section 55.1, which deals with fraud and market manipulation. However, the specific allegations contained in the Notice of Hearing in reference to the alleged breach of the *Act* were consistent with potential breaches of both Section 55.1 and Section 55.11.

56. The evidence presented to the Panel was consistent and disheartening. Alena Pastuch made statements to investors which were misleading and untrue, and which would have a significant impact on the value of the contract investors were signing. The following examples are just a few of the numerous instances of the statements made by Alena Pastuch.

57. On August 19, 2008, Alena Pastuch wrote an email to 

We are guaranteeing these funds so it had to be set up differently by law and most investors who inject over half a million want it set up a different way.

(...)

...there are three of us who have injected over a million....Your guaranteed portion we are raising is a fraction of all the money that has been raised to date and over the 6 years. [underlines added]

58. In the January 5, 2010 transcript of the interview of Alena Pastuch by staff investigators, the following exchange was recorded at page 167:

MR. RODONETS: Did you file for bankruptcy that year? [1999]

MS. PASTUCH: Yeah, I did.

(...)

MS. PASTUCH: *Like, we kept track of our hours, and in lieu of salary – like, for me, if it's like – if I'm not getting paid my salary, then that's cash being put in the company.*

MR. RODONETS: *Okay. So you--*

MS. PASTUCH: *It's cash remaining in the company.*

MR. RODONETS: *So you don't really have an awful lot of money between 1999 and 2007?*

MS. PASTUCH: *Correct.*

MR. RODONETS: *Yeah. We're not going to find any banks that have got \$2 million worth of money in it?*

MS. PASTUCH: *No, no.*

MR. RODONETS: *Okay. Did you have \$2 million in a sock under the mattress?*

MS. PASTUCH: *No.*

59. Based on the above transcript, the statement to [REDACTED] which indicated that Alena Pastuch had injected "over a million" dollars into the company was false and misleading.

60. On August 20, 2008, [REDACTED] replied to the email from Alena Pastuch to clarify what he had been told.

I need to clarify for my understanding and clarity:

- 1. The trust fund that was set up has all your revenue from the Federal and Prov gov't going into it? Amount around 1.2 million that will cover all investors interests in the worst case scenario and when would it be determined that the investment would be paid back under the guarantee agreement?*

(...)

[underline added]

61. On October 20, 2008, Pastuch advised [REDACTED] in an email that there was a trust fund. During the subsequent staff investigation interviews, she confirmed that no trust fund was ever established.

62. In the January 5, 2010 transcript of the interview of Alena Pastuch by FCAA investigators, the following exchange was recorded at page 185:

MS. NOVAK: Okay. On the loan share agreements issued for [REDACTED] in July 2008; [REDACTED] in July 2008; [REDACTED] August 2008; and [REDACTED] September 2008. It states: "Trust fund has been established through the accounts receivable of Team Works Foundations Limited, specifically those from the Federal and Provincial Government of Saskatchewan." So, again, there is no trust fund?

MS. PASTUCH: No, there wasn't.

MS. NOVAK: Never was a trust fund?

MS. PASTUCH: No.

63. Based on the above transcript, the statement communicated to [REDACTED] by Alena Pastuch which indicated that there was a trust fund set up to guarantee the investors' money was false and misleading.

64. On May 16, 2008, Alena Pastuch wrote an email to [REDACTED].

The monies are still be [sic] collected with the full guarantee both contained in the contract and within the promissory note. [underline added]

65. On September 23, 2008, Alena Pastuch wrote to [REDACTED].

NO need to feel anxious when your initial funds are guaranteed – there is no way you can ever lose that...the only thing you could lose is larger ROI. [underlines added]

66. In the January 5, 2010 transcript of the interview of Alena Pastuch by staff investigators, the following exchange was recorded at pages 185-6:

MS. NOVAK: So for [REDACTED] May 2008; [REDACTED] June 2008; [REDACTED] June 2008; [REDACTED] October '08; [REDACTED] October 2008; and then [REDACTED] from November 2008. It states, "A trust fund through the accounts

receivable of Team Works Productions Limited, specifically those from the Federal and Provincial Governments of Saskatchewan." And, again, there's no such thing?

MS. PASTUCH: Yeah.

MS. NOVAK: Did you represent to these investors that their money was 100 percent guaranteed, they would never lose any of it?

MS. PASTUCH: Yeah, I – and I will make sure they never do. I did.

MS. NOVAK: Mhmm. But at this point, you have no means to guarantee that and when you made these statements?

MS. PASTUCH: Well, we want --

MS. NOVAK: No, at the time when you issued these loan share agreements.

MS. PASTUCH: Yes, you are correct, yes. But it was our intention to never rip --

MS. NOVAK: No, I'm not talking about intention.

MS. PASTUCH: Okay.

MS. NOVAK: I'm talking about what you told them and what they based their information on to invest with you.

MS. PASTUCH: Yes.

MS. NOVAK: Okay. So here's an email that you sent to [REDACTED] October 20, 2008, and you state that, "The only reason there is zero risk is because the trust fund was set up to guarantee the investment up to the amount of the trust fund. The other company loaned the money to cover only family and friend investments, and because that money is in trust, it cannot be taken out and used for this venture." Is that statement correct?

MS. PASTUCH: No. We were hoping to have a trust fund, but you're right, that statement is not correct.

67. Based on the above transcript, the statement communicated to [REDACTED] by Alena Pastuch which indicated that the investors' money involved zero risk and was guaranteed was false and misleading.

68. On March 25, 2009, Alena Pastuch wrote to [REDACTED]

Oh, and our business valuation for our company – the accountant just finished it – it is \$20 million – up double from last year!!

69. The Panel heard evidence from [REDACTED], whom Alena Pastuch asserted was her [REDACTED]. No other [REDACTED] was ever named or produced by the Respondents. [REDACTED] testified that he did not do a business valuation of the company or communicate to Alena Pastuch that this was the value of the business. His evidence was that she informed him that this is what she believed the company may be worth, and he advised that it was proper to advise investors of the business valuation of a company. [REDACTED] testified that he did not suggest this number nor did he perform any calculations upon which a business valuation could be inferred.

70. Alena Pastuch's written representations and limited testimony were simply not credible. In the transcript of her interview with staff investigators on January 5, 2010, Alena Pastuch admitted to lying to investors. The following excerpts are reproduced in support of this conclusion.

Page 359...

MS. PASTUCH: *...So I lied and I said that I had sent it and I got a cheque already because I was hoping that I'd be able to – you know, we would be able to launch and get some money in, and I shouldn't have. And they're extremely upset, and they want their money back.*

MR. RODONETS: *So you lied to another investor on a loan?*

MS. PASTUCH: *Well, because we did send – we did send—it wasn't an outright lie.*

Page 363...

MS. PASTUCH: *No, we didn't send it then. We sent it after the fact.*

MR. RODONETS: *So you're lying when you said that they sold?*

MS. PASTUCH: *That they sold, yeah.*

MR. RODONETS: *And you're lying that you weren't getting your money for*

30 days?

MS. PASTUCH: Correct.

MR. RODONETS: All right, okay.

MS. PASTUCH: Because we did think --- we thought the Jimi Hendrix guitar was, indeed, real, and it wasn't. It was proven to be not, so now, we're suing the person who sold it to us to get the money back for Idendego.

MR. RODONETS: But you lied to them?

MS. PASTUCH: Correct.

71. The preceding examples are much more serious and more extreme than has been accepted as sufficient evidence of infractions in other decisions. For example, in *Ronald Stephen Barker and Double Eagle Investments Inc.*, 2005 BCSECCOM 146, a statement that the business was doing fine, when in fact it was not, was considered a mis-statement in relation to a material fact so as to be categorized as misrepresentation and a breach of the statute.
72. It is the conclusion of the Panel that the Alena Pastuch made misleading and untrue statements that would influence both a potential investor and an existing investor. In every instance, her false statements would have influenced a reasonable person to believe that an existing or future investment was more secure than it was. The Panel has no hesitation in concluding that Alena Pastuch, as the controlling mind and principal actor on behalf of all of the Respondents, lied to investors and potential investors about material facts so as to influence their perception of the value and security of an investment in one of the companies she was leading. This Panel has never seen such blatant disregard for truth in dealing with people who were willing to hand over their significant savings to her for business purposes.
73. Notwithstanding the above factual finding, the Notice of Hearing failed to cite Section 55.11. Without such an explicit reference to this section of the *Act* in the Notice of

Hearing, so as to give proper notice to the Respondents of the case they had to meet, the Panel will not make any findings concerning a breach of Section 55.11.

74. However, Section 55.1 was explicitly raised in the Notice of Hearing, and the Respondents were therefore put on notice of the necessity to deal with the serious allegations of fraud and fraudulent activities.

75. The evidence, through the examples cited above, clearly describes actions and behavior than can only be characterized as fraudulent. In Canada, the courts have determined that there must be both an act of dishonesty (or deceit) and the occurrence of deprivation, in order that fraud may be confirmed. (see *Scott v. Metropolitan Police Commissioner*, [1975] A.C. 819 (H.L.), adopted by the Supreme Court of Canada in *R. v. Olan*, [1978] 2 S.C.R. 1175). In the text, *Commercial Crime in Canada*, the author summarized fraud as follows:

A fraud is established by proof of the prohibited act, be it an act of deceit, falsehood or other fraudulent means, and by proof of deprivation caused by the prohibited act, which may consist of actual loss or in the placing of the victim's pecuniary interests at risk. [page 2-18.5]

76. The Panel heard substantial evidence directly from investors of the actual losses they incurred. The evidence summarized above confirms that Alena Pastuch acted in a manner that was deceitful and dishonest in her statements and dealings with investors. On that basis, the Panel has no hesitation in concluding that a breach of section 55.1(b) took place.

Allegation #4: Contravention of Subsection 135.7

77. Section 135.7 of the *Act* states:

(1) No person or company shall, or shall attempt to, destroy, conceal or withhold any information, property or thing reasonably required for a hearing, review or investigation pursuant to this Act.

- (2) No person or company shall hinder or interfere with a member, employee, appointee or agent of the Commission in the performance of his or her powers, functions and duties pursuant to this Act.*
- (3) A person or company contravenes subsection (1) if the person or company knows or ought reasonably to know that a hearing, review or investigation is to be conducted and takes any action mentioned in subsection (1) before the hearing, review or investigation.*

78. The evidence received by the Panel included confirmation that Alena Pastuch failed to provide the full list of investors when requested. In the first interview, she provided the names of only a few investors, all of whom were family and close friends. When she appeared with counsel for her second interview, she blamed the incomplete list on her counsel at the time, suggesting that he did not have a complete list. The recorded interview disclosed feigned confusion at times over what she was being asked and over what she had told the investigators previously. A single omission or lapse of memory could be excused. However, her interactions with the investigators revealed a convenient pattern of failed memory on important business issues. Her excuses ranged from suggesting that she did not understand what was being asked of her, to being unaware of the number of investors or the amount of raised investment funds. This convenient memory loss was inconsistent with her demonstrated memory of events during the course of her verbal testimony by telephone and in her ongoing dealings with the Panel. While her demonstrated memory was frequently inaccurate, during her testimony and throughout the hearing she never hesitated to express her recollection of specific events and details from documents.

79. The evidence confirmed that it took about a year before she attended a meeting in response to the investigators' requests and subpoena. The initial request was made in January 2008. She attended her first interview in January 2009 and investigators were still attempting to obtain basic information concerning the names of investors and the amount of investments in an interview on January 5, 2010.

80. In addition to the obvious interference through excessive delays in meeting with the investigators and her reluctance to provide complete documentation on the investors,

Alena Pastuch also contacted investors about the ongoing investigation. While she did not disclose details about what she had told the investigators, she contacted investors and directed them to sign a document refusing to cooperate with the investigators.

81. In a covering email to investors on or around September 23, 2009, Alena Pastuch directed them: "If anyone calls you (other than our lawyer) please just ask for their name and number and inform them that your lawyer will call them. Do NOT speak to them, do not give them any info and do not hand over to them any documents." She attached a formal letter for them to sign and send to her lawyer. The following excerpts from the letter are reproduced below:

To Whom It May Concern:

(...)

This letter has been drafted to make it crystal clear to said Financial Services Commission that we will NOT tolerate any meddling in our personal affairs...

(...)

Should legal counsel be compelled...to provide additional information in this matter, we are directing that all such materials be redacted of all personal and financial details.

Furthermore, the Commission is to be instructed that under NO circumstances will any of us engage in any communication with the Commission and shall view any attempt by the Commission to initiate contact with us as intentional harassment. ANY and ALL communication MUST be done through legal counsel...

82. On the basis of the preceding information alone, there is sufficient evidence and grounds to find a breach of Section 135.7. However, the conduct of Alena Pastuch exceeded mere delay and interference with the investigation. Throughout the hearing and before it was completed, there were extraordinary efforts by Alena Pastuch to disrupt and influence the course of the hearing. The methodology that she used in her efforts to derail the hearings, as frequently observed by the Hearing Panel, was consistent with the testimony of many witnesses who recounted their unsavoury experiences with her. These observations confirmed the reliability of the sworn witness testimony, which supported the allegations contained in the Notice of Hearing.

83. On the basis of the preceding, it is clear that the Respondents have breached Section

135.7(1) and (2) of the *Act*, by withholding and concealing information from investigators and by hindering or interfering with investigators in the performance of their duties and functions.

Summary and Closing Comments

84. The evidence was conclusive that the Respondents sought and accepted people's investment funds under fraudulent and false pretenses, and at numerous times used these investment funds for personal instead of business purposes. Once her businesses began to unravel, Alena Pastuch's persistent lies to investors and her use of investment funds for personal purposes, coupled with her failure to abide by securities legislation, led to her undoing.
85. The scope of the written arguments filed by the Respondents focused almost exclusively on procedural and rights issues. Most of their submissions lacked any relevant connection to the facts presented through other witnesses.
86. In keeping with the normal adjudicative approach of the Financial and Consumer Affairs Authority, the issue of sanctions will be dealt with separately. While both parties have already filed written submissions on the appropriate sanction or remedy in these matters, the parties now have the benefit of the Panel's findings on the allegations. The reasons for this decision may influence their respective submissions on how the Panel ought to fully and finally dispose of these allegations including whether the imposition of any sanctions is warranted.
87. Accordingly, the parties will be given the opportunity to file any supplementary submissions within three (3) weeks (i.e. twenty-one days) from the date of this decision before the Hearing Panel considers remedial issues and sanctions arising out of these findings. The sanctions sought against the Respondents are set out in the Notice of Hearing in significant detail. If there are any variations or further details in relation to the

requested sanctions, these are to be submitted within two (2) weeks so that the Respondents will have time to properly respond prior to the three-week deadline.

This decision of the Hearing Panel was issued in Regina, Saskatchewan this 23rd day of July, 2014.

A black rectangular box redacting the signature of Gordon D. Hamilton.

Gordon D. Hamilton, Panel Chairperson