

**ALBERTA SECURITIES COMMISSION**

**DECISION**

**Citation: Broers, Re, 2009 ABASC 25**

**Date: 20090116**

**Daren M. Broers**

**Panel:**

Glenda A. Campbell, QC  
Karl M. Ewoniak, CA  
Neil W. Murphy

**Appearing:**

Tom McCartney and Tom Percy  
for Commission Staff

William R. Pieschel, QC and Ashley Christie  
for Daren M. Broers

**Date of Hearing:**

15 December 2008

**Date of Decision:**

16 January 2009

## **I. OVERVIEW OF THE PROCEEDING**

### **A. Introduction**

[1] This proceeding was commenced by a notice of hearing dated 6 February 2008 (the "Notice of Hearing") that set out allegations of staff ("Staff") of the Alberta Securities Commission (the "Commission") that three respondents (the "Respondents") – Mortgage 1 Corporation ("Mortgage 1"), Michael James Savage ("Savage") and Daren M. Broers ("Broers") – had contravened the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") or acted contrary to the public interest or both by:

- engaging in illegal trades and distributions of securities of Mortgage 1; and
- providing false or incomplete disclosure in reports of exempt distribution (the "Reports of Exempt Distribution") filed with the Commission under Multilateral Instrument 45-103 – *Capital Raising Exemptions* ("MI 45-103").

[2] The first part of the hearing into the merits of Staff's allegations against the Respondents was scheduled to begin on Monday 27 October 2008. The week prior to the start of the hearing Savage sought an adjournment primarily on the basis that he had recently learned that his brother had a terminal illness. On Friday 24 October 2008 the panel, after hearing submissions from Staff, Savage and Broers, decided that it was in the interests of all parties and the subpoenaed witnesses and in the public interest to decline Savage's adjournment request and to proceed with the hearing as scheduled with a view to concluding it as expeditiously as possible. Late that same day Savage had his physician send a letter to the panel via facsimile advising that Savage was "suffering from marked stress and anxiety related to both the ongoing litigation and illness within the family" and was "not capable at this time of continuing with the current litigation" and requesting that Savage "be permitted an adjournment of six-eight weeks".

[3] Savage did not appear at the hearing when it began on 27 October 2008. Staff and Broers advised the panel that they wished to proceed with the hearing of the allegations against Broers on the basis of an agreed "Statement of Admissions" ("Broers' Admissions"). In the circumstances, the panel ordered the severance of Mortgage 1 and Savage from this proceeding and adjourned the hearing of Staff's allegations against Mortgage 1 and Savage to a separate hearing before a different panel, to commence in January 2009.

[4] The panel also received Broers' Admissions and adjourned the hearing to December 2008 for oral submissions and possibly viva voce evidence.

[5] Staff and Broers filed written submissions. On 15 December 2008 the panel heard oral submissions from them. The panel accepted into evidence an affidavit of a Staff investigator and excerpts of an interview of Broers conducted under oath by Staff

investigators on 20 July 2007 ("Broers' Interview"). The panel also entered as exhibits two binders of documents provided by Broers, including an unsworn document titled "Sanctioning Hearing Statement of Fact and Admissions of [Broers]" ("Broers' Unsworn Statement"), letters of reference and affidavits and other documents filed in court proceedings; Staff did not object to the admissibility of these documents as evidence but did take issue with the weight to be accorded to certain of that evidence. Broers, although in attendance at the hearing, did not testify.

## **B. Summary of Findings and Orders Made**

[6] After reviewing the relevant evidence, applicable law and submissions made, we find that:

- Broers illegally traded and distributed Mortgage 1 securities contrary to sections 75(1)(a) and 110 of the Act and the public interest; and
- Broers acted contrary to the public interest when he certified as true inaccurate disclosure in Reports of Exempt Distribution filed with the Commission regarding the exemptions relied on to sell Mortgage 1 securities.

[7] We further find it in the public interest to order that Broers be prohibited from trading in or purchasing securities or exchange contracts and using the exemptions under Alberta securities laws and be banned from acting as a director or officer of any issuer, all for ten years with limited exceptions, and that he pay an administrative penalty of \$40 000. We also order that Broers pay costs of \$10 000.

[8] Our reasons for our decision follow.

## **II. FACTUAL BACKGROUND**

[9] We summarize the factual background pertinent to our decision, as derived from Broers' Admissions and other documentary evidence.

### **A. Persons Involved**

[10] Mortgage 1, incorporated under the laws of Canada on 5 November 2004, was registered extra-provincially in Alberta on 1 April 2005. Its registered outlet was in Calgary, Alberta. Mortgage 1 is a wholly-owned subsidiary of M1 Capital Corporation ("M1 Capital"), which owns 1st Mortgage Investments Corporation of Canada Limited ("1st Mortgage Canada"). Mortgage 1 has never been a reporting issuer under the Act, never registered with the Executive Director of the Commission (the "Executive Director") to trade in securities and never filed a prospectus with the Executive Director. Mortgage 1 described itself as a financial services company engaged in the business of non-traditional residential and commercial mortgage lending.

[11] Savage, an Ontario resident, was at all material times Mortgage 1's guiding mind – its chief executive officer ("CEO") and a director. He was also a Mortgage 1 shareholder. Savage was a director of M1 Capital and 1st Mortgage Canada. As at 20 and 30 July 2005, respectively, Savage and his father were the sole directors of M1 Capital and Mortgage 1. Savage has never been registered with the Executive Director to trade in securities.

[12] Broers, an Alberta resident, is a mortgage broker licensed with the Real Estate Council of Alberta and has been involved in the financial services industry for over 20 years with a focus in the area of mortgage lending and investments. At all material times Broers was a director of Mortgage 1 and was held out to be – and Broers himself believed that he was – the president of Mortgage 1, although corporate documentation showed Savage as the president of Mortgage 1. Broers admitted to playing "an integral role, as a senior officer and director, in the formation and operation of [Mortgage 1]", but he was not a Mortgage 1 shareholder. Corporate documentation also showed Broers as a director of M1 Capital from September 2004 until July 2005, although Broers denied consenting to act as such. Broers has never been registered with the Executive Director to trade in securities.

[13] Pinnacle Mortgage Investment Corporation ("Pinnacle"), an Alberta corporation, was incorporated, according to Broers' Unsworn Statement, "to qualify as a Mortgage Investment Corporation ('MIC') to be a tax-exempt, pension-qualified investment vehicle under the *Income Tax Act* (Canada)". From 2003 to 2005 the directors of Pinnacle were Broers (a mortgage broker/agent), Leo Scarcelli ("Scarcelli") (a realtor), Hugh Adamson ("Adamson") (a real estate lawyer) and Scott M. Reeves ("Reeves") (a securities lawyer), and each of them held 25% of the voting shares of Pinnacle.

[14] Broers was also a director and shareholder of Gecko Mortgage Capital Corp. ("Gecko"), an Alberta corporation.

## **B. History of Broers' Involvement with Mortgage 1**

[15] Pursuant to a financial services agreement with Pinnacle, Gecko managed Pinnacle's mortgage investment portfolio and secured first and second mortgages on residential and commercial properties. In 2003 Gecko successfully placed mortgages totalling some \$86 million with Pinnacle, for which Gecko earned significant finder's fees.

[16] Between March 2002 and June 2004, Pinnacle raised money to fund its business as an MIC through the sale of its preferred shares to investors using available registration and prospectus exemptions. Through these capital-raising efforts, Pinnacle received almost \$1 million from investors.

[17] In late 2003 Savage, apparently unsolicited, advised Broers that 1st Mortgage Canada had targeted Gecko as a potential acquisition and began negotiations with Broers for the purchases of Pinnacle and Gecko. In July 2004 1st Mortgage Canada, Savage and two other individuals entered into a purchase and sale agreement to acquire the shares of Pinnacle held by Scarcelli, Adamson and Reeves for cash and shares of 1st Mortgage Canada. Also in July 2004 1st Mortgage Canada entered into a purchase and sale agreement to acquire the shares of Gecko held by Broers and his wife for cash and shares of 1st Mortgage Canada.

[18] In September 2004, although the sales of Pinnacle and Gecko had yet to be completed – indeed were never completed and no purchase money was ever paid – Savage was insistent about assuming control and responsibility for day-to-day operations and banking of Pinnacle and Gecko. In an e-mail from Savage dated 7 September 2004, Broers was advised that until the closing of the sales of Pinnacle and Gecko Savage, as "President and CEO of [M1 Capital] and [Mortgage 1]", authorized Broers "to conduct business and financial transactions on behalf of the corporation as we have discussed", including the sale of up to \$500 000 of Pinnacle's mortgage portfolio.

[19] In early November 2004 Broers was instructed by Savage to, and did, sign post-incorporation documentation respecting Mortgage 1's incorporation and extra-provincial registration. According to Broers, in early November, he also came under a physician's care as a result of a viral infection and the stress arising from his dealings with Savage over the closing of the Pinnacle and Gecko sales. Broers was prescribed medication for anxiety and depression which he took until August 2005.

[20] On 15 November 2004 Savage wrote to Broers, on behalf of Pinnacle and Gecko, confirming that Savage, as "Chairman and CEO of [M1 Capital] and [Mortgage 1]", had assumed "control and full responsibility for all executive management decisions, direction, including all of the day-to-day operations and banking of it's [sic] companies and all operating subsidiaries" and indemnifying Broers "from any and all actions regarding the operations, daily business decisions, and undertakings and banking decisions that are now being made and conducted by myself".

[21] In December 2004 Broers received a document titled "Kitchen Table Power", which was Mortgage 1's business plan, and was asked to "read every word looking for errors particularly if something is inaccurate. If there any [sic] falsehoods in here about who we are, what we are currently doing or anything let me know." Broers, in Broers' Unsworn Statement, represented that he had no input in the preparation of this document. Staff suggested that Broers' attempt to minimize his role in the preparation of Mortgage 1's business plan was inconsistent with this request. Because we did not have the benefit of Broers' direct testimony on the extent of his involvement in the preparation of Mortgage 1's business plan, we believe it reasonable to conclude that Broers received in advance a copy of Mortgage 1's business plan and read it for accuracy as requested.

Whether he had any further role is inconclusive and we make no further finding on this point.

### **C. Impugned Conduct and Subsequent Events**

[22] In early 2005 Mortgage 1 embarked on raising money from the public. A subscription agreement for preferred shares was prepared presumably, according to Broers' Unsworn Statement, "by Savage's lawyer for Mortgage 1".

[23] Between 1 February and 22 June 2005 at least 52 Alberta residents were solicited to purchase Mortgage 1 preferred shares, from which was raised at least \$700 126. Broers admitted that he actively participated in some of these sales of Mortgage 1 preferred shares to Alberta residents by:

- encouraging Mortgage 1 staff to sell Mortgage 1 preferred shares to their friends and families;
- as Mortgage 1's authorized signing officer, signing and accepting subscription agreements on behalf of Mortgage 1;
- as Mortgage 1's president, authoring and distributing e-mails inviting people to attend investor seminars;
- attending and speaking at Mortgage 1 investor seminars;
- as Mortgage 1's chief operating officer, co-authoring correspondence asking investors to consider investing in Mortgage 1;
- as Mortgage 1's president, authoring and distributing e-mails to investors updating them on Mortgage 1's developments;
- attending at an investor's residence to pick up a cheque paying for her purchase of Mortgage 1 preferred shares;
- attending at an investor's residence to assist her in the completion and witnessing of her Mortgage 1 subscription agreement;
- faxing subscription agreements to investors; and
- as Mortgage 1's president, authoring correspondence addressed to investment advisors indicating that Mortgage 1 preferred shares qualified as RSP investments.

[24] However, according to Broers' Unsworn Statement, Broers did not receive any commission or remuneration in relation to the sales of Mortgage 1 preferred shares.

[25] Broers received correspondence dated 8 June 2005 from Mortgage 1's solicitors enclosing Reports of Exempt Distribution in connection with the sale of Mortgage 1 preferred shares to investors in British Columbia, Alberta and Saskatchewan. That correspondence informed Broers that Mortgage 1's solicitors had been advised by Mortgage 1 that "all of the investors fall within the family, friends and business associate exemption category of [MI 45-103]" and enclosed a copy of, and some commentary on, MI 45-103. In that correspondence Broers was also asked to review the enclosed Reports of Exempt Distribution and "only sign the documents if you are satisfied that all of the investors meet the requirements for the bonds of association set out in [the family, friends and business associate exemption category of MI 45-103]".

[26] Broers admitted that he, as Mortgage 1's president, signed the Reports of Exempt Distribution filed with the Commission certifying that all of the investors listed in the reports qualified under the family, friends and business associate exemption category of MI 45-103 although many of the Alberta investors who purchased the Mortgage 1 preferred shares did not qualify for that or any exemption under Alberta securities laws. In Broers' Interview, Broers said that he had not reviewed the Reports of Exempt Distribution but simply signed them as requested.

[27] On 24 June 2005 Broers was denied access to Mortgage 1's Calgary office. On 20 July 2005 Broers resigned as a director of Mortgage 1 and M1 Capital and as president of Mortgage 1. In September or October 2005 Savage vacated Mortgage 1's Calgary office, removing property of Pinnacle and Gecko, which has yet to be recovered. The sales of Pinnacle and Gecko never closed and no purchase money was ever paid. Broers, Pinnacle and Gecko have commenced legal proceedings against Savage, 1st Mortgage Canada, Mortgage 1, M1 Capital and others. It appears that some, if not all, money invested in Mortgage 1 has been lost.

### **III. ADMISSIONS AND FINDINGS**

#### **A. Unregistered Trading and Distributions Without a Prospectus**

[28] Broers admitted, and we find, that the Mortgage 1 preferred shares were "securities" within the meaning of the Act, that he traded the Mortgage 1 securities without registration as required under section 75(1)(a) of the Act and that he distributed the Mortgage 1 securities not previously issued without a receipted prospectus as required by section 110 of the Act. Broers further admitted, and we find, that many of the trades and distributions of the Mortgage 1 securities to Alberta investors were made without an available exemption from the registration and prospectus requirements. We find, therefore, that Broers engaged in illegal trades and distributions of Mortgage 1 securities.

## **B. Conduct Contrary to the Public Interest**

[29] Broers admitted, and we find, that his unregistered trading and distributions of Mortgage 1 securities without a prospectus was conduct contrary to the public interest in that investors were deprived of key protections afforded to them under the Act – the advice of a registrant and the information provided by a prospectus. Further, abuses of the exemptions provided to issuers under Alberta securities laws bring into disrepute exempt market capital-raising and jeopardize the regime for those exempt market participants who seek to raise capital legitimately.

[30] Broers admitted, and we find, that he acted contrary to the public interest when he certified as true inaccurate disclosure in Reports of Exempt Distribution filed with the Commission regarding the exemptions relied on to sell Mortgage 1 securities. The Commission relies on directors and officers of issuers to act scrupulously in complying with reporting requirements of Alberta securities laws and failures to do so are clearly conduct contrary to the public interest.

## **IV. SANCTIONS**

### **A. Positions of Staff and Broers**

#### **1. Staff**

[31] Staff seek orders that would prohibit Broers from trading in or purchasing securities or exchange contracts, using the exemptions under Alberta securities laws and acting as a director or officer of any issuer, all for 12 years with limited exceptions, and would impose on him an administrative penalty of \$80 000.

[32] In submitting that these orders would be appropriate in the public interest, Staff characterized Broers as a principal of Mortgage 1 intimately involved in its efforts to effect the illegal distributions and argued that, as such, he was a beneficiary of the money raised. Staff contended that Broers has minimized his capital market experience and noted that Broers' Admissions were not signed by him until the day before the hearing into the merits was to begin. Staff also argued that Broers' misconduct was serious, the illegal distributions raised a substantial amount of money, and the orders sought would provide the necessary specific and general deterrence.

#### **2. Broers**

[33] Broers suggested that orders prohibiting him from trading in or purchasing securities, using the exemptions under Alberta securities laws and acting as a director or officer of any issuer, all for three to seven years, and imposing on him an administrative penalty between \$15 000 and \$30 000 would be appropriate.

[34] In so suggesting, Broers acknowledged that his misconduct was serious and deserving of sanction. He did not deny that his misconduct resulted in harm to Alberta investors but argued that much of that harm was attributable to Savage's conduct. Broers also submitted that he has not been the subject of prior sanctions or faced previous

disciplinary action by any securities regulatory authority, he had little prior experience with securities distributions and the legal requirements involved, he trusted Savage – who was Mortgage 1's guiding mind – with respect to compliance with Alberta securities laws requirements, he has been cooperative with Staff, he has not benefited from his misconduct, and the suggested orders would be in keeping with sanctions imposed in other cases involving similar misconduct.

## **B. Sanctioning Principles and Factors**

[35] The Commission administers Alberta securities laws and in so doing acts in the public interest to protect investors, the integrity of the Alberta capital market and confidence in that market. In enforcing Alberta securities laws, the Commission is empowered to impose sanctions that are prospective in nature – protective and preventative, not punitive or remedial. When a finding of misconduct has been made, we consider whether it is necessary to prevent a recurrence of the misconduct and, if so, what sanction or combination of sanctions would best achieve our protective and preventative (deterrent) aims and serve our public interest mandate. Specific deterrence (directed at dissuading a particular respondent from engaging in the same or similar misconduct) and general deterrence (directed at discouraging others who might be inclined to engage in similar misconduct) are considered (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; and *Re Podorieszsch*, 2004 ABASC 567 at para. 17).

[36] In determining what, if any, sanctions (in nature and quantum) to order against a particular respondent, we are guided by the factors enumerated by the Commission in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253), which include, as set out in *Re Workum and Hennig*, 2008 ABASC 719 at para. 43:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

## **C. Consideration of Sanctioning Principles and Factors**

[37] We turn now to our analysis of the sanctioning principles and factors in light of our findings of misconduct by Broers.

### **1. Seriousness and Recognition of Seriousness**

[38] Broers' illegal trades and distributions of Mortgage 1 securities deprived Alberta investors of the advice of a registrant and the information provided by a prospectus – core protections to which they were entitled under the Act. Such misconduct, by its very nature, is always serious misconduct deserving of significant sanction. Further, Broers' certification of inaccurate disclosure in Reports of Exempt Distribution filed with the Commission served to undermine the Commission's oversight function. This, too, was serious misconduct.

[39] In his written submissions, Broers acknowledged that his misconduct was serious and deserving of sanction. He also stated that his activities "were influenced by the actions of Savage". The most effective way for a respondent to demonstrate recognition of the respondent's misconduct's seriousness is by testifying to that effect (*Workum and Hennig* at para. 71), which did not occur here. After considering the whole of his submissions, the letters of reference and Broers' Admissions, we are prepared to accept that Broers has some understanding of the seriousness of his misconduct. This argues for some moderation in sanction but not to the extent that might have been warranted had we been able to assess Broers' understanding of the seriousness of his misconduct with the benefit of his testimony.

### **2. Capital Market Experience**

[40] We acknowledge, consistent with Broers' Admissions, that Broers has not been previously sanctioned by the Commission.

[41] Further, according to Broers, he had little prior experience with securities distributions and the legal requirements involved and he trusted Savage, Mortgage 1's guiding mind, with respect to compliance with Alberta securities laws requirements. However, while this may be so, Broers is a licensed mortgage broker, has been involved in the financial services industry for over 20 years, and with Pinnacle had prior exposure to raising money in the exempt market. Hence, we believe that he ought to have been aware of the possibility of regulatory requirements and that it was necessary for him to learn of, and ensure compliance with, any such requirements. Indeed, "*everyone* trading or distributing securities has a responsibility to ensure, to a greater or lesser degree, that the activity is conducted in accordance with the Act and consistent with the public interest" (*Re Hampton Court Resources Inc.*, 2006 ABASC 1345 at para. 155 (emphasis in original)). We conclude that Broers' failure to assume such responsibility in relation to the trades and distributions of Mortgage 1 securities calls for significant sanction despite the absence of prior sanctioning of him by the Commission.

### **3. Harm to Investors or the Capital Market / Benefits to Broers**

[42] At least 52 Alberta residents purchased Mortgage 1 securities, expending in total at least \$700 126. We have no difficulty inferring that Broers' misconduct exposed these investors to direct financial harm and the Alberta capital market to the risk of harm.

Indeed, Broers acknowledged in his written submissions that some of these investors will have lost significant amounts of money and will have had their confidence in the Alberta capital market shaken. We believe it fair to conclude that, without Broers' involvement, many of these investors would not have invested in Mortgage 1 securities and thereby sustained the financial losses that they have.

[43] There was no evidence of any benefit accruing to Broers in consequence of his misconduct. Rather, it could fairly be said that he suffered harm – financial loss, health difficulties and the demise of Pinnacle and Gecko – through his involvement with Mortgage 1, including the illegal trades and distributions. On the other hand, it could also fairly be said that Broers intended to benefit from his involvement with Mortgage 1, including the trades and distributions in question. We conclude, on balance, that the lack of actual benefit to Broers argues for a slight tempering of the significant sanction warranted by the harm occasioned by Broers' misconduct.

#### **4. Need for Deterrence**

[44] Although we found that Broers has some understanding of the seriousness of his misconduct, he appears to have misunderstood the duties and responsibilities that are required of a director or officer of an issuer raising money from the public and to have lacked the independence and strength of character required to carry out those duties and responsibilities. We are persuaded that sanctions must be imposed in the public interest to dissuade Broers from engaging in the same or similar misconduct in light of his apparent willingness to abdicate to others his responsibility as a director or officer of an issuer to ensure that its capital-raising activities are conducted in compliance with Alberta securities laws. Further, given the success of the illegal trades and distributions in question, the public interest requires the imposition of significant sanctions commensurate to the task of discouraging others who may be tempted to engage in similar serious misconduct.

#### **5. Decisions in Other Matters**

[45] Previous sanction decisions are generally unhelpful because each case is circumstance-specific, and historical sanctions, in an evolving capital market, can quickly become outdated measures that fail to provide the level of deterrence needed to properly address the misconduct in question. We considered the decisions cited by Staff and Broers but found them to be of little assistance for these reasons.

#### **6. Mitigating Factors**

[46] We acknowledge, in addition to the mitigating factors discussed above, the following: Broers has cooperated with Staff by signing Broers' Admissions; and Broers' Admissions have saved the Commission some time and expense associated with a contested hearing into the merits.

## **7. Conclusion**

[47] For the reasons given, we conclude that sanctions against Broers providing a considerable measure of specific and general deterrence are appropriate and necessary in the public interest.

### **D. Types and Extent of Sanctions Appropriate**

[48] Having regard to the nature of Broers' misconduct and his role at Mortgage 1 over the course of his misconduct, we believe that market-access bans of the types sought by Staff are appropriate here, although we do not consider the duration proposed by Staff to be required in the particular circumstances of Broers – although, as noted, Broers apparently failed to understand his duties and responsibilities as a director or officer of an issuer, he was not, as Staff acknowledged, the guiding mind behind the illegal distributions made by Mortgage 1. The seriousness of Broers' contraventions and the harm occasioned by them also persuade us of the appropriateness of an administrative penalty, although again we are of the view that a quantum somewhat less than that proposed by Staff would achieve the requisite deterrent effect.

[49] Specifically, we conclude that, in the circumstances, it is in the public interest to order that Broers be prohibited from trading in or purchasing securities or exchange contracts and using any of the exemptions under Alberta securities laws and be banned from acting as a director or officer of any issuer, all for ten years with limited exceptions, and that he pay an administrative penalty of \$40 000.

### **E. Orders**

[50] For the reasons given, we order in the public interest that:

- under sections 198(1)(b) and (c) of the Act, Broers cease trading in or purchasing any securities or exchange contracts and all of the exemptions contained in Alberta securities laws do not apply to him, for ten years from the date of this decision, except that this order does not preclude him from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of this decision) in a single account for his benefit;
- under sections 198(1)(d) and (e), he resign all positions he holds as a director or officer of any issuer and he is prohibited for ten years from the date of this decision from becoming or acting as a director or officer (or both) of any issuer, except that this order does not preclude him from:
  - continuing to act as a director or officer (or both) of Pinnacle and Gecko solely for the purpose of conducting any legal proceedings on behalf of those two issuers, including any lawsuit, liquidation, dissolution or filing in bankruptcy; or

- becoming or acting as a director or officer (or both) of an issuer wholly owned by Broers or members of his immediate family that does not issue or propose to issue securities; and
- under section 199, he pay an administrative penalty of \$40 000.

## V. COSTS

[51] Staff ask that Broers be ordered to pay costs in the amount of \$17 500, noting that the total costs "to bring this matter to a conclusion" approximate the amount sought. To that end, Staff provided a two-page summary of investigation and hearing costs totalling \$62 801.87, presumably incurred in relation to all three Respondents originally named in the Notice of Hearing. Broers contended that an appropriate costs order would be in the range of \$5000 to \$10 000.

[52] A costs order is a means of recovering certain specified costs that have been incurred by the Commission during the enforcement process. It is generally appropriate that a respondent found to have contravened Alberta securities laws or acted contrary to the public interest be required to pay at least some of the enforcement costs so incurred. The Commission has the power to order full costs recovery, within the limits set by the Act and the regulations, but it makes costs orders having regard to the parties' contributions to the efficiency of the enforcement process and the public interest in ensuring that respondents are accorded fairness and natural justice (*Workum and Hennig* at paras. 192-93).

[53] Mindful of these principles, we note that Staff did not elaborate on their calculations that resulted in costs sought of \$17 500, which may include costs incurred by Staff in their investigation and preparation for the hearing that related to Mortgage 1 and Savage. We further note that, based on Staff's representation, costs recovery of \$17 500 would effectively be full costs recovery against Broers, which would fail to recognize the efficiencies realized by his cooperation described in Broers' Admissions.

[54] For these reasons, we apply a discount of approximately 40% to the costs sought and we order, under section 202 of the Act, that Broers pay costs of the investigation and hearing in the amount of \$10 000.

[55] This proceeding is now concluded.

16 January 2009

**For the Commission:**

"original signed by"  
Glenda A. Campbell, QC

"original signed by"  
Karl M. Ewoniak, CA

"original signed by"  
Neil W. Murphy