

IN THE MATTER OF THE ELLIOT LAKE COMMISSION OF INQUIRY
The Honourable Paul R. Belanger, Commissioner

**WRITTEN SUBMISSIONS ON BEHALF
OF ALEXANDRE SENNETT**

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PART I: OVERVIEW

1. On June 23, 2012, the Algo Centre Mall in Elliot Lake collapsed, tragically causing the death of Lucie Aylwin and Doloris Perizzolo.

2. On July 19, 2012, the Government of Ontario established the Elliot Lake Inquiry to inquire into and report on events surrounding the collapse of the Algo Centre Mall, the deaths of Lucie Aylwin and Doloris Perizzolo and the injuries to other individuals as well as the emergency management and response.

3. On May 14, 2013, Mr. Alexandre Sennett was called as a witness at the inquiry. He attended without counsel. Mr. Sennett testified that he first became involved with Mr. Robert Nazarian and the Algo Centre Mall in approximately October 2007.¹ Mr. Nazarian came to his office and they were introduced by a mutual friend. At the time, Mr. Sennett ran a company called Bitflow Software, which specialized in network engineering.² The two men

¹ Evidence of Alexandre Sennett, May 14, 2013, at p. 9650, lines 3-5

² Evidence of Alexandre Sennett, May 14, 2013, at p. 9648, lines 6-8

discussed the mall and Mr. Sennett doing some work there, but no agreement was reached at that time. Ultimately, Mr Nazarian hired Mr. Sennett in the spring of 2008 to install additional video surveillance cameras and systems at the mall.³

4. Mr. Sennett first attended at the mall in March 2008 to begin the installation of the security system.⁴ The security system installation was completed by May 2009.⁵ From 2008-2009, Mr. Sennett would accompany Mr. Nazarian to Elliott Lake to work on the surveillance systems. When he was done his work, Mr. Nazarian would ask Mr. Sennett to accompany him to meetings, where he was introduced as Mr. Nazarian's IT consultant or security specialist.⁶ There was a two year warranty on the equipment which would have ended Mr. Sennett's involvement in 2011. However, Mr. Sennett continued to do work at the mall when in Canada at the request of Mr. Nazarian on one occasion in 2012.⁷ However, between 2010-2012, Mr. Sennett spent the vast majority of time on a project in Sierra Leone and was only at the mall on approximately three occasions over that two-year period.⁸

5. Mr. Sennett testified that in the spring of 2008, he was asked by Mr. Nazarian to register a 'shell' company for the purpose of assisting with financing.⁹ Because Mr. Sennett was familiar with computers and online registration, and Mr. Nazarian was not computer literate, Mr. Sennett agreed to establish the company for Mr. Nazarian.¹⁰ Even Mr. Nazarian conceded in cross-examination that the company was created on his behalf.¹¹ The company, The Empire Roofing and Restoration Inc., was registered on June 18, 2008.¹² The

³ Evidence of Alexandre Sennett, May 14, 2013, at p. 9653, lines 6-10

⁴ Evidence of Alexandre Sennett, May 14, 2013, at p. 9670, lines 4-7

⁵ Evidence of Alexandre Sennett, May 14, 2013, at p. 9659, lines 2-6

⁶ Evidence of Alexandre Sennett, May 14, 2013, at p. 9657, lines 11-23

⁷ Evidence of Alexandre Sennett, May 14, 2013, at p. 9661, lines 13-21

⁸ Evidence of Levon Nazarian, July 17, 2013, at p. 17032, lines 9-19

⁹ Evidence of Alexandre Sennett, May 14, 2013, at p. 9664, lines 9-12

¹⁰ Evidence of Alexandre Sennett, May 14, 2013, at p. 9664, lines 13-16

¹¹ Evidence of Robert Nazarian, July 29, 2013, at p. 18728, lines 13-22

¹² Exhibit 6209

corporation was supposed to be transferred into Mr. Nazarian's name at a later date, but when Mr. Sennett tried to do so, Mr. Nazarian told him he did not need the company anymore.¹³

6. The evidence shows that Mr. Nazarian provided the name The Empire Roofing and Restoration Inc. to Mr. Sennett. That name was likely chosen because it closely resembled a legitimate roofing company called Empire Roofing. Empire Roofing was well known in the Elliot Lake area and Mr. Nazarian conceded, in cross-examination, that he may have been aware of that company before Mr. Sennett registered The Empire Roofing and Restoration Inc. on his behalf.¹⁴

7. Several documents were created in the name of The Empire Roofing and Restoration Inc. These documents purported to establish a contractual relationship between Eastwood Mall (the registered owner of the Algo Centre Mall) and The Empire and Roofing and Restoration Inc.¹⁵ The documents also indicated that work worth \$1.7 million was done (or to be done) on the roof of the mall by The Empire Roofing and Restoration Inc.¹⁶ However, the company had no employees nor the experience or expertise necessary to do such work. Some of these documents were submitted to ELNOS by Mr. Sennett "*on behalf of Mr. Nazarian*" in an attempt to obtain financing.¹⁷ However, as Mr. William Elliott from ELNOS testified, there was no prospect that ELNOS would advance this money and no money was ever advanced. In other words, there was no risk of deprivation to ELNOS.¹⁸

8. What was in dispute at the inquiry was who conceived of The Empire Roofing and Restoration Inc. and who created and used the company's documents and

¹³ Evidence of Alexandre Sennett, May 14, 2013, at p. 9665, lines 8-19

¹⁴ Evidence of Robert Nazarian, July 29, 2013, at pp. 18773, line 12-18774, line 14; Exhibit 5599

¹⁵ Exhibit 00748

¹⁶ Exhibit 5399

¹⁷ Exhibit 00226, at p. 2

¹⁸ Evidence of William Elliott, August 1, 2013, at pp. 80-85

bank account. Mr. Sennett's evidence was that he was duped by Mr. Nazarian into creating the company and blindly signed some of these documents at Mr. Nazarian's request. Mr. Nazarian claimed that Mr. Sennett was the "mastermind" behind The Empire and Roofing and Restoration Inc., that it was a legitimate company established to secure financing to fix the mall roof and that he was merely following Mr. Sennett's orders when he signed the relevant documents.

9. Levon Nazarian tried to support his father in that assertion, but was ultimately forced to concede that between 2005-2009, he was not involved with the mall and, more importantly, that he was not privy to the discussions surrounding the creation of Empire Roofing or other material events connected to The Empire Roofing and Restoration Inc.¹⁹ Accordingly, his evidence on the issue can be given little, if any, weight.

10. It is respectfully submitted that a review of the evidence clearly demonstrates that Mr. Robert Nazarian was the person who conceived of The Empire Roofing and Restoration Inc., created the documents and used those documents (and the corporate bank account) for his own purposes. It was Mr. Nazarian, and not Mr. Sennett, who was desperate to secure financing for the mall and prevent the Royal Bank of Canada ('RBC') from defaulting on the mortgage it held.²⁰ Mr. Nazarian, and Mr. Nazarian alone, has the motive to establish this company in a desperate attempt to get money for the mall. At every stage in the life of The Empire Roofing and Restoration Inc., it was Mr. Nazarian who controlled and directed the conduct of the company. Mr. Sennett was merely a dupe who naively registered the company and signed some documents at Mr. Nazarian's request, without understanding the purpose of the documents or how they would be later used.

¹⁹ Evidence of Levon Nazarian, July 17, 2013, at pp. 17020, line 24-17022, line 8; p. 17030, lines 2-23; pp. 17039-17042; July 18, 2013, at p. 17127, lines 2-16; pp. 17145-17153; pp. 17158, line 18-17160, line 25

²⁰ Evidence of Levon Nazarian, July 17, 2013, at p. 17064, lines 9-21, 17067, lines 5-7; Exhibit 5842

11. More specifically, Mr. Sennett submits that the evidence at this Inquiry proves that:

- i) Mr. Nazarian was in desperate straits to secure financing to try to repair the roof of the mall²¹;
- ii) Mr. Nazarian was desperately trying to forestall RBC from defaulting on the mortgage²²;
- iii) Mr. Nazarian was familiar with the 'legitimate' Empire Roofing company and directed Mr. Sennett to establish a corporation with a similar name in a misguided effort to secure financing²³;
- iv) Mr. Sennett registered the corporation *on behalf of Mr. Nazarian*. This was admitted to by Mr. Nazarian in his evidence and is proven by the fact that Mr. Sennett invoiced Mr. Nazarian for the registration of the company.²⁴ That invoice was paid by Mr. Nazarian;
- v) Mr. Nazarian and Levon Nazarian claimed that Mr. Sennett expected to be paid out of any money obtained by a lender. However, there was not a single shred of evidence that supported that claim.²⁵ Mr. Sennett's unchallenged evidence was that he was never paid for anything he did outside of the IT/security surveillance work.²⁶ Moreover, he was never a partner in the mall and never received any shares or profits in the mall²⁷;
- vi) The documents created in the name of The Empire Roofing and Restoration Inc. were *all located in Mr. Nazarian's place of business, residence or on his son's computer*.²⁸;
- vii) Most notably, the "invoices" created in the name of the company in August 2008 were created, on his own admission, by Levon

²¹ Evidence of Levon Nazarian, July 17, 2013, at p. 17064, lines 9-21, 17067, lines 5-7; Exhibit 5842

²² Evidence of Levon Nazarian, July 17, 2013, at p. 17064, lines 9-21, 17067, lines 5-7; Exhibit 5842

²³ Evidence of Robert Nazarian, July 29, 2013, at pp. 18773, line 12-18774, line 14; Exhibit 5599

²⁴ Evidence of Robert Nazarian, July 29, 2013, at p. 18728, lines 3-22; Exhibit 6190

²⁵ Evidence of Levon Nazarian, July 17, 2013, at p. 17102, lines 1-20

²⁶ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9802, line 22-9804, line 23

²⁷ Evidence of Alexandre Sennett, May 14, 2013, at p. 9666, lines 5-10

²⁸ Exhibits 5399, 1297, 5393, 3775, 5425

- Nazarian.²⁹ He alleged that Mr. Sennett gave him the information contained in those invoices, but the evidence showed that the details were replicated from the quote provided by Peak Restoration.³⁰ That quote was provided to Mr. Nazarian in June 2008, two months prior to the creation of the ‘Empire’ invoices. There is no evidence that the Peak Restoration document was ever in the possession of Mr. Sennett;
- viii) Moreover, even though the company was purportedly created by Mr. Sennett for the purpose of obtaining financing, there were multiple documents in the name of the company that were never submitted to any financial institution. *All of those documents were located on the computer of Mr. Levon Nazarian, or in Mr. Nazarian’s residence or place of business*³¹;
 - ix) The invoices and documents were never used by Mr. Sennett. While Mr. Sennett emailed the invoices to Mr. Elliott at ELNOS, that was done “on behalf of Bob Nazarian”.³² The documents were only ever used by Mr. Nazarian; i) in a misguided attempt to secure financing with ELNOS; ii) in order to prevent RBC from defaulting on the mortgage; and/or iii) in an effort to assuage at least one of his tenants (Zeller’s) that he was doing work on the roof of the mall, when in fact he was not³³;
 - x) Mr. Sennett never had any contact with either Mr. Elliott at ELNOS³⁴ or any representatives of the RBC;
 - xi) Mr. Nazarian and his wife opened a bank account in the name of The Empire Roofing and Restoration Inc., without the knowledge of Mr. Sennett³⁵;

²⁹ Evidence of Levon Nazarian, July 17, 2013, at p. 17049, line 18-17050, line 2

³⁰ See and compare Exhibit 5399 (Empire invoices) and Exhibit 657 (Peak Restoration quote provided to Mr. Nazarian)

³¹ Exhibits 01208, 01209, 01210, 01211, 01215

³² Exhibit 00226, at p. 2

³³ Exhibit 00748, located in the possession of the Hudson’s Bay Company, the parent company of Zeller’s;

³⁴ Evidence of William Elliott, August 1, 2013, at pp. 82, line 11-83, line 4

³⁵ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9673, line 18-9674, line 12; Exhibit 6202

- xii) Mr. Nazarian then used that bank account to deposit and transfer money to Peak Restoration Inc.³⁶ He also used the bank account to funnel money to himself.³⁷ The evidence before this Inquiry demonstrates that it was Mr. Nazarian who opened, used and controlled the company's bank account. After Mr. Sennett discovered the account, he took steps to remove Mr. and Mrs. Nazarian as signing authorities on the account and eventually closed the account;
- xiii) Mr. Nazarian's evidence was riddled with inconsistencies, the constant blaming of others and a complete unwillingness to accept any responsibility for his own conduct. His *modus operandi* is to blame others for his conduct, just as he has done with Mr. Sennett; and
- xiv) Mr. Nazarian is a proven liar who signed a document prepared in anticipation of litigation that contained blatant mistruths about The Empire Roofing and Restoration Inc.³⁸ Simply put, his evidence defies belief and cannot be accepted.

PART II: THE FACTS

Mr. Sennett was the perfect dupe for Mr. Nazarian

12. Mr. Sennett testified before this Inquiry on May 14, 2013. He attended without a lawyer. It is respectfully submitted that the absence of a lawyer is consistent with Mr. Sennett's position that he did not knowingly engage in any misconduct or fraudulent activity. In his eyes, no lawyer was necessary because he did not appreciate that he had done anything wrong. He had merely registered a company and signed some documents when asked to do so by Mr. Nazarian. While he was aware that the company was established by Mr. Nazarian for the purpose of securing financing for the mall, he did not know any of the details of how the company would be used.

³⁶ Exhibits 6203, 6205

³⁷ Exhibits 6207, 3775, 6206

³⁸ Exhibit 6188

13. Much was made about the fact that Mr. Sennett had a Master's in Business Administration and that, as such, he must have known that he was engaging in some form of misconduct. However, Mr. Sennett would not be the first person with a professional degree who was duped by someone unscrupulous. The reality is that many people with professional degrees, including lawyers and experienced business people, can be taken advantage of and deceived by unscrupulous people - there are examples of this every day, whether it be real estate lawyers who get taken in by people trying to improperly obtain money from lending institutions, or even exceptionally bright and sophisticated investors who are exploited by fraudsters (e.g. Earl Jones in Montreal, Bernie Madoff in New York). The reality is that an academic degree is no guarantee that one will not be exploited by others. Even Levon Nazarian recognized this in his evidence, when he acknowledged that even people with higher degrees can "still be taken in by unscrupulous people."³⁹
14. Moreover, Mr. Sennett was the perfect dupe. Despite having a business degree, Mr. Sennett was not an experienced or even successful businessman. He ran a small, largely unsuccessful software company (that is in trusteeship, as per his funding application). When he met Mr. Nazarian, he was provided with a substantial contract to do work at the mall. He was told by Mr. Nazarian that Mr. Nazarian owned other properties and Mr. Sennett hoped that if he performed well in his work at the mall, other business opportunities might follow. In addition to his hope that he would get more work for his company, Mr. Sennett developed a friendship with Mr. Nazarian and the two would often drive together from Toronto to Elliot Lake. By all accounts, Mr. Sennett was eager, too eager, to ingratiate himself with Mr. Nazarian who was a successful businessman with millions of dollars in property and investments. Accordingly, Mr. Sennett was willing to make representations on behalf of Mr. Nazarian *when requested to do so by Mr. Nazarian* (e.g. in newspaper articles discussing improvements to the mall, or in signing the Fibron contract

³⁹ Evidence of Levon Nazarian, July 17, 2013, at pp. 17018, line 1-17020, line 7

on Mr. Nazarian's instruction, or in signing Ms. Bear's offer of employment as acting CEO of the corporation). Even Levon Nazarian conceded that Mr. Sennett was overly eager to assist his father.⁴⁰

Mr. Sennett's initial involvement with the Algo Mall - late 2007-early 2008

15. Mr. Sennett first met Mr. Robert Nazarian in late 2007 at which time Mr. Nazarian raised the possibility of Mr. Sennett doing IT work at the mall. This was corroborated by a memo sent by Mr. Tom Turner, the mall manager, to Mr. Sennett on November 28, 2007.⁴¹ This time frame was also corroborated by Mr. Nazarian in his evidence.⁴²
16. Between 2008-2010, Mr. Sennett would travel frequently to the mall with Mr. Nazarian. He would do his IT work upon arrival and, when that was completed, he would accompany Mr. Nazarian while Mr. Nazarian was engaged in other mall business (e.g. meetings with architects or even city officials).⁴³

Mr. Nazarian asks Mr. Sennett to establish a company entitled The Empire Roofing and Restoration Inc. - June 2008

17. In the spring of 2008, Mr. Nazarian came to Mr. Sennett and asked him to assist in setting up a company called The Empire Roofing and Restoration Inc. Mr. Nazarian indicated that the company was needed to assist in getting financing to fix the mall roof. Mr. Nazarian also asked Mr. Sennett to register the company online on his behalf. Mr. Nazarian explained that he was not good with computers and, given Mr. Sennett's line of work, asked that Mr. Sennett do the registration for him online. Mr. Sennett agreed to assist, thinking at this time that there was nothing wrong with helping Mr. Nazarian

⁴⁰ Evidence of Levon Nazarian, July 17, 2013, at p. 17022, lines 17-23

⁴¹ Exhibit 3754

⁴² Evidence of Robert Nazarian, July 29, 2013, at pp. 18752-18756

⁴³ Evidence of Alexandre Sennett, May 14, 2013, at p. 9657, lines 11-23

establish a company online in and of itself. The company was registered online by Mr. Sennett on June 18, 2008. Mr. Nazarian tried to claim that this was all Mr. Sennett's idea, *but conceded in cross-examination that the company was registered on his behalf.*⁴⁴ Moreover, Mr. Nazarian's claim that the company was all Mr. Sennett's idea was proven to be false because Mr. Sennett later invoiced Mr. Nazarian and his wife for this work.⁴⁵ This invoice was paid by Mr. Nazarian.

18. The name of the company was provided by Mr. Nazarian to Mr. Sennett. The name was very similar to another, legitimate roofing company that performed lots of work in Elliot Lake; Empire Roofing. Mr. Nazarian conceded that he may have known of the Empire Roofing company prior to the June 2008 registration, given his efforts to find roofing contractors to fix the mall roof.⁴⁶ This was no coincidence. It was undoubtedly done purposely by Mr. Nazarian to try to make it look like a legitimate company. Mr. Sennett's email and the attached invoice demonstrate that he conducted a specific name search for Mr. Nazarian and that a conflict arose. As a result, he had to conduct a second NUANS search; a service for which he charged Mr. Nazarian and which was paid by him.⁴⁷

Mr. Nazarian asks Mr. Sennett to sign a CCDC contract - June 2008

19. On June 16, 2008, two days before the company was registered online, Mr. Nazarian presented a CCDC contract to Mr. Sennett and asked him to sign it. Mr. Sennett did so because he trusted Mr. Nazarian.⁴⁸ Mr. Nazarian claimed that it was Mr. Sennett who put together this document, presented it to Mr. Nazarian and directed him to sign it. This is, with respect, preposterous. First, Mr. Sennett had no background or experience in roofing or construction. As

⁴⁴ Evidence of Robert Nazarian, July 29, 2013, at p. 18728, lines 3-22

⁴⁵ Exhibit 6190

⁴⁶ Exhibit 5599

⁴⁷ Exhibit 6190

⁴⁸ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9674, line 13-9677, line 25

such, he had never seen or worked with a CCDC contract. However, Mr. Nazarian, who spent his entire adult life in construction and development, had significant experience with such contracts.⁴⁹ Second, the contract did not set out a price. By all accounts, not only was Mr. Nazarian an extremely involved and controlling businessman but he was very concerned about money and the cost of contracts. It defies belief that he would, as he claimed, turn over the financing for the repairs to his family's largest asset to Mr. Sennett, a man he had known for only a few months and that he would do so in a contract with no price limitation. Yet that is what he expected this Commission of Inquiry to believe.⁵⁰

20. Moreover, the CCDC contract was located by the OPP in the possession of the Hudson's Bay Company, the parent company of Zeller's. Mr. Sennett had no relationship with Zeller's and there is no reason he would have provided the contract to them. He testified that he did not provide a copy of the contract to Zeller's.⁵¹ However, Mr. Nazarian was the landlord to Zeller's and it was Zeller's, more than any other tenant that was complaining of the leaks. It is an inescapable conclusion that it was Mr. Nazarian, or someone on his behalf, who presented the CCDC document to Zeller's in an effort to assuage them and convince them that steps were being taken to fix the roof, when in fact no such steps were being taken.

Mr. Nazarian asks Mr. Sennett to sign a contract between Eastwood Mall and The Empire Roofing and Restoration Inc. that contains invoices for work done (or to be done) by Empire

21. In August 2008, Mr. Sennett was invited to Levon Nazarian's office.⁵² Mr. Nazarian and his son, Levon, were present. There he was presented with a contract between The Empire Roofing and Restoration Inc. and the Eastwood Mall. The contract contained a series of invoices. Mr. Sennett was asked to

⁴⁹ Evidence of Robert Nazarian, July 29, 2013, at p. 18691, lines 1-25

⁵⁰ Evidence of Robert Nazarian, July 29, 2013, at pp. 18695, line 19-18697, line 16

⁵¹ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9676, line 15-9677, line 2

⁵² Evidence of Levon Nazarian, July 17, 2013, at p. 17046, lines 19-22

sign the contract by Mr. Nazarian. He naively did so, without making further inquiries.⁵³ This was, in retrospect, an error.

22. The Nazarians have suggested that it was Mr. Sennett who created these documents and directed Bob Nazarian to sign. However, the evidence proves otherwise.
23. First, the contract itself, as well as the invoices contained therein, was created by Levon Nazarian on his computer, on his own admission.⁵⁴ Knowing this, the Nazarians had to come up with a story that accounted for these items being found on Levon's computer. Hence, the story that the documents were prepared at Mr. Sennett's request.
24. However, that claim fell apart when it was revealed that the specific work set out in the invoices was an exact replica of the work that had been quoted by Peak Restoration a mere two months earlier.⁵⁵ That Peak restoration quote was sent to Mr. Nazarian and there is no evidence that it was ever in Mr. Sennett's possession.
25. Second, the Nazarians claimed that The Empire Roofing and Restoration Inc. was all Mr. Sennett's idea, set up to obtain financing for them for the mall. However, there were at least two additional invoices in the name of Empire for work to be done on the roof of the mall that were never submitted to anyone for financing. Those documents were both found by the OPP on Levon Nazarian's computer.⁵⁶
26. Third, another series of documents, all in the name of Levon Project Management, were created by Levon Nazarian. They purported to show additional work to be done by Empire for work on the mall, to the tune of

⁵³ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9713, line 10-9716, line 4

⁵⁴ Evidence of Levon Nazarian, July 17, 2013, at p. 17049, line 20-17050, line 2

⁵⁵ Exhibit 657

⁵⁶ Evidence of Levon Nazarian, July 17, 2013, at p. 17072, line 9-17086, line 26; pp. 17097, line 1-17098, line 5; Exhibits 01210 and 01211

approximately \$3.6 million. These documents were never submitted to any financial institution for lending purposes. Rather, they were located by the OPP on Levon's computer.⁵⁷

27. Fourth, while the Nazarians would have this Commission of Inquiry believe that Mr. Sennett created all these documents for the purpose of obtaining financing, *there is no evidence that Mr. Sennett ever used the documents*. There were only ever used by Robert Nazarian.
28. On September 9, 2008, the documents were emailed by Mr. Sennett to William Elliott at ELNOS "on behalf of Bob Nazarian".⁵⁸ Mr. Sennett testified that he merely forwarded what he had received from Mr. Nazarian and that he never even saw the invoices that were contained within the contract.⁵⁹ On September 10, 2008, Mr. Nazarian (not Mr. Sennett) called and left an urgent message for Mr. Elliott, following up on the email.⁶⁰ That same day, Mr. Fabris, Mr. Nazarian's lawyer, wrote to Mr. Elliott *on behalf of Mr. Nazarian* inquiring about the status of the loan.⁶¹ Mr. Nazarian was asked in cross-examination whether he had directed Mr. Fabris to send this letter. After several attempts to avoid answering the question and blame Mr. Sennett, he eventually conceded that it was "very much possible".⁶²
29. Moreover, with respect to ELNOS, Mr. Elliott testified that he had never met or dealt with Mr. Sennett.⁶³ This contradicted Mr. Nazarian's false claim that Mr. Elliot knew Mr. Sennett - another example of Mr. Nazarian's evidence being contradicted by other, more credible witness.⁶⁴ Rather, Mr. Elliott testified that all of his dealings were with Mr. Nazarian directly or with agents

⁵⁷ Evidence of Levon Nazarian, July 17, 2013, at p. 17072, line 9-17086, line 26; pp. 17097, line 1-17098, line 5; Exhibits 01210 and 01211; Exhibits 01208, 01209, 01215

⁵⁸ Exhibit 00226, at p. 2

⁵⁹ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9716, line 11-9717, line 16; pp. 9758, line 6-9767, line 16

⁶⁰ Evidence of Robert Nazarian, July 29, 2013, at p. 18757, lines 8-10; Exhibit 00226, at p. 1

⁶¹ Exhibit 00226, at p. 11

⁶² Evidence of Robert Nazarian, July 29, 2013, at pp. 18758, line 3-18759, line 9

⁶³ Evidence of William Elliott, August 1, 2013, at pp. 82, line 11-84, line 22

⁶⁴ Evidence of Robert Nazarian, July 29, 2013, at p. 18761, lines 9-13

acting on Mr. Nazarian's behalf. And, those dealings started *before The Empire Roofing and Restoration Inc. was even registered*. As described by Mr. Elliott, it was abundantly clear that at all stages of the application, Mr. Nazarian was "captain of the ship".⁶⁵

30. On May 30, 2008, Mr. Nazarian met with Mr. Elliott in person at the ELNOS office. Mr. England was also present but said very little during the meeting. Mr. Sennett was not at the meeting and his name, and the name of The Empire Roofing and Restoration Inc., never came up. Mr. Nazarian indicated that he needed financing for the roof and proposed a loan from ELNOS and another lending institution for \$250,000 total. He said he would raise an additional \$200,000 of his own money to get work started on the roof of the mall. However, he had told Mr. Elliott he would need almost a million dollars total to repair the roof. Mr. Nazarian was proposing that he hire a contractor for the repairs without having the money needed to fulfill the contract. Mr. Elliott was not impressed with that suggestion as he felt it was fraudulent and he ended the meeting soon thereafter. He advised Mr. Nazarian that he would need to see a very comprehensive business plan before ELNOS would even consider funding.⁶⁶
31. On July 14, 2008, Mr. Dmitri Yakimov met with Mr. Elliott as agent for Mr. Nazarian to follow up on the May 30th meeting. Mr. Nazarian claimed that he never assigned that task to Mr. Yakimov.⁶⁷ That was a clear lie, as both Mr. Yakimov and Mr. Elliott testified that Mr. Yakimov was acting as Mr. Nazarian's agent for the purpose of that meeting. Moreover, Mr. Fabris had prepared a memo to file that detailed a meeting on July 16, 2008, wherein Mr. Nazarian had participated in a discussion whereby Mr. Yakimov was directed to proceed with the ELNOS financing issue.⁶⁸ During the July 14th meeting,

⁶⁵ Evidence of William Elliott, August 1, 2013, at pp. 86, line 10-88, line 1

⁶⁶ Evidence of William Elliot, August 1, 2013, at pp. 56, line 22, 63, line 22-63, line 10; Evidence of Robert Nazarian, July 29, 2013, at p. 18709, lines 7-24; Exhibits 00723 and 00226, at p. 21

⁶⁷ Evidence of Robert Nazarian, July 29, 2013, at pp. 18715, line 9-18718, line 17

⁶⁸ Exhibit 1495

Mr. Elliott indicated that he was not impressed by what Mr. Nazarian had proposed at their May 30th meeting and again indicated that he would need to see a proper application, including a very comprehensive business plan, before ELNOS would even consider financing.⁶⁹

32. The involvement with ELNOS ended in September 2008, when, after having received and reviewed the materials, Mr. Elliott wrote to Mr. Fabris outlining the history of the matter and indicated that there was no application before ELNOS to be considered.⁷⁰
33. Mr. Nazarian also used the documents in order to forestall default proceedings by the Royal Bank of Canada. Between June and September 2008, the bank was threatening to default on the mortgage because of the physical condition of the Algo Mall. Mr. Mand was retained by Mr. Nazarian to deal with the bank. Ultimately, after multiple demands by the bank for proof that the physical condition of the mall was being addressed, Mr. Mand sent a copy of the contract and invoices to Mr. Davidson at the RBC.⁷¹ It is important to note that *Mr. Nazarian was copied on the email that attached the Empire contract and the earlier emails* so he was fully aware that the document was being used for this purpose. Moreover, a review of the email chain clearly suggests that Mr. Mand received the document from Mr. Nazarian and that it was Mr. Nazarian who instructed him to use the document to forestall default proceedings by the bank.
34. Notably, Mr. Sennett and both of the Nazarians testified that Mr. Sennett had no involvement with RBC or the mortgage. Despite that, Mr. Nazarian tried to implicate Mr. Sennett by repeatedly claiming that Mr. Nazarian was referred to Mr. Mand by Mr. Sennett and suggesting that Mr. Sennett was

⁶⁹ Exhibit 00226, at p. 21

⁷⁰ Exhibit 0226, at p. 21

⁷¹ Exhibit 00226

communicating with Mr. Mand about RBC.⁷² This is just another example of Mr. Nazarian falsely blaming others for his misconduct.

Mr. Nazarian opened a bank account in the name of The Empire Roofing and Restoration Inc. without Mr. Sennett's knowledge

35. Mr. Sennett testified that Mr. Nazarian had set up a bank account in the name of The Empire Roofing and Restoration Inc. without his knowledge.⁷³ Mr. Nazarian claimed that the account was set up on Mr. Sennett's direction and that he just followed Mr. Sennett's order to do so. Mr. Nazarian also claimed that he attended at the bank with Mr. Sennett and Mrs. Nazarian to open the account.

36. However, the evidence proves that it was Mr. Nazarian and his wife who opened the account and had signing authority for the company. The original registration card shows that the account was opened on June 27, 2008. The person who had sole signing authority was Mr. Nazarian. His wife also had signing authority, albeit not on her own. The registration card shows Mr. and Mrs. Nazarian's signatures in blue ink. Mr. Sennett's signature was in black ink. Moreover, on September 23, 2009, Mr. and Mrs. Nazarian's signatures are struck out in black ink and Mr. Sennett was added as the sole signing authority.⁷⁴ This was completely consistent with Mr. Sennett's evidence that once he found out about the account, he took steps with the bank to have the Nazarians removed as signing authorities and later closed the account.

Mr. Nazarian used the bank account without Mr. Sennett's knowledge for his own purposes

37. Not only was the account opened by Mr. and Mrs. Nazarian, but the evidence shows the account was being used by Mr. Nazarian (even though he claims The Empire Roofing and Restoration Inc. was Mr. Sennett's idea and

⁷² Evidence of Robert Nazarian, July 29, 2013, at pp. 18766, line 3-18768, line 4

⁷³ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9673, line 18-9674, line 12; p. 9787, lines 16-21

⁷⁴ Evidence of Robert Nazarian, July 29, 2013, at pp. 18776, line 9-18777, line 13; Exhibit 6216

creation). On July 3, 2008, Mr. Nazarian deposited \$84,000 into the account.⁷⁵ That same day, he transferred \$80,000 to Peak Restoration Inc. to pay them for the work they had done on the mall.⁷⁶ There was no relationship between The Empire Roofing and Restoration Inc. and Peak Restoration. Peak Restoration had entered into a contract with Eastwood Mall.

38. Mr. Nazarian claimed that he used the account on Mr. Sennett's direction in an attempt to show that The Empire Roofing and Restoration Inc. had an active bank account with transactions. However, this once again defies belief. If The Empire Roofing and Restoration Inc. was a legitimate attempt to secure financing, as claimed by the Nazarians, there would be no need for this. Moreover, if that was indeed the case, then one would have expected Mr. Nazarian to question the use of the account, but he did not.⁷⁷ The inevitable conclusion is that Mr. Nazarian was lying to this Commission; he opened the account without Mr. Sennett's knowledge and improperly used the account to funnel money to Peak Restoration so that The Empire Roofing and Restoration Inc. would appear to be a general contractor.

Mr. Nazarian continued to use the account even after he claimed he was told to drop the entire The Empire Roofing and Restoration Inc. idea by Mr. Fabris

39. Mr. Nazarian testified that in and around September 2008, he consulted with Mr. Fabris about The Empire Roofing and Restoration Inc. and that Mr. Fabris told him to drop the idea and he did so.
40. The fact that it was Mr. Nazarian who opened and used the account, and lied to this Commission by blaming Mr. Sennett, was further evidenced by other transactions that passed through the account after this purported advice from Mr. Fabris.

⁷⁵ Exhibit 6203

⁷⁶ Exhibit 6205

⁷⁷ Evidence of Robert Nazarian, July 29, 2013, at pp. 18782, line 1-18783, line 19

41. On October 3, 2008, Mr. Nazarian asked Mr. Sennett to create an invoice for approximately \$14,310 for roof repairs.⁷⁸ Mr. Sennett's evidence was that Mr. Nazarian used this invoice to fraudulently collect insurance money for repairs to his residence that were never done by The Empire Roofing and Restoration Inc.⁷⁹ When asked about this invoice by Commission counsel Mr. Doody, Mr. Nazarian claimed he could not remember what the invoice was used for. Thus, Mr. Sennett's evidence is unchallenged on this point.
42. However, what is most notable for this Commission of Inquiry is that Mr. Nazarian deposited this amount into the Empire account on January 27, 2009, long after he claims he dropped the whole idea of The Empire Roofing and Restoration Inc. on Mr. Fabris' suggestion.⁸⁰ Then, a short while thereafter (February 2009), Mr. Nazarian wrote himself a cheque from the account for the bulk of that money, \$10,150.⁸¹ This proves that Mr. Nazarian was the one using the bank account for his own fraudulent purposes long after he claimed he dropped the whole idea at Mr. Fabris' suggestion.

Mr. Nazarian created other documents in the name of The Empire Roofing and Restoration Inc. as part of his scheme and tried to blame the documents on Mr. Sennett

43. There were at least two other documents that were created in the name of The Empire Roofing and Restoration Inc. Once again, Mr. Nazarian claimed that these documents were created by Mr. Sennett, but (once again) the evidence proves this to be untrue.
44. Exhibit 1297 is an unsigned contract between The Empire Roofing and Restoration Inc. and the Eastwood Mall for work to be done on the mall by Empire. The total cost on the contract is approximately \$3.6 million. Mr.

⁷⁸ Exhibit 3775

⁷⁹ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9708, line 18-9710, line 2; pp. 9774, line 10-9776, line 3

⁸⁰ Exhibit 6206

⁸¹ Exhibit 6207

Sennett testified that he had never seen the document before.⁸² This testimony was unchallenged in cross-examination. Levon Nazarian testified he, too, had never seen the document. However, there can be no doubt that Mr. Bob Nazarian saw the document for two reasons. First, *it was located by the OPP at his place of residence*. Second, a duplicate of the same document was located by the OPP, however this version was signed by Mr. Nazarian alone.⁸³ It, too, was located by the OPP at Mr. Nazarian's residence.

45. Mr. Nazarian tried to justify why the documents were located at his residence and signed only by him, and not Mr. Sennett. He initially claimed that Mr. Sennett had sent him the documents via email.⁸⁴ However, when cross-examined by counsel for Mr. Sennett, he could not point to the existence of such an email anywhere.⁸⁵ Then, when pressed on the issue, he changed his evidence and claimed he never said he received it via email.⁸⁶ This was patently untrue given his earlier evidence. The inevitable conclusion is that these two documents were found at Mr. Nazarian's residence, and signed only by him, because he had created the documents himself. There is no evidence whatsoever that Mr. Sennett was connected to those documents at all. Mr. Nazarian was clearly lying when he tried to blame Mr. Sennett for the creation of these documents.
46. Exhibit 5425 is another invoice in the name of The Empire Roofing and Restoration Inc. The invoice includes an amount payable to The Empire Roofing and Restoration Inc. (i.e. Mr. Sennett) for \$136,500. This document was located in Mr. Nazarian's office. Mr. Nazarian again claimed that this document was created by Mr. Sennett and emailed to him. However, Mr. Sennett testified that he never saw this document prior to the inquiry.⁸⁷

⁸² Evidence of Alexandre Sennett, May 14, 2013, at pp. 9707, line 1-9708, line 13

⁸³ Exhibit 5393

⁸⁴ Evidence of Robert Nazarian, July 25, 2013, at p. 18075, line 1-18077, line 10

⁸⁵ Evidence of Robert Nazarian, July 29, 2013, at pp. 18748, line 20-18750, line 7

⁸⁶ Evidence of Robert Nazarian, July 29, 2013, at pp. 18749, line 20-18752, line 2

⁸⁷ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9727, line 17-9728, line 18

47. A review of the document itself belies any assertion that Mr. Sennett created this document. Mr. Nazarian would have this Commission of Inquiry believe that Mr. Sennett was charging Mr. Nazarian a vast sum of money (\$136,500) for setting up The Empire Roofing and Restoration Inc. and *not* successfully obtaining any financing. Such a claim is utterly incredible. Moreover, when cross-examined on the issue, Mr. Nazarian testified that if the document had truly been created by Mr. Sennett it would show him to be a terrible and greedy person who was trying to unfairly make money from Mr. Nazarian. One would expect, in such circumstances, that Mr. Nazarian would have cut off all contact with Mr. Sennett as a result. However, he was forced to concede in cross-examination (after multiple attempts to not answer the question) that he continued to work with Mr. Sennett and even invited him back to the mall to do work as late as 2012.⁸⁸ Again, this defies belief. The more logical, and simple explanation, is that this document was another in a whole series of documents created by Mr. Nazarian (or his son) because The Empire Roofing and Restoration Inc. was Mr. Nazarian's idea, conceived of by him to try to secure financing and stave off default proceedings by RBC.

Mr. Nazarian directed Mr. Sennett to enter into a contract with Fibron Inc. on his behalf, then lied to the Commission of Inquiry and claimed that Mr. Sennett entered into the contract on his own without permission.

48. In and around mid-August 2008, an agreement was signed between Eastwood Mall and a company known as Fibron Inc. for repairs to the roof of the mall. Mr. Nazarian claimed that Mr. Sennett entered into the contract on his behalf without his authorization. There is an email from Mr. Sennett indicating that he has signing authority on behalf of Eastwood Mall to enter into the agreement.⁸⁹ Mr. Sennett testified that he was asked by Mr. Nazarian to deal with the matter on his behalf and sign the contract.⁹⁰ A review of the documents corroborates Mr. Sennett's evidence that he did so at the request of

⁸⁸ Evidence of Robert Nazarian, July 29, 2013, at pp. 18752, line 10-18755, line 18

⁸⁹ Exhibit 1103

⁹⁰ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9718, line 11-9720, line 17

Mr. Nazarian. On August 14, an email from Mr. Halford to Mr. Shaw of Fibron Inc., indicates that Mr. Nazarian is eager to hire Fibron immediately to repair the roof, subject only to an agreement on cost.⁹¹ Mr. Nazarian conceded this point in cross-examination as well.⁹² On August 15 at 12:52 p.m., Mr. Shaw sent the quote for the work to Mr. Nazarian.⁹³ That same day, at 5:49 p.m., Mr. Sennett sent an email to Mr. Shaw indicating that Mr. Shaw and Fibron Inc. could proceed with the work and that he has signing authority for the corporation. Most importantly, the email also says that *Mr. Sennett has communicated with Mr. Nazarian about this and that Mr. Nazarian can be contacted for any follow up details.*⁹⁴ Even Mr. Nazarian conceded, in cross-examination, that he and Mr. Sennett discussed the Fibron contract prior to 5:49 p.m.⁹⁵ A further email was sent Mr. Nazarian to Mr. Sennett on August 15th at 9:41 p.m., *attaching the Fibron Inc. quote from Mr. Shaw.* There would be no reason why that document would be sent from Mr. Nazarian to Mr. Sennett unless Mr. Nazarian had asked Mr. Sennett to be involved in the contract negotiations with Fibron on Mr. Nazarian's behalf. Mr. Nazarian's assertion that he was seeking Mr. Sennett's opinion on the document, when Mr. Sennett had no background or experience in roofing or construction, was utterly incredible.⁹⁶

Mr. Sennett signs an offer of employment for Ms. Bear on Mr. Nazarian's instruction

49. The uncontradicted evidence was that between 2010 and 2012, Mr. Sennett was living and working in Africa. He would occasionally return to Toronto and, at Mr. Nazarian's request, come to Elliot Lake. The evidence is that

⁹¹ Exhibit 5394

⁹² Evidence of Robert Nazarian, July 29, 2013, at p. 18740, lines 8-12

⁹³ Exhibit 3770

⁹⁴ Exhibit 1103

⁹⁵ Evidence of Robert Nazarian, July 29, 2013, at p. 18733, lines 2-21

⁹⁶ Evidence of Robert Nazarian, July 29, 2013, at pp. 18734, line 19-18735, line 23

between 2010-2012, Mr. Sennett attended in Elliot Lake on approximately three occasions.⁹⁷

50. On one of those occasions, Mr. Nazarian asked Mr Sennett to accompany him when he interviewed Ms. Bear as a prospective mall manager. Since Mr. Sennett was already in Elliot Lake and had completed his IT work, he agreed to do so.⁹⁸ Subsequently, Mr. Nazarian decided to hire Ms. Bear. An offer of employment was sent to her in May 2011. The offer was signed by Mr. Sennett as Acting CEO of ALGO mall.⁹⁹
51. In retrospect, this was a mistake. Mr. Sennett readily admitted that he was not acting CEO at all. However, he had signed as such at Mr. Nazarian's request.¹⁰⁰ This further proves (as with the Fibron Inc. contract) that Mr. Nazarian was willing to appoint Mr. Sennett to do certain tasks at the mall, even though he was not formally employed or paid by the mall in that capacity. His only formal capacity was as the IT supervisor. It also proves how trusting and naïve Mr. Sennett was that he was prepared to blindly sign his name to documents at the request of Mr. Nazarian, even though he held no formal title with the Algo Mall. This corroborates his position that he was an overly trusting dupe of Mr. Nazarian.
52. In summary, the evidence proves beyond any doubt, that it was Mr. Nazarian who conceived of, controlled and directed The Empire Roofing and Restoration Inc. in a misguided attempt to secure financing at a time when he, and the mall, were in desperate financial shape. Mr. Sennett was not, as suggested by Mr. Nazarian and Levon Nazarian, the founder and operating mind of the company; rather, he was an overly trusting and naïve friend who was taken in by Mr. Nazarian and duped into registering the company and blindly signing some documents.

⁹⁷ Evidence of Levon Nazarian, July 17, 2013, at p. 17032

⁹⁸ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9744, line 13-9747, line 17

⁹⁹ Exhibit 3828

¹⁰⁰ Evidence of Alexandre Sennett, May 14, 2013, at pp. 9744, line 13-9747, line 17

53. This is not only proven by the evidence outlined above, but by the respective manner in which Mr. Sennett and Mr. Nazarian testified. Their contrasting manner of testimony leads to one inevitable conclusion; Mr. Sennett was telling the truth and Mr. Nazarian was not.

Mr. Sennett was an honest and forthright witness

54. Mr. Sennett was fully cooperative with this Inquiry. He produced whatever documents he had when requested and attended before the Commissioner on May 14, 2013 to testify. He did not have counsel with him because he did not perceive the need for representation given his position that he had not done anything improper. He only retained counsel, and sought standing, after receiving Notice (very fairly) from Commission counsel that he may be the subject of findings by the Commissioner.
55. Mr. Sennett's testified in a candid and forthright manner, even when the answers were not helpful to his position. He was responsive to the questions and did his best to answer. And, perhaps of the most importance, his evidence was amply supported by the documentary record. In other words, Mr. Sennett came across as a candid and honest, albeit very naïve, witness in these proceedings.

Mr. Nazarian was an unsavoury witness who refused to take any responsibility for the collapse of the mall and blamed everyone else for what occurred

56. This stands in stark contradiction with the testimony of Mr. Nazarian. Mr. Nazarian was a most unsavoury witness. He was not at all candid or forthright. He was unresponsive to the questions asked of him and, at every opportunity, gave lengthy speeches to justify his conduct, even if it had no bearing on the question being asked. His evidence was contradicted repeatedly and in materials ways by the documentary record before this Commission (as outlined above) and by other witnesses (i.e. Mr. Yakimov, Ms. Bear, Mr.

Elliott). Whenever confronted with the documentary evidence or conflicting testimony, he took the opportunity to not only blame others, but to denigrate them as well. He publicly blamed and denigrated each and every one of his managers (Mr. Turner, Mr. England, Ms. Henri McLeery), Mr. Day, Mr. Yakimov, Mr. Hurmunzi, and even his lawyers (Mr. Fabris and Mr. Mand). He even went so far as to make false allegations against Mr. Mand, suggesting that he was being investigated by the Law Society of Upper Canada and under suspension, when that was demonstrably false. Mr. Nazarian's clear *modus operandi* was to 'throw everyone under the bus' to save his own skin. It was most unsavoury to observe.

57. Moreover, in addition, Mr. Nazarian was proven to be a liar. He testified that he had never lied in a document intended for a court proceeding.¹⁰¹ However, the evidence proved that in April 2009 (long after Mr. Fabris warned him to drop The Empire Roofing and Restoration Inc. idea), he signed an affidavit (that was never formally sworn) as part of the Peak Restoration litigation that contained material mistruths regarding The Empire Roofing and Restoration Inc. More specifically, paragraphs 24-25 of that signed statement claimed that Mr. Nazarian hired The Empire Roofing and Restoration Inc. and paid them 1.7 million dollars.¹⁰² These statements were both untrue. In other words, Mr. Nazarian lied in the statement that he signed, and then lied to this Commission by claiming he had never lied previously in a document intended for court. And, those lies were not only inconsistent with the evidence he gave at the Inquiry, but were used to perpetuate a series of mistruths regarding The Empire Roofing and Restoration Inc.

58. When confronted with these lies, Mr. Nazarian took the opportunity to allege that Mr. Sennett and Mr. Mand engaged in a conspiracy to create a false document and have him sign it. He claimed that Mr. Sennett was "behind the curtain". He also took the opportunity to falsely defame Mr. Mand by

¹⁰¹ Evidence of Robert Nazarian, July 29, 2013, at p. 18785, lines 6-19

¹⁰² Exhibit 6188

claiming that Mr. Mand was being investigated and under suspension by the Law Society.¹⁰³ These allegations against Mr. Mand were proven to be untrue thanks to Mr. Doody's re-examination on the issue, during which he tendered proof that Mr. Mand was a member of good standing with the Law Society of Upper Canada.¹⁰⁴ Again, this stands as another example of Mr. Nazarian's willingness to lie and defame others to save his own skin.

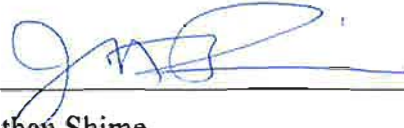
59. Simply put, Mr. Nazarian is a proven liar who has attempted to scapegoat everyone, including Mr. Sennett for his misdeeds. His evidence should not, and cannot be accepted by this Honourable Commission. In other words, the evidence proves that Mr. Sennett was an overly trusting and naïve dupe who was taken in by Mr. Nazarian in relation to The Empire Roofing and Restoration Inc.

¹⁰³ Evidence of Robert Nazarian, July 29, 2013, at pp. 18811, line 1-18812, line 25

¹⁰⁴ Evidence of Robert Nazarian, July 31, 2013, at pp. 19267, line 22-19269, line 7; Exhibit 6225

All of which is respectfully submitted.

Dated at Toronto the 7th day of August, 2013.



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