



THE MANITOBA
SECURITIES
COMMISSION

October 4, 2017

IN THE MATTER OF: THE SECURITIES ACT

- and -

**IN THE MATTER OF: POWER WITHIN INC., a company incorporated
under the Business Corporations Act, Ontario,
("Power Within") and SALIM KHOJA ("Khoja"),
collectively the Respondents.**

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel:

Panel Chair:	Mr. J.T. McJannet, Q.C.
Vice-Chair:	Ms. D.J. Metcalfe
Member:	Ms. S.C. Rolland

Appearances:

Mr. S. Gingera)	Counsel for Commission Staff
)	No appearance on behalf of the Respondents

Securities Division

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A DIVISION OF THE MANITOBA FINANCIAL SERVICES AGENCY

This is a hearing before The Manitoba Securities Commission (the "Commission") pursuant to The Securities Act, Manitoba, (the "Act") to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 19(5) of The Securities Act (the "Act"), that:
 - (a) subsection 19(1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to Khoja and Power Within;
 - (b) subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to Khoja and Power Within;
 2. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of *The Securities Act* ("Act"), that Khoja and Power Within pay an administrative penalty;
 3. whether or not pursuant to section 148.2 of the Act, that Khoja and Power Within be ordered to pay compensation for financial loss;
 4. whether or not it is in the public interest to order that Khoja and Power Within pay the costs of the investigation and the hearing;
 5. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.
1. The Commission first dealt with this matter on April 26, 2017 at which time the Commission set September 18, 19 and 20, 2017 as dates for the public hearing of the matters herein. Based upon evidence set forth in Exhibits 1 to 5 filed with the Commission on April 26, 2017, the Commission granted and approved an Order for Substitutional Service of a Notice of Hearing of the matter and a Statement of Allegations in connection with such matters.
 2. Mr. Gingera advised the Commission that the Order for Substitutional Service was fully complied with by staff of the Commission and, as evidence thereof, filed Affidavits entered herein as Exhibits. The Commission stated that based upon such Exhibits compliance with the Order had been met and directed the Hearing to proceed.
 3. Mr. Gingera advised that notwithstanding that no one had appeared for the Respondents it was his position that it was necessary to present evidence by calling a number of witnesses and filing some 20 Exhibits to prove the facts alleged in this matter. The Commission concurred.
 4. The Commission heard testimony of Ms. Jenny Hernaez, her nephew Rolando Hernaez, Commission staff members Jason Roy and Manolo Mabini.

5. It is the decision of this Commission that the stated allegations are proven based upon the evidence presented. Further, this Commission states that in view of the fact that neither the Respondents nor anyone on behalf of the Respondents appeared at this Hearing it will not be necessary to state the facts in detail but rather that a short summary of such proven facts shall be sufficient in support of the Commission's decision.

Accordingly, this Commission finds that at all material times, namely in the calendar years 2009 and 2010, the facts proven at this Hearing, are as follows:


- a) that Khoja was a resident of the City of Markham, in the Province of Ontario;
- b) that Power Within was a company incorporated under the Business Corporations Act of Ontario with its head office located in the Province of Ontario;
- c) That Khoja was the President and owner/sole shareholder of Power Within;
- d) That neither Power Within nor Khoja were registered under The Securities Act of Manitoba to trade in securities;
- e) That Ms. Jenny Hernaez, resident of the City of Winnipeg, in the Province of Manitoba decided to make an investment in Power Within and wrote a cheque dated April 15, 2009 in the sum of \$93,000.00 in favour of Power Within which cheque was cashed by deposit to the Power Within bank account maintained at the TD Bank branch located at 55 King Street West, in the City of Toronto, in the Province of Ontario;
- f) That Ms. Jenny Hernaez received an acknowledgement from Power Within stating that her investment of \$93,000.00 was secured by a Promissory Note in the sum of \$100,000.00;
- g) That Ms. Jenny Hernaez understood that she would receive a return of \$17,000.00 on her \$93,000.00 investment in Power Within;
- h) That Ms. Jenny Hernaez has received the sum of \$34,000.00 from Power Within leaving a balance due of \$59,000.00 which amount remains outstanding;
- i) That neither Power Within nor Khoja filed a prospectus in connection with the \$93,000.00 investment made by Ms. Jenny Hernaez in Power Within.

Accordingly, it is the decision of this Commission that it is in the public interest to order:

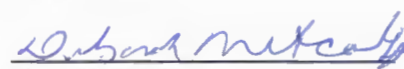
- a) That Power Within and Khoja have contravened the provisions of subsections 6(1) and 37(1) of the Act, such:

- i) that, pursuant to subsection 19(5) of the Act, subsection 19(1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to Power Within nor Khoja; and
 - ii) that subsection 19(2) of the Act does not, with respect to such of the securities referred to in that subsection, apply to Power Within nor Khoja.
- b) That immediately Power Within and Khoja jointly and severally pay the sum of \$59,000.00 to Ms. Jenny Hernaez as compensation for her financial loss;
 - c) That pursuant to subsection 148.1(1) of the Act, Power Within and Khoja pay an administrative penalty in the sum of \$59,000.00;
 - d) That Power Within and Khoja immediately, jointly and severally pay costs in the sum of \$10,300.00.


This Commission specifically states that with respect to the administrative penalty set out herein it took note of the comments made by the Commission in the Reasons for Decision in the Hearing relating to Jack George Wladyka and reference therein to In Re: Lavallee (2008 WL 644781), a decision of the Alberta Securities Commission and its reference to the Cartaway Decision of the Supreme Court of Canada (2004 1 SCR 672).



J.T. McJannet, Q.C.
Panel Chair



D.J. Metcalfe
Vice-Chair



S.C. Rolland
Member