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COR#04/049

Eric Wayne Nelson and Alicia Nelson

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Adrienne Salvail-Lopez	Vice Chair
	Marc A. Foreman	Commissioner
	Robert J. Milbourne	Commissioner

Date of Hearing January 26, 2004

Date of Decision March 26, 2004

Appearing

Joyce M. Johner For Commission staff

Findings

Introduction

¶ 1 These findings relate to a hearing under section 161 of the *Securities Act*, RSBC 1996, c. 418. The Executive Director issued a notice of hearing in this matter on October 29, 2002. The notice of hearing alleged that Eric Wayne Nelson solicited money from residents of British Columbia, some of which was used by Nelson and his wife, Alicia, for their own purposes and some of which was invested but lost due to Nelson's incompetent and reckless trading. Specifically, the notice of hearing alleged that:

- Eric Nelson traded in securities without being registered under the Act,
- Eric Nelson acted as an adviser without being registered under the Act,
- Eric Nelson made misrepresentations to the persons from whom he solicited money, and
- both Eric and Alicia Nelson perpetrated a fraud on persons in British Columbia.

¶ 2 The notice of hearing was accompanied by a temporary order that:

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- the Nelsons cease trading in, or be prohibited from purchasing, any securities or exchange contracts,
 - the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to the Nelsons,
 - the Nelsons resign any positions they hold as an officer or director of any issuer and are prohibited from becoming or acting as a director or officer of any issuer, and
 - the Nelsons are prohibited from engaging in investor relations activities.
- ¶ 3 The Commission extended the temporary order until the hearing is held and a decision is rendered.
- ¶ 4 The hearing was held on January 26, 2004. Neither of the Nelsons attended the hearing. However, Commission staff put into evidence transcripts of sworn interviews of each of the Nelsons conducted on February 12, 2003. Commission staff also put into evidence transcripts of sworn interviews of two people who gave money to Eric Nelson, an interview of Patricia Hill conducted on January 21, 2003, and an interview of Robert Witges conducted on December 5, 2002.

Background

- ¶ 5 Eric Nelson is 34 years old and Alicia Nelson is 30. They have a six year old son. At all times relevant to this hearing they lived in Surrey, British Columbia.
- ¶ 6 Eric Nelson has Von Willibrand's disease, which is a bleeding disorder similar to haemophilia. He also has hepatitis C, as a result of blood transfusions he received in the 1980s and 1990s. He is hospitalized, on average, several times a year.
- ¶ 7 Eric Nelson had a few years of college and then worked at a variety of jobs. He has not worked since the late 1990s. Alicia Nelson has a bachelor's degree in education and worked for a time as a teacher. By mid February 2003, she too was unemployed. At that time they owned no property and had no savings.
- ¶ 8 In 1999, Eric Nelson began investing. Alicia Nelson described how this came about: ". . . he heard a program on the radio about investing and that it could be potentially lucrative. And he sent for a free tape that was offered, and that's the beginning, to my knowledge." By late 1999, he had lost somewhere between CDN\$25,000 and US\$46,000 of his and his wife's money.

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- ¶ 9 In 1998 or 1999, Eric Nelson met Patricia Hill, who owned a house in Surrey in which a friend of Eric Nelson's rented a room. At that time, Hill was in her 60s.
- ¶ 10 Hill's husband had died in 1986, leaving her with two children and \$180,000. She invested the money in mutual funds, and recalled telling the salesperson with whom she was dealing: "I don't want to go into anything that's going to make me lose money."
- ¶ 11 Hill later remarried and worked for a time in a clerical position. She sold her mutual funds, used some of the money and reinvested the remaining \$80,000 with another dealer. Once again, she purchased conservative mutual funds. Eventually, she was laid off from her job and retired. Her only income was from her government pensions and her investments. Her only assets were her home, which was mortgaged, and a car.
- ¶ 12 Hill agreed to meet Eric Nelson on the advice of his friend. Hill recalled Nelson's friend telling her that Eric Nelson was "a brilliant man" and "a genius" and "was making lots of money for everyone". Hill was impressed when she met Eric Nelson. She recalled that he was "[v]ery well spoken, very gentle and I believed everything he said."
- ¶ 13 He said that he had other clients and that they were happy. He said that he had been studying the market and that he knew more than financial advisers. He said that he would make her a millionaire. He said her return would be much better than she could earn in the stock market. He said that he would invest only 25% at once of any money she gave him, so that she would not lose it all. He showed her graphs and websites and said that he invested in the NASDAQ.
- ¶ 14 Hill cannot remember any of the details of those graphs or websites. She said that "it was just so much stuff to take in that – just all sounded great, I guess." She did remember that he did not talk about options trading, admitting that "I don't even know what option trading is."
- ¶ 15 Eric Nelson also told Hill that he worked with Pillar Capital, which he said was a company from the United States. Hill did check into this and discovered through the internet that there was indeed a company in the US called Pillar Capital.
- ¶ 16 On December 8, 1999, Hill entered into a "Partnership Agreement" with the Nelsons, under which she "entrusted to Eric and Alicia Nelson . . . the sum of \$10,000.00 plus \$5000 US for investment purposes for a period ending December 8/2000 . . ." Among other things, the Agreement provided that:

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- Hill would receive monthly written updates “outlining the activity of [her] investment capital for the preceding month.”
 - Hill would “surrender 25% of (loss adjusted) net profit on a per trade basis (after brokerage commissions) to [the Nelsons] to defray expenses towards administration, overhead and services.”
 - “[Hill] does not hold [the Nelsons] responsible for any risks which may affect the profitability of the investment capital. At the end of the period of this agreement, upon termination of this agreement, [Hill] is entitled to receive no less than the principal invested (this includes any sums withdrawn during the agreement period), and is entitled to a portion of the net profit (75% after commissions, as agreed) generated during the period of the agreement.”
- ¶ 17 Despite the reference to a “Partnership” Agreement, Hill did not understand herself to be Eric Nelson’s partner. Nor did she believe that she was loaning him money.
- ¶ 18 Despite the reference to Alicia Nelson as a party to the Agreement, she was not involved in Eric Nelson’s conversations with Hill. Alicia Nelson signed the Agreement before Eric Nelson took the document to Hill’s house. She described her knowledge at the time as follows:
- Q . . . But you were aware back in December of 1999 that your husband was going to receive some sum of money from [Hill]?
- A I would guess so, yes. I didn’t ask him many details, and what he told me is – if he chose to tell me something, then, I might remember it or I might not. I wasn’t very involved in his actual meetings with any of these parties.
- ¶ 19 Pursuant to the Agreement, Hill gave Eric Nelson US\$10,000 on December 8, 1999, and US\$5000 on December 29, 1999. Both amounts were in the form of money orders payable to Eric Nelson. Eric Nelson deposited the US\$15,000 in an account he opened at Wall Street Access, a dealer in New York. The account was a joint account with his wife.
- ¶ 20 Eric Nelson did provide Hill with monthly statements. Each was on Pillar Capital letterhead and included a table that showed, among other things, a net profit figure for the month. Hill lost the statements for January through May 2000. Each of the statements for June 2000 through March 2001 showed either a net profit or no change for the month. The statement for December 2000 showed “[y]our increase

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for the year 2000” as 39%. Hill assumed from this that she had made 39% interest on her investments over the year.

¶ 21 Between December 1999 and March 2001, Hill requested three payments from Eric Nelson: US\$600 in July 2000; US\$2666 in December 2000; and US\$2000 in March 2001. In each case, she experienced no problem in getting the money from him.

¶ 22 Late in March 2001, Hill decided to give more money to Eric Nelson. When she was asked what led to that decision, Hill replied:

A Yeah. I decided that he was doing well for me, and the other one was going down so much. Like, in a two-week period I’d lost a few thousand.

So, it scared me and I couldn’t seem to get in touch with the woman, so I thought – so, he talked to me, he says, “Well hey, Pat, I can do so much better for you.” And I thought, well, I can see he’s doing better for me, so that’s when I decided.

¶ 23 She continued later:

A Yeah. I was trying to think, on some – you know, I was kind of really out of it all of – my son was in the hospital for about six months with cancer, and he died in 2000. And I really – everything was kind of – and I think that’s why I, kind of, put in all the money, and nothing was going right for me, and my son had just died of cancer. And I was very vulnerable at the time, and I was doing stupid things, so – yeah.

Q Okay.

A He even came to my son’s memorial.

Q Eric Nelson did?

A Yes. So, he was like a friend to me also, you know. So, that’s, kind of, why I trust – trusted him in a lot of ways.

¶ 24 Before she gave Eric Nelson the additional money, she told him that she needed to receive \$600 a month, to supplement her pension income. Hill recalled that he agreed, saying “Oh, yeah, I can do that.”

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- ¶ 25 On March 30, 2001, Hill obtained a bank draft in the amount of CDN\$78,000 payable to Alicia Nelson. Eric Nelson had asked Hill to obtain the bank draft in Alicia Nelson's name as she would be picking it up from Hill's home. Alicia Nelson did pick up the bank draft and cashed it the same day. This additional money was reflected in Hill's Pillar Capital statement for March 2001, which showed "Principal Added" of US\$49,369.09.
- ¶ 26 Eric Nelson deposited US\$48,000 of this money into a Wall Street Access account. There is no evidence as to what happened to the remaining US\$1,369.09 referred to in Hill's March 2001 statement.
- ¶ 27 However, we do know what happened to the US\$48,000 deposited in the Nelsons' account at Wall Street Access. The April 2001 statement for the account shows that the account traded a number of options contracts on the NASDAQ 100 index and the S&P 100 index. By the end of the month, the net value of the account was US\$834.22.
- ¶ 28 Hill had become concerned that her December 1999 partnership agreement with Eric Nelson had expired and pressured him to give her a renewal agreement. On July 25, 2001, Hill entered into a second "Partnership Agreement", this time with only Eric Nelson. The agreement did not refer to a specific sum of money but had "Renewal" printed in the top right hand corner. Hill recalled that Eric Nelson told her that this agreement would cover all of the money she had given to him.
- ¶ 29 The second agreement contained substantially the same provisions as the first, with one exception. The second referred to a "loan" rather than an "investment". However, Hill never understood that she was giving the money to Eric Nelson as anything other than an investment; she recalled that Eric Nelson never told her that she was loaning him the money.
- ¶ 30 Eric Nelson continued to provide monthly statements to Hill. The last was for July 2001. Each of these statements, from April through July, showed a net profit and an "Adjusted Principal" figure that varied between US\$50,144.61 and US\$70,711.42. Eric Nelson was asked what the adjusted principle figure in the July statement represented:

Q That \$70,711.42 US, does that adjusted principal number mean that [Hill] holds, through you, cash and securities worth that much money?

A No.

Q What does it mean?

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A It means that's how much I owe her.

Q Oh, okay. At this point in time, do you have any cash or securities on her behalf?

A No

Q So, sometime prior to this, that money was lost?

A Yes.

Q All right. Did you ever have that conversation with [Hill] at about this time, July, August 2001 to say, "Look I know that I've given you a statement showing a principal amount of \$70,000 US, but what that means is I owe you \$70,000," did you explain that to her at that time?

A I don't recall that, but – I don't recall, but I do know that – that she knows that I'm working hard to get that back to her, whatever way I can.

¶ 31 Alicia Nelson admitted that she would sometimes type these monthly statements for her husband. Specifically, he would tell her the figures from the prior month's statement and the percentage he had earned in the current month, and have her do the calculations and fill in the table. However, Alicia Nelson denied knowing anything about the specific trades her husband was making. She also denied knowing at the time she prepared Hill's monthly statement for July 2001 that Hill's money had already been lost in the market.

¶ 32 In June 2001, Hill asked Eric Nelson for, and received, US\$1000. That was the last money she received from him. Hill described what happened when she requested further payment from Eric Nelson:

Q Have you seen any of this money to date?

A No, not a penny. And then I started to ask – oh, and then September 11th, when that happened, he blamed everything – all – losing all the money September the 11th.

He said, after the September 11th all – he had gone – he said, "I made a big mistake and put all the money in there. And of course,

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they closed down for three or four days, and when they came back up, they had lost all the money.” That was his explanation to me.

Q So, of this \$70,000 –

A American, yeah.

A -- American, he’s told you he’s lost it all?

A Well, yeah. At first he said, “Well – and I said, “Well, you can’t have lost it all, they opened it – and then he, kind of, went back and said – he just – “No, it’s all tied up and they can’t free it. I’m having problems getting it since September 11th.” That’s what his excuse was.

“They – they’re not letting it – there’s a lot of problems now because of what’s going on, and all that stuff.” So, he said, “It’s there, but I just – it – they just won’t release it right now.”

Q Who’s “they”?

A Whoever – the Nasdaq. That’s what he said, the companies down there that he invested in. And first he said, “That’s what ruined it, that’s what ruined it for me,” but then now – and – lately when I’ve talked to him he says, “It’s there.” . . .

- ¶ 33 At the time of her interview in January 2003, Hill was living on her government pensions, a \$5000 RRSP, a monthly payment from her daughter, and the money she was able to earn from housecleaning and babysitting. She was looking for a job.
- ¶ 34 In April 2001, at about the same time Eric Nelson lost the last of Hill’s money, he met Robert Witges.
- ¶ 35 Witges was 46 at the time and lived in Prince George. He had worked at a lumber company, but suffered an injury in 1983 that left him in the same condition as if he had suffered a massive stroke. He received a personal injury settlement that he invested in mutual funds, senior equities and bonds with three dealers. He lived on a pension, supplemented by the income from his investments.
- ¶ 36 Witges met Eric Nelson through Nelson’s father, who also lived in Prince George. He told Witges that Eric Nelson had gotten into investing and would be prepared to teach Witges how to read graphs and get into the stock market.

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¶ 37 Eric Nelson met with Witges at Witges' home in May 2001. Eric Nelson showed Witges some websites and graphs and talked about his investment technique. Witges remembered their conversation as follows:

Q Okay. Now, did Eric Nelson talk about option trading with you?

A Yes.

Q And what did he say?

A He said it was – it's a very low risk because all you do is buy the options, and which were a lot cheaper than risking all the money.

Q So he said he invests just a small portion of money into options?

A Yes, because instead of putting all the money up, you buy the options at a small price.

...

Q Now, did Eric Nelson tell you he was a broker?

A He said he – he told me he invests money, but he was into graphs and options that is very low risk, because, as Fred [Fred Punko, who accompanied Witges to the interview] just explained, you only have to risk a low amount.

Q Right. Did he say he was a broker to you?

A I don't recall if he used that exact word.

Q Did he tell you he had any specific qualifications or education with regards to investing?

A He told me that he had been doing it for six years.

Q So did he say he was a professional trader?

A I don't recall whether it was in that – them kind of words or not, but he was – he brought it on that he knew what he was doing and he had been doing it for a long time.

Q Okay. Did Eric Nelson say that he had several clients?

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- A Yeah, he said he invested for several people.
- Q Did he happen to mention any of their names to you?
- A No. All he did was he showed me a bankbook of his dad's, which I believe had 409,000 that he said he had made.
- Q For his father?
- A Yes.
- ...
- Q Did Eric Nelson say how much money or what amount – or how much profit you should expect to receive from trading through him?
- A Yes.
- Q And what did he say about that?
- A He said it would be lots, in the million, commented.
- Q Pardon me?
- A A million dollars was said.
- Q He actually mentioned \$1 million?
- A Yeah, he said that we could do that.
- Q Okay. Did Eric Nelson talk about how long he wanted you to keep your money with him?
- A The agreement we had was for one year.
- Q One year, okay. And you could renew that agreement after the one year; is that – did he talk about that at all?
- A No, we didn't discuss that because my goal was to learn how to do it.
- Q Okay. Did he actually teach you how to do it?
- A No.

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Q No.

A He just gave me some websites that I went over, and then started skipping around so I couldn't get hold of him.

Q Okay. Did he guarantee any results, any other results? He said – well, you said earlier that he threw out the word \$1 million. Did he say anything else to you about what to expect from his trading?

MR. PUNKO: Did he ever tell you you were going to lose money?

THE WITNESS: No.

MR. PUNKO: Did he tell you there was any risk involved?

THE WITNESS: No. He said the risk was very low because out of the options we were risking very low.

BY MS. THAULI:

Q Okay. Sir, what do you know about option trading?

A Just what he told me.

¶ 38 Eric Nelson also told Witges that he would receive \$1600 each month if he gave his money to Eric Nelson.

¶ 39 On May 31, 2001, Witges entered into a “Partnership Agreement” with Eric Nelson which provided, among other things, that

- Witges “entrusted” to Eric Nelson the sum of CDN\$199,620.74 for a period ending May 31, 2002.
- Witges would receive monthly written updates “outlining the activity of the capital for the preceeding month”.
- Witges would “surrender 30% of the (loss adjusted) net profit per transaction on a monthly basis to [Eric Nelson] to defray expenses towards administration, over head and for special skills and services”.

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- “[Witges] does not hold [Eric Nelson] responsible for any risks which may affect the profitability of the capital. At the end of the period of this agreement, upon termination of this agreement, [Witges] is entitled to receive no less than the loan amount (this includes any sum withdrawn during the agreement period), and is entitled to interest equal to 70% of the net profit (after deduction of overhead and transaction expenses) generated during the period of the agreement.”
- ¶ 40 Eric Nelson told Witges that his usual fee was 25% but that he was charging Witges 30% because he was going to be coming up to Prince George to train Witges. Eric Nelson also told Witges that he was with a company called Pillar Capital.
- ¶ 41 On May 31, 2001, Witges instructed his bank to transfer CDN\$199,514.74 (which would have been approximately US\$130,000 at that time) to an account in the name of Custom House Currency Exchange at a bank in Victoria, for the benefit of Eric and Alicia Nelson. Witges’ bank charged fees of CDN\$106, which made the total paid by Witges CDN\$199,620.74.
- ¶ 42 On June 4, 2001, Eric Nelson deposited US\$100,000 of the money into a second account he opened at Wall Street Access. Once again, the account was a joint one, with his wife.
- ¶ 43 Also, on June 4, Custom House issued a bank draft payable to Alicia Nelson in the amount of CDN\$35,472.20 (approximately US\$23,000 at that time). On June 7, 2001, CDN\$22,667.20 of this was deposited into an account at a Surrey bank in the name of Eric and Alicia Nelson.
- ¶ 44 Alicia Nelson was asked why instruments such as the CDN\$78,000 bank draft from Hill and the CDN\$35,472.20 bank draft from Custom House had been issued in her name rather than her husband’s. She replied.
- A Oh, usually so he could stay and watch the markets, or stay abreast of any commentaries, or do whatever he needed to on his end. There was just, I guess, delegation for time management.
- ¶ 45 Alicia Nelson was also asked what had happened to the Witges money that had not been deposited in the Wall Street Access account. She replied that it had been used to pay the Nelsons’ personal household expenses and to pay other people who had given money to Eric Nelson to invest for them. The interview continued:

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Q Well, you said earlier that you believe that part of Robert Witges' money was used toward your household expenses and part was used to pay off others.

I'm just trying to get a sense of how you feel about using someone else's money to pay your bills?

A I can't say I've made any emotional attachments to the situation. That wasn't factored into the decision or the request at that time.

Q The decision or the request that you made to your husband for money to pay bills?

A. Yes.

¶ 46 On June 21, 2001, Witges gave Eric Nelson an additional CDN\$204,824 (approximately US\$134,179 at that time). Witges described the circumstances as follows:

Q What were the discussions that you had with Eric Nelson prior to sending the second amount of money, do you recall?

A Just that we would – we would do better investing more than the first amount.

Q So he said that if you provided him with more money, you would make more money?

A We would hit the million a lot quicker.

Q I see. And he actually – he said that to you?

A Well, I don't know if that was the exact words, but that's the way it was brought across to me that we were trying to make.

¶ 47 Witges wired the money to an account in the name of PB Alex Brown LL, at a bank in Baltimore, for "further credit to" Eric or Alicia Nelson. PB Alex Brown provided clearing and other back-office services for Wall Street Access.

¶ 48 The next day, June 22, US\$133,954.90 (approximately CDN\$204,482 at that time) was deposited into the same account at Wall Street Access in which the first US\$100,000 had been deposited. Eric Nelson used the funds in the account solely to trade options on the NASDAQ 100 index.

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¶ 49 Witges asked Eric Nelson to provide him with a partnership agreement respecting this second amount. Witges also asked Eric Nelson for monthly statements respecting his investment. He received neither.

¶ 50 Though Witges did not know it, the news was not good. The Wall Street Access account suffered net trading losses every month. By the end of October 2001, the money was gone; the net value of the account on October 31, 2001, was US\$1.02.

¶ 51 There had also been funds wired out of the account during this period. Those amounts totalled as follows:

- US\$2200 to Witges, representing two monthly payments of US\$1100 (approximately CDN\$1600 at that time) each,
- US\$15,381.97 to others who had given money to Eric Nelson,
- US\$700 to Eric Nelson's grandmother,
- US\$8000 to Eric and Alicia Nelson, and
- US\$10,300 to Custom House Currency.

¶ 52 Eric Nelson was asked what had happened to the money that had been sent to Custom House Currency:

Q Can you tell me what that's about?

A I wouldn't remember that.

Q Well, was there a mechanism whereby Wall Street Access could wire funds to Custom House Currency and you could, in turn, pick up funds from Custom House Currency at 100th and King George [in Surrey]?

A Yeah.

Q So, that sometimes happened?

A Yeah.

¶ 53 Eventually, Witges asked Eric Nelson for his money. He described his calls to Eric Nelson as follows:

Q Okay. Do you recall, sir, how often you demanded repayment of your money?

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A No, but there would be phone records. And whenever I could get through, I demanded payment, and I wanted that monthly statements. I demanded repeatedly. And he started moving around so I could not get hold of him.

¶ 54 On March 5, 2002, Witges sent a fax to Eric or Alicia Nelson demanding repayment of all of his remaining funds within two weeks. Some time later, Witges received an undated letter from Eric Nelson, which read in part as follows:

Your request for getting your funds back to you is a good idea, as I have been having health issues that I don't want to have interfere with your funds.

My plan is to have your original amount to you by the end of May that is \$200000.00 and then the \$150,000.00 that I made for you soon after. It is harder to work with this amount of money since the 911 thing as they have put so many restrictions on anything to do with banking.

¶ 55 Eric Nelson admitted that he made up the reference to \$150,000 and that he had never made that amount for Witges.

¶ 56 Witges did not receive any more money from Eric Nelson.

¶ 57 Eric Nelson admitted that he had accepted money from approximately eight people, in addition to Hill and Witges. However, he was unable to remember in any detail the amounts involved or the timing of the transactions. It appears that these other people gave Eric Nelson at least CDN\$60,000, only a small proportion of which was paid back to them.

¶ 58 Eric Nelson was questioned as to the nature of his relationship with these people:

Q Can you put a word or a label on the basis under which you are handling other people's money in your account? What would you call yourself?

A A trader.

Q Okay. Would you describe yourself, at all, as a broker?

A No.

Q Would you describe yourself, at all, as an investment advisor?

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- A No, definitely not.
- Q Are you borrowing this money?
- A Borrowing, explain?
- Q Sure. Someone gives you money, the money goes into the account, securities are bought and sold.
- A Mm-hmm.
- Q Was that money given to you on a loan basis where you are the borrower?
- A It was done on a partnership agreement.
- Q All right. Would you say, then, that you are a business partner with the people who have given you this money?
- A I'm not sure, I hadn't really thought about that.
- Q All right. We may come back to that. We'll look at the partnership agreement and see what it means to you.
- A Sure.
- Q Do you consider yourself to be a trustee relating to this money?
- A No.
- Q All right. So, you've described yourself as a trader, and people have given you money. Why exactly are they giving you money, what's the basis there?
- A The only reason I did that was to help them in the long run. My intents were to help, not to – to hurt them.
- Q Okay, I take it, then, that your intent was to use your abilities as a trader to help these people in their financial situation?
- A Yes.

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Q And did you tell them that, that that's what you were intending to do?

A I don't recall. Probably. I wouldn't have done it otherwise.

Q Sorry, they would not have done it otherwise.

A No, I wouldn't have.

Q Well, really I'm just asking, Mr. Nelson, if you ever recall having that conversation with someone where you said to them, "Look, I can use my ability as a trader to help you financially"?

A Yeah, I showed that, yeah, yeah.

¶ 59 Eric Nelson stated that he had a set of Pillar Capital statements for each of the people who invested with him. He said that Pillar Capital was just a name he came up with because he liked pillars and columns. He never incorporated a company or got a business licence under that name. He denied knowing that there was a financial institution in the US called Pillar Capital.

¶ 60 Neither Eric nor Alicia Nelson was registered under the Act; nor was Pillar Capital. Eric Nelson admitted that he should have been registered under the Act to do the things he did but that he did not realize this at the time.

Findings

¶ 61 The allegations in the notice of hearing read as follows:

7. During the relevant period, Eric Nelson did the following:

- (a) traded in securities for individuals in British Columbia without being registered in accordance with the requirements of the Act, and without an exemption from the registration requirements of the Act, contrary to section 34(1)(a) of the Act; and
- (b) acted as an advisor to individuals in British Columbia without being registered in accordance with the requirements of the Act, and without an exemption from the registration requirements of the Act, contrary to section 34(1)(c) of the Act.

8. During the relevant period, Eric Nelson, while intending to trade in a security, made statements that he knew, or ought reasonably to have

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known, were misrepresentations, contrary to section 50(1)(d) of the Act.

9. During the relevant period, the Respondents directly or indirectly engaged in or participated in a transaction or series of transactions relating to a trade in or acquisition of a security when they knew or ought reasonably to have known that the transaction or series of transactions perpetrated a fraud on persons in British Columbia, contrary to section 57 of the Act.

1. Unregistered trading

¶ 62 Section 34(1)(a) of the Act provides as follows:

34 (1) A person must not

(a) trade in a security or exchange contract unless the person is registered in accordance with the regulations as

(i) a dealer, or

(ii) a salesperson, partner, director or officer of a registered dealer and is acting on behalf of that dealer

¶ 63 An exchange contract is defined in section 1 of the Act.

"exchange contract" means a futures contract or an option that meets both of the following requirements:

(a) its performance is guaranteed by a clearing agency;

(b) it is traded on an exchange pursuant to standardized terms and conditions set out in that exchange's bylaws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange,

and includes another instrument or class of instruments that meets both of those requirements and is designated as an exchange contract in an order the commission may make for the purpose of this definition

¶ 64 A security is defined in section 1 of the Act to include:

...

(n) an instrument that is a futures contract or an option but is not an exchange contract

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¶ 65 A trade is defined in section 1 of the Act to include:

...

(b) entering into an option that is an exchange contract

¶ 66 Eric Nelson used Hill's and Witges' money to trade exchange contracts, namely options on the NASDAQ 100 index and the S&P 100 index, through a dealer in New York. The definition of security in section 1 of the Act specifically provides that an exchange contract is not a security.

¶ 67 Pursuant to these definitions, Eric Nelson was trading in exchange contracts, but not trading in securities. The allegation in the notice of hearing relates solely to trading in securities. Therefore, we make no findings in respect of this allegation.

2. Unregistered advising

¶ 68 An adviser is defined in section 1 of the Act.

“**adviser**” means a person engaging in, or holding himself, herself or itself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities or exchange contracts

¶ 69 Section 34(1)(c) of the Act provides as follows:

34(1) A person must not

...

(c) act as an adviser unless the person is registered in accordance with the regulations as

(i) an adviser, or

(ii) an advising employee, partner, director or officer of a registered adviser and is acting on behalf of that adviser

¶ 70 Section 8(a) of the *Securities Rules*, BC Reg. 194/97, provides as follows:

8 A person registered as an adviser must be classified in one or more of the following categories:

(a) *portfolio manager*: a person that manages or holds itself out as managing the investment portfolio, consisting of securities, exchange contracts or both, of one or more clients through discretionary authority granted by the clients; . . .

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- ¶ 71 Eric Nelson told Hill that he had studied the market and that he knew more than financial advisers. He told Witges that he invested money, that he knew what he was doing and that he had been investing for some time. He showed both Hill and Witges graphs and websites and talked about his investment strategies. He told both Hill and Witges that he had other clients.
- ¶ 72 Eric Nelson told both Hill and Witges that he worked for Pillar Capital, which Hill discovered was a financial institution in the US.
- ¶ 73 Eric Nelson entered into agreements with both Hill and Witges under which he agreed to invest their money in exchange for a percentage of the net profit. The agreements also provided that Hill and Witges would each get back the money that they had given to Eric Nelson.
- ¶ 74 The agreements provided as well that Hill and Witges would get monthly written statements. Indeed, Eric Nelson admitted that he had a set of Pillar Capital statements for each of the people who invested with him. Hill received several monthly statements, all of which were on the letterhead of Pillar Capital. Her statement for December 2000 showed her “increase for the year 2000” as 39%. Hill understood this to mean that she had earned 39% that year on the money she had given to Eric Nelson. Witges received no monthly statements; but he did receive a letter from Eric Nelson in which Nelson referred to “the \$150,000.00 that I made for you”. This information would not have been surprising to either Hill or Witges; Eric Nelson had told each of them that he would make them a million dollars.
- ¶ 75 Eric Nelson denied being an investment adviser. He did admit, however, that he had accepted money from a total of approximately ten people. He called himself a “trader” and admitted that his intention had been to use his abilities as a trader to help these people in their financial situation. He also admitted that he had told this to the people who had given him money.
- ¶ 76 We are of the view that there is overwhelming evidence that Eric Nelson was holding himself out as, and engaging in, the business of advising people with respect to investment in, or the purchase and sale of, exchange contracts, and therefore should have been registered as an adviser. There is equally compelling evidence that he was managing, and holding himself out as managing, investment portfolios of exchange contracts for several clients, through discretionary authority granted by those clients, and therefore should have been registered in the category of portfolio manager. Indeed, Eric Nelson admitted that he should have been registered to do the things he did.

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¶ 77 Therefore, we find that Eric Nelson acted as an adviser without being registered, contrary to section 34(1)(c) of the Act.

3. Misrepresentation

¶ 78 Section 50(1)(d) of the Act provides as follows:

50 (1) A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:

...

(d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation

¶ 79 A misrepresentation is defined in section 1 of the Act.

"misrepresentation" means

(a) an untrue statement of a material fact, or

(b) an omission to state a material fact that is

(i) required to be stated, or

(ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made

¶ 80 A material fact is defined in section 1 of the Act.

"material fact" means, where used in relation to securities issued or proposed to be issued, a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value of those securities

¶ 81 It is clear from the legislation that misrepresentation cannot occur in respect of exchange contracts. Eric Nelson traded only in exchange contracts. Therefore, we make no findings in respect of this allegation.

4. Fraud

¶ 82 Section 57(b) provides as follows:

57 A person in or outside British Columbia must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security or a trade in an exchange contract if

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the person knows, or ought reasonably to know, that the transaction or series of transactions

...

(b) perpetrates a fraud on any person in British Columbia

- ¶ 83 There is a significant body of evidence before us in support of an allegation that Eric and Alicia Nelson engaged in or participated in a transaction or series of transactions relating to trades in exchange contracts that they knew, or ought reasonably to have known, perpetrated a fraud on persons in British Columbia.
- ¶ 84 However, the allegation before us relates to trading in securities rather than exchange contracts. Therefore, we make no findings in respect of this allegation.

Orders

- ¶ 85 We will hear further submissions before issuing orders in respect of our findings. If Commission staff wishes to make a written submission, we direct them to send copies to the Commission Secretary and to Eric Nelson at his last known address by April 16, 2004. If Eric Nelson wishes to make a written submission, we direct him to send copies to the Commission Secretary and to Commission staff by May 7, 2004. If the parties wish to make oral submissions, we direct them to contact the Commission Secretary before April 9, 2004, to fix a date for the hearing of those submissions.
- ¶ 86 March 26, 2004
- ¶ 87 **For the Commission**

Adrienne Salvail-Lopez
Vice Chair

Marc A. Foreman
Commissioner

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Robert J. Milbourne
Commissioner