IN THE MATTER OF AN ARBITRATION
UNDER THE *ARBITRATION ACT, 1991*,

BETWEEN:

DMITRI TEREKHOV

Claimant

-and-

CHEMICAL VAPOUR METAL REFINING INC., CVD MANUFACTURING INC., CVMR CORPORATION, CVD CONSOLIDATED ACCOUNTS MANAGEMENT INC., NET PROCESS TECHNOLOGIES HOLDING INC., REPROTECH LIMITED, AND KAMRAN KHOZAN

Respondents

FINAL AWARD

Stan Fisher, Q.C.
The Arbitrator

HODDER BARRISTERS
181 University Avenue, Suite 2200
Toronto, ON M5H 3M7

J. Gardner Hodder
Tel: 416.601.6809
Fax: 416.947.0909
Lawyers for the Claimant

WIRES JOLLEY LLP
90 Adelaide Street West, Suite 200
Toronto, ON M5H 3V9

David Wires
Tel: 416.366.5006
Fax: 416.366.0002
Lawyers for the Respondents

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I. INTRODUCTION AND OVERVIEW

1. This arbitration arises from a dispute between the Claimant, Dmitri Terekhov ("**Terekhov**") and his fellow shareholder, Kamran Khozan ("**Khozan**"). In June 2014, Terekhov issued a statement of claim in Ontario Superior Court as against Khozan and the corporate respondents (the "**Court Action**"), seeking relief on the grounds of oppression, non-payment of dividends, and wrongful termination.

2. By order of Master McAfee dated November 19, 2014, and with the consent of the parties, the claims made in the Court Action were stayed and directed to me for binding arbitration, except for Terekhov's claims for wrongful termination.

3. The key issues at stake in this arbitration centre on Terekhov's status as a minority shareholder in Chemical Vapour Metal Refining Inc. ("**CVMRI**"), one of the respondent corporations. In particular, Terekhov alleges that Khozan, as the controlling mind and alter ego of the respondent corporations, engaged in various acts of oppression and misrepresentations.

A. Procedural History

4. Following Master McAfee's order in the Court Action, the parties agreed to effectively bifurcate this arbitration. Further to that agreement, the Respondents brought a summary judgment motion seeking to dismiss Terekhov's claims on the basis that they were statute-barred under the *Limitations Act, 2002*, and a declaration that Terekhov owned no shares in CVMRI. In the alternative, the Respondents sought a declaration that Terekhov was the owner of preference shares pursuant to the terms of a Special Resolution of Shareholders and Directors of CVMRI dated April 11, 2005 (the "**2005 Resolution**").

5. As part of the Respondents' motion, the parties exchanged and filed extensive written evidence, and arranged to lead *viva voce* testimony from Terekhov, Khozan, and two additional witnesses (by videoconference). The parties also filed extensive written and oral argument (collectively, "**Phase 1**" of this arbitration).

6. On December 10, 2015, I issued an Interim Award dismissing the Respondents' motion. The importance of the findings I made in the Interim Award are discussed further below, but in short, I found that Khozan deceived Terekhov so as to disentitle the Respondents from relying on the applicable limitation period. I also found that Terekhov was the "owner of common shares [in CVMRI] as represented by the share certificates he holds".

7. The Respondents subsequently brought a motion by letter dated January 8, 2016, alleging that the Interim Award, *inter alia*, failed to afford procedural fairness to the Respondents. Following the exchange of written and oral submissions, I issued a Procedural Order dated July 21, 2016, in which I dismissed the bulk of the Respondents' allegations, with the following exception:

> 57. I ought to have simply dismissed the Respondents' motion on the limitation defence and heard the parties on the second part of the motion namely, the status of the Claimant's shareholdings.
>
> 58. I therefore recall my conclusion on the status of the Claimant's shareholdings and invite submissions on how that part of the motion should be addressed.

8. The Respondents then brought an application in Superior Court, seeking to set aside or vary my Interim Award and Procedural Order, and to have me removed as arbitrator in these proceedings. On November 23, 2016, Justice Stewart dismissed the Respondents' application, concluding that there has "been no procedural unfairness or apprehension of bias".

B. Evidence and Pleadings

9. Following Justice Stewart's decision, the parties, on consent, set a timetable for further production of documents, examinations for discovery, and ultimately the hearing. At the hearing they presented their evidence and argument in respect of the remaining issues at stake in this arbitration ("**Phase 2**") over the course of 8 hearing days in November and December 2017. In addition to the *viva voce* and affidavit evidence of Terekhov and Khozan themselves, *viva voce* evidence was led from the following "expert" witnesses during Phase 2:

a. Patricia Harris: Ms. Harris is a chartered business valuator and investigative forensic accountant with Fuller Landau LLP. She was retained by Terekhov to prepare an expert valuation report in respect of CVMRI. Her Calculation Valuation Report, dated October 5, 2017 (the "**Harris Report**"), is the basis upon which Terekhov claims compensation for his shares in CVMRI.

b. Hartley Nathan: Mr. Nathan is a corporate lawyer with Minden Gross LLP. Shortly before the November 2017 hearing dates, Mr. Nathan delivered a report at the request of the Respondents, in which he set out his opinion as to the status of shareholdings in CVMRI (the "**Nathan Report**"). There was some debate as to whether Mr. Nathan ought to be qualified as an expert given that the scope of his opinion was limited to Canadian law. Ultimately, I directed that Mr. Nathan should give his evidence over the objection of Claimant's counsel, as I found that his evidence would be in the nature of assistance for me in respect of the key legal issues in dispute, and that such assistance could just have easily come from the Respondents' counsel table.

c. Errol David Soriano: Mr. Soriano is a chartered business valuator. He was retained by the Respondents to prepare a limited critique report commenting on the scope of the Harris Report and the suitability of the findings contained therein for the purposes of this arbitration (the "**Soriano Report**").

10. The Respondents also presented written and *viva voce* evidence from John Finley. Mr. Finley is an experienced corporate lawyer and a long-time friend of Khozan. He was involved at

least tangentially with the business of CVMRI and its affiliated companies throughout the relevant time period; commencing in 2011, Mr. Finley began to serve as general counsel to CVMRI.

11. In addition to the evidence of Khozan himself, Mr. Nathan, and Mr. Finley, the Respondents also submitted will-say statements from an additional 14 witnesses, 4 of whom briefly testified *viva voce* during Phase 2: Nathakumar Victor Emmanuel, Sydney Lu, Serge Kovtun, and Mohammed Al Quayyam.

12. For the remaining witnesses, counsel agreed during the hearing, in the interests of time, that their will-say statements would be admitted as evidence in the arbitration, subject to a general objection of Claimant's counsel as to the questionable relevance of that evidence.

13. Both parties have amended their pleadings in this matter on several occasions. The final form of pleadings consists of the following:

a. Claimant's Amended Statement of Claim in Arbitration, dated April 9, 2015;
b. Respondents' Fresh as Amended Answer to Statement of Claim in Arbitration, dated February 7, 2017;
c. Claimant's Fresh as Amended Reply to the Fresh as Amended Answer to Statement of Claim in Arbitration, dated September 7, 2017.

14. Finally, I have had the benefit of written and oral submissions from all parties in respect of Phase 2 of the arbitration.

C. Jurisdiction

15. My jurisdiction is not in dispute. The Order of Master McAfee dated November 19, 2014, which was made on consent of the parties, directed that the "issues of oppression, alter-ego, and fraudulent conveyance, as pleaded, shall be determined by the arbitrator and shall be binding on

the parties". As noted above, the pleadings in this matter have since been amended, on consent of the parties, and the full scope of the dispute is therefore within my jurisdiction in this arbitration.

II. FACTUAL BACKGROUND

16. Some of the factual background that is relevant to this Phase 2 of the arbitration was described in my Interim Award, parts of which are repeated here for the sake of convenience. Certain aspects of the factual background to this arbitration are not in dispute, whereas in other respects there is significant disagreement as between the parties.

17. The factual background to this dispute spans more than a decade and involves numerous transactions and non-party entities; what follows is not intended to be a comprehensive telling of this full background, but rather only a brief summary of those factual events that I consider relevant to my resolution of the issues in dispute.

A. Early history of CVMRI

18. Terekhov is a scientist who came to Canada from Russia in 1990 to pursue his doctorate at York University. During his time at York University, he began to work for a company named Mirotech Ltd., and in 1997, upon graduating, he took on a full-time research scientist role with the company.

19. Between 1997 and 1999 Mirotech faced significant financial difficulties, ultimately leading to bankruptcy. Khozan, who at that point was already a successful businessman, purchased the assets of Mirotech out of bankruptcy through Net Process Technologies Holding Inc ("**Net Process**") and its subsidiary, CVD Manufacturing Inc. ("**CVDM**"), another of the corporate respondents.

20. CVMRI was incorporated under the *Canada Business Corporations Act* on December 1, 1999, in order to continue the business that was carried on by Mirotech and purchased by CVDM, namely the production of industrial moulds and the development of processes connected to the extraction of metals, particularly nickel, from ores and concentrates. In particular, CVMRI was incorporated in response to potential new business from Falconbridge Ltd., a nickel company ("**Falconbridge**").

21. From the time of its incorporation, there is no debate that CVMRI has been financed almost exclusively by Khozan himself, through Net Process. As discussed below, the company's financial records show various shareholder loans and management bonuses which are reflective of the manner in which CVMRI's financial affairs were managed by Khozan. In general, Terekhov's evidence of CVMRI's corporate and financial matters and his responsibility as a director is that he understood he would be required "to sign certain documents from time to time", but that he completely trusted Khozan's ability to run the business and to deal with the financial and corporate organization of the company.

22. CVMRI was authorized to issue an unlimited number of one class of shares, namely common shares. At the time of CVMRI's incorporation, Terekhov and Khozan were listed as the company's directors, and 100 issued common shares were divided such that Khozan (held by Net Process, his corporate alter ego)[1] held 80 and Terekhov held 20.

[1] Interim Award at para 26.

23. Terekhov subsequently became an employee of CVMRI through a contract for professional services dated July 1, 2000, which describes Terekhov as experienced in the fields of "chemistry and chemical vapour deposition technology".

24. There is some disagreement between the parties as to the circumstances surrounding CVMRI's initial incorporation, the purchase of Mirotech's assets (namely whether Khozan was alerted to the opportunity by Terekhov, or whether he learned of it through his own contacts), and the agreed scope of Terekhov's responsibilities within CVMRI and the other corporate respondents. To the extent that these disagreements are relevant to the issues at stake in this arbitration, they are addressed further below.

B. Popik and the 2000 USA

25. Shortly after the incorporation of CVMRI, Terekhov introduced Khozan to Vladimir Popik Jr. ("**Popik**"), an academic acquaintance of his and professor at Bowling Green State University. Terekhov and Khozan agreed that Popik's technical expertise would be of value to CVMRI, and that he should be given an equity stake in the corporation. Specifically, each of Terekhov and Khozan agreed to provide 2.5 common shares to Popik, giving him 5% of the outstanding common shares of CVMRI.

26. Terekhov, Khozan and Popik sought to formalize this arrangement by way of a Unanimous Shareholders' Agreement dated January 1, 2000 (the "**2000 USA**"). The 2000 USA states, in the preamble, that CVMRI's authorized capital consists of 1,000,000 common shares issued and outstanding, of which Net Process owns 775,000, Terekhov owns 175,000, and Popik owns 50,000. Section 1.5.1 of the 2000 USA repeats this description of share ownership.

27. Other relevant provisions from the 2000 USA include:

a. Section 2.04: CVMRI's board of directors shall consist of a minimum of 3 directors. Net Process is entitled to appoint four directors, or alternatively, one director with four votes. Terekhov and Popik are each entitled to nominate one director, so long as they remain shareholders.

b. Section 2.06: various corporate actions, including the declaration and payment of dividends, and any change in the authorized or issued capital of the corporation, shall not be taken unless approved by the directors (both Terekhov and Khozan, the latter through Net Process);

c. Section 3.02: the corporation must follow a specific process if additional shares are to be issued from treasury. In particular, existing shareholders have the right to purchase newly issued shares *pro rata* based upon their existing ownership;

d. Section 3.05: if a non-incorporated shareholder ceases to be employed by CVMR, the other shareholders have the right to purchase his shares;

e. Section 4.09: the parties to the 2000 USA agree to resolve any disputes by way of arbitration.

28. The parties now disagree as to the efficacy of certain aspects of the 2000 USA, and the agreement's effect on the current share structure of CVMRI. These matters are discussed further below.

C. The Falconbridge and JJNI Agreements

29. From CVMRI's inception, Falconbridge was one of its most important clients, and much of the technical work carried out by Terekhov while employed by CVMRI was for Falconbridge's benefit. CVMRI and Falconbridge entered into an agreement for a joint development project dated December 13, 2001 (the "**Falconbridge Agreement**"). Pursuant to the Falconbridge Agreement, Terekhov worked on developing processes related to the use of carbonyl technology to refine materials containing nickel, copper and other metals.

30. In or around 2004, Khozan began negotiations with a Chinese company known as Jilin Jien Nickel Industry Co. ("**JJNI**"), with the goal of building a plant in China in order to make use of CVMRI's proprietary technology and processes. On June 12, 2004, CVMRI and JJNI executed a Technology Transfer Agreement (the "**JJNI Agreement**"), which provided that JJNI would pay CVMRI USD $18 million for the construction of the plant, and an additional USD $9.1 million in technology transfer fees.

31. At or around the same time, Khozan claimed to have invested approximately USD $8.5 million in JJNI's parent company, HOROC, in return for a 20% equity stake. There is considerable disagreement as between the parties surrounding the details of this investment, and in particular, how it was carried out through Khozan's family members, and the extent to which Khozan's investment may have been later misappropriated by Chinese officials connected to HOROC.

32. What is clear is that at the time of the JJNI Agreement, Khozan was extremely optimistic as to the business prospects available for CVMRI in China and was eager to capitalize on what he saw as valuable opportunities.

33. For the purposes of this arbitration, the relevance of CVMRI's dealings with Falconbridge and JJNI are two-fold. First, they have bearing, the Claimant alleges, on the appropriate valuation of CVMRI. Second, these dealings are the genesis of the events that ultimately led to the breakdown in the relationship between Khozan and Terekhov and the matters currently in dispute in this arbitration.

D. The $1 million "dividend"

34. It is common ground that work under the JJNI Agreement concluded in or about 2007, and that it was a lucrative project for CVMRI. According to Terekhov, in the wake of the execution of

the JJNI Agreement, Khozan represented to him that from the expected profits of the JJNI Agreement, Terekhov would be entitled to a "dividend" of USD $1 million (the "**JJNI Payment**"), being his approximate share of the USD $9.1 million in technology transfer fees.

35. There is considerable debate between the parties on this point. Terekhov's evidence surrounding the JJNI Payment is broadly denied by Khozan, though there is no disagreement that in fact, no such "dividend" was ever formally declared or paid by CVMRI to any of its shareholders. CVMRI's financial records, discussed further below, show no sign of any such dividend, although the records do state that other dividends were paid out, which is discussed further below.

36. Terekhov's evidence on the JJNI Payment can be briefly summarized as follows:

a. Following Khozan's initial promise of the JJNI Payment, the issue was discussed between the two men on multiple occasions, though Terekhov acknowledges that Khozan's promise of the JJNI Payment was never recorded in writing, since he "trusted Khozan completely".

b. Khozan represented that the timing of the JJNI Payment to Terekhov would depend on when CVMRI received payment from JJNI itself for the technology transfer.

c. In or around late 2005, Khozan offered to assist Terekhov in protecting him from excessive taxes as a result of the JJNI Payment. To that end, Khozan introduced Terekhov to Mr. Florian Schefer ("**Schefer**"), a banker with Credit Suisse. Terekhov met with Schefer on several occasions to discuss how the JJNI Payment might be efficiently invested on his behalf. Terekhov relies on a communication from Schefer dated July 25, 2006, containing an "investment proposal" for $2 million, half of which Terekhov understood to be his.

d. By 2007 Terekhov believed, based on Khozan's representations to him, that the JJNI Payment had been invested on his behalf in a Swiss account, and that it was growing, safe, and secure.

e. Terekhov relies on two e-mails to support his account of the JJNI Payment. According to Terekhov, in late 2007 and early 2008, Khozan asked for his authorization to move the funds to follow Schefer with his new employer into a "great investment", and Terekhov authorized the transfer.

- An e-mail dated Dec 12, 2007 from Terekhov to Khozan, in which Terekhov states "this e-mail is authorization to invest $500,000 according to your proposal. Thank you for opportunity".
- An e-mail dated January 17, 2008 from Terekhov to Khozan, in which Terekhov states "this e-mail is authorization to invest second half of money from account according to your proposal. Thank you for opportunity".

f. In or around 2009, Terekhov had still not directly received any part of the JJNI Payment, and he began to ask Khozan more pointed questions as to the status of his money. According to Terekhov, it was not until December 2012 that Khozan finally delivered on some part of the JJNI Payment, namely a $5,000 payment made to Terekhov's wife.

g. In January 2013, when the next installment of the JJNI Payment was not forthcoming from Khozan, Terekhov began to realize that something was amiss, and the relationship between the two men deteriorated significantly from this point.

37. Khozan broadly denies Terekhov's account of the JJNI Payment, suggesting it is a whole cloth fabrication, and that Terekhov's limited contributions to CVMRI's success could never have justified such a generous "bonus". As part of the Respondents' case in this Phase 2, however, Respondents' counsel read-in excerpts from the transcripts of Terekhov's examination for discovery on this issue. In particular, the read-in excerpts include the following:

> Q 1377: Was your – the million dollars you claim, was it promised before January 1st, 2005?
> A: I believe so.
> […]
> Q 1491: Did you ever think you had a bank account?
> A: Yes.
> Q 1492: In Switzerland?
> A: Yes.
> Q 1493: At Credit Suisse?
> A: Yes.
> […]
> Q 1522: So sometime between July of 2006 and December 12, 2007, you believe there was an account in Geneva that had a million dollars in it?
> A: Yes.
> Q 1524: Okay. So you've referred me to a December 12, 2007 e-mail from you to Kamran Khozan, subject transfer. "Dear Kamran, this e-mail is authorization to invest $500,000 according to your proposal". What was the proposal?
> A: Kamran said that this million dollars that exists for me, he needed authorization for transferring for some great investment and he said he cannot do it without my authorization and he said I cannot send it from CVMR's e-mail, I have to send it from my home e-mail. SO I went home and I transfer — I sent him e-mail he requested.

38. The read-ins are consistent with Terekhov's other evidence and inconsistent with Khozan's evidence and positions.

39. Further, Khozan sought to explain away the 2 e-mails from Terekhov to himself in December 2007 and January 2008, referred to above, as related to Khozan's plans for a condominium development in Dubai. Terekhov denies any such interest in such a development.

40. Mr. Finley also testified in respect of the JJNI Payment, and his evidence supports the Respondents' position that no such amount of money was ever promised to Terekhov, as a dividend or otherwise. In support of that claim, Mr. Finley testified as follows:

a. He was very close with both Terekhov and Khozan, and had the promise of the JJNI Payment been made, he would have learned about it. Instead, Mr. Finley states that he was entirely unaware of Terekhov's claim to the JJNI Payment until the start of litigation.

b. Terekhov's contributions to the success of the JJNI Agreement were limited, and considerably less than other persons involved with the project.

c. At the time the JJNI Payment was allegedly promised in 2004, the financial windfall from the JJNI Agreement was unknown to CVMRI. According to Mr. Finley, it was in part due to the uncertainty surrounding the success of the JJNI Agreement that Khozan felt compelled to make his investment in HOROC, in order to "ensure a continuing favourable relationship with JJNI".

d. If Terekhov had indeed been promised the JJNI Payment as a "dividend", then CVMRI would have been required to pay pro rata dividends to the other shareholders. According to Mr. Finley, given the size of Terekhov's alleged dividend, "there is no way there is enough money…it would have been illegal". He testified that "any dividend that they might have been suggested to be declared would not be valid, because the company would either be jeopardizing its ability to pay its creditors, as they fall due, or their debts would...that the assets would not be equivalent or greater than the combination of liabilities and stated capital, which are the two requirements for payment of dividends under the Business Corporations Act". Mr. Finley's view in this regard was based on his review of the company's unaudited financial statements, which are discussed further below.

E. The 2005 Resolution

41. Terekhov has little to no recollection of discussing the 2005 Resolution with Khozan and does not specifically recall having signed it. His evidence on this issue was informed at least in part by Popik's own recollection of events, and that account is broadly denied by Khozan, who offered his own narrative as to how the 2005 Resolution came to be.

42. In any event, there is no debate that the 2005 Resolution was in fact signed by Terekhov, Khozan and Popik. The 2005 Resolution was included in a document entitled "Minutes of an Annual Meeting of Directors and the Shareholders of Chemical Vapour Metal Refining Inc.", which provides that a meeting of the directors and shareholders of CVMRI took place on April 11, 2005, attended by Khozan, Terekhov, and Popik. Important provisions of the 2005 Resolution include:

a. In the preamble, it is noted that CVMRI has received from Net Process a subscription for "all the Common Voting Shares issued and outstanding at the subscription price of $0.10 per share", and that the company has received the "full subscription price payable in respect of such subscription from [Net Process] at a subscription price of $100,000 as fully paid".

b. It is further noted in the preamble that Terekhov and Popik "have both agreed to exchange their Common Voting Shares, one for one, with Preference Shares of the Corporation".

c. It is then resolved that CVMRI accepts such subscriptions and its shares are allotted as follows:

Name of Shareholder	**Number of Common Shares**	**Number of Preferred Shares**
Net Process	1,000,000	775,000
Terekhov	Nil	175,000
Popik	Nil	50,000

d. Holders of preference shares shall not be entitled to receive notice of, to attend, or to vote at meetings of the shareholders of CVMRI.

e. At the discretion of CVMRI's director, holders of preference shares would be entitled to a maximum dividend of $0.05 in a fiscal year.

f. The number of directors of CVMRI is reduced to one.

g. The powers granted to Khozan (as President and CEO) in a 2002 resolution are continued, granting him the "right to transact the financial affairs of the Corporation as he sees fit, on a day to day basis".

43. According to Terekhov, the JJNI Agreement was the genesis of the 2005 Resolution. In the wake of the JJNI Agreement, CVMRI began to make use of assets and resources belonging to Falconbridge in order to carry out various tasks under the JJNI Agreement, such as the training of JJNI personnel. Terekhov's evidence is that Khozan wished to keep this practice secret from Falconbridge representatives, but they ultimately learned of it and "raised substantial objections".

44. In response to Falconbridge's "objections", Terekhov claims that Khozan advised him and Popik that steps had to be taken to avoid being personally sued in their capacities as common shareholders of CVMRI. Terekhov relies on Popik's recollection that Khozan told them the 2005 Resolution "would have the effect of insulating me and Dr. Popik from court action by Falconbridge".

45. This view is supported by an e-mail exchange between Popik and Khozan in April and May 2005. In an e-mail dated April 18, 2005, Popik wrote to Khozan as follows:

> […] I also would like to thank you for offering common to preferred shares exchange. It is very nice of you to try to shield me from potential problems. However, I haven't received any documents yet. […]

46. Khozan replied by e-mail dated May 5, 2005

> Dear Vladimir,
> Your memory is absolutely correct. However, we never issued the first pref. shares for the employees of CVMR. Therefore, as it stands today, we have 1 mil. Common and 1 mil. Pref. shares in the company, only.
> […]

47. According to Terekhov, he has “no recollection of anything of a substantive nature taking place in 2005 regarding my shareholding with CVMR”, and at no point did he discuss anything with Khozan regarding the exchange of common shares with preference shares in CVMR.

48. Khozan’s evidence in respect of the 2005 Resolution differs significantly from Terekhov’s. According to Khozan, the genesis of the 2005 Resolution had nothing to do with any real or imagined threat of litigation from Falconbridge. It was, instead, a reflection of Khozan’s belief that by 2005, Terekhov had failed to fulfill his end of the bargain as a shareholder of CVMRI. Specifically, Khozan claims that he was disappointed in Terekhov’s and Popik’s “failure to bring in any decontamination business from Russia as had been promised”. He therefore asked Terekhov and Popik to return their common shares outright, though they refused. As a result, Khozan says he devised the plan to instead exchange their common shares for preference shares, and proposed this to Terekhov and Popik as early as October 2004.

49. Khozan’s evidence is that his intentions surrounding the 2005 Resolution were in fact charitable towards Terekhov and Popik. In the context of the JJNI Agreement, Khozan’s own developing plans to grow the business in China, his continued capital investments in the company, and plans to possibly take CVMRI public, Khozan suggests that the 2005 Resolution was devised to protect Terekhov and Popik from dilution. Khozan characterized the April 18, 2005 e-mail from Popik as evidence that he was being thanked for offering Popik this protection from dilution.

50. That said, Khozan also gave evidence that his motivation for converting Terekhov’s and Popik’s shares was to ensure that any growth and profit in CVMRI that resulted from the developing plans in China and the possible IPO would flow solely to his own benefit, as the person who was assuming virtually all the risk of financing the company up to that point. Khozan’s

narrative was shared, at least in part, by Mr. Finley. It should be noted however, that according to Mr. Finley's evidence:

a. Mr. Finley was not involved at all in the drafting of the 2005 Resolution, which was prepared entirely by Khozan; and

b. Mr. Finley did not even learn of the 2005 Resolution or that Terekhov and Popik were CVMRI shareholders until the start of these legal proceedings.

F. CVMRI's Financial Statements and the 2003-2005 Dividends

51. The unaudited financial statements of CVMRI show that dividends were paid in 2003, 2004 and 2005 in the following amounts (collectively, the "**CVMRI Dividends**"):

2003	$325,000
2004	$225,000
2005	$230,000

52. Terekhov's evidence is that he was never informed of the CVMRI Dividends, and that he never received any payments that would have been consistent with his *pro rata* share of such dividends.

53. Notably, Khozan largely does not dispute this evidence: in his view, the financial records of CVMRI in describing the payment of the CVMRI Dividends and any bonuses are simply wrong, a "mistake". He agrees that no portion was ever paid to Terekhov. According to Khozan, he learned of the CVMRI Dividends' appearance in the company's financial statements when it was raised by Ms. Harris as part of the process leading to her report. Khozan testified during the hearing that he had spoken with his long-time accountant, Michael Pajak, who had prepared the financial

statements, regarding the CVMRI Dividends, and that Mr. Pajak would be called as a witness to clear up the confusion.[2]

54. Khozan's evidence suggested that the CVMRI Dividends were in fact payments from CVMRI to Net Process, an affiliated company, and that it should not have been recorded as a dividend in the financial statements. This position was also offered by Mr. Finley. Ultimately, however, Mr. Pajak was not called to testify by the Respondents.

55. Apart from the CVMRI Dividends, the unaudited financial statements also reveal certain other aspects of CVMRI's financial management:

a. The "share capital" of CVMRI is listed in the financial statements from 2002 through to 2013 as $100, with a note that there is an authorization for unlimited shares and 100,000 issued common shares.

b. Significant shareholder loans are recorded commencing in 2008, hitting a peak in 2010.

c. Significant loans payable are recorded from 2002 to 2005; the line item goes to zero in 2006 and 2007, and then more loans payable are recorded from 2008 through to 2013.

d. Significant management bonuses are recorded as payable liabilities from 2002 to 2005. It should be noted that Terekhov's evidence is that he never received any management bonus.

- 2002: $180,000
- 2003: $249,000

[2] As noted below, Terekhov also takes the position that CVMRI's unaudited financial statements are likely unreliable, as he instructed Ms. Harris in the preparation of her report that the financials "may have been misstated" for the purpose of hiding Khozan's movement of assets from CVMRI to other corporate entities. Terekhov's own affidavit dated October 24, 2017 sets out his view as to how CVMRI's revenues were systematically understated in the financial statements.

- 2004: $840,000

e. The company's revenue hits an all-time high in 2006 of $14,013,436, considerably more than the next highest entry of $4,334,225 in 2007. The timing is consistent with the JJNI Agreement.

56. Despite his view as to their unreliability, Khozan testified that CVMRI's unaudited financial statements were used for the purpose of the company's corporate tax filings.

57. CVMRI's corporate records reveal that the financial statements for several years have been approved by the company's shareholders and/or directors on multiple occasions. In particular:

a. December 2002 Annual Resolution of the Directors: balance sheets of CVMRI for year ended December 31, 2002 are approved by Khozan and Terekhov, both listed as directors.

b. December 2002 Annual Resolution of the Shareholders: balance sheets for year ended December 31, 2002 are adopted by the shareholders, listed as Net Process, Terekhov, and Popik.

c. December 2002 Special Resolution of the Shareholders and Directors: balance sheets for year ended December 31, 2002 are adopted, signed by Net Process and Terekhov (as shareholders and directors), and Popik (as shareholder).

d. The 2005 Resolution, which provides in the minutes that "the unaudited financial statements of the Corporation for the fiscal period ended 31 December 2004 were approved by the Directors and the Shareholders"

58. There are numerous other corporate records in evidence in which the financials of one of the other corporate respondents (particularly CVMRC, defined below) are approved by the shareholders and/or directors.

G. CVMRI's later history and Terekhov's termination

59. In 2006, Khozan left Canada and moved to Dubai. From there, he continued to be deeply involved in the management of CVMRI and in pursuing the company's ongoing business in China. As noted, the investments made with HOROC did not go according to plan, and much evidence was presented regarding the efforts of Khozan and Finley to recover that investment. As part of those efforts, CVMRI's later history was characterized by the movement of assets away from CVMRI and into two of the other corporate respondents, CVMR Corporation ("**CVMRC**") and Reprotech.

60. The evidence presented during Phase 2 shows that in 2011, Khozan began to move CVMRI's operations to CVMRC, while also transferring some of CVMRI's assets to Reprotech. In particular, approximately $10 million in cash was moved from CVMRI to Reprotech, and from Reprotech it was then moved to Khozan personally. The Claimant takes the position that these various maneuvers were undertaken with the intention to "defeat or hinder a creditor, namely [JJNI]".

61. More germane to the present dispute, the evidence is also clear from 2005 onwards, Khozan's conduct and the corresponding corporate records were consistent with someone who believed himself to be the sole shareholder and director of CVMRI. There are numerous corporate records which list Net Process as the sole shareholder and Khozan as sole director of CVMRI.

62. As noted above, based on Terekhov's evidence, his relationship with Khozan deteriorated considerably once he started to push for what he believed he was owed as part of the JJNI Payment. This eventually contributed, on March 6, 2014, to Terekhov's termination by Khozan.

III. EXPERT EVIDENCE

A. Harris Report

63. The Harris Report was delivered approximately one month prior to the Phase 2 Hearings in this arbitration. It is a Calculation Valuation Report with respect to the fair market value of the issued and outstanding shares of CVMRI, and in particular, of Terekhov's claimed 17.5% interest in CVMRI.

64. In preparing her report, Ms. Harris relied primarily on documents and information that Terekhov himself was able to provide. As she notes in the Report, the "vast majority of items requested [from CVMRI itself] were not provided". On account of the limited information received from CVMRI, Ms. Harris's initial plan to deliver an "Estimate Valuation Report", which reflects a higher level of accuracy and detail, had to be downgraded in scope to the Calculation Valuation Report that was ultimately delivered.

65. The Harris Report also notes, based on advice from Terekhov, that "there is a risk that the financial statements of [CVMRI] are misstated". She notes that a corporate organization chart showing the relationships between the various corporate respondents was requested but not provided, and as such, "we do not know the extent to which assets or liabilities owned by CVMR may have been transferred or recorded in related or affiliated companies".

66. The Valuation Date used in the Harris Report is April 11, 2005, namely the date of the 2005 Resolution. As of the Valuation Date, the Harris Report concludes that an en bloc fair market value of CVMRI is approximately $10 million, with Terekhov's share valued at $1,751,000.

67. I would highlight the following comments and conclusions from the Harris Report:

a. In or around the Valuation Date, CVMRI had two significant customers: Falconbridge and JJNI.

b. The valuation conclusion does not, however, include any value related to Falconbridge, since Terekhov "advised that CVMR's relationship with Falconbridge deteriorated in or around 2005".

c. The JJNI Agreement set out that JJNI would pay CVMRI a total of $27,500,000, representing $9,500,000 for refining technology and $18,000,000 for the JJNI plant. Payments of $3,000,000 were to be made quarterly, starting in July 2004 and ending in July 2006.

d. CVMRI's intellectual property was put in two categories: first, "Revenue-Producing Technology", referring to carbonyl and refining technology that were producing revenue as of the Valuation Date. Second, "Pre-Revenue Technology", referring to various patents and know-how that had yet to earn revenue at the Valuation Date.

e. The valuation is based on the going-concern approach, which "assumes a continuing business enterprise with a potential for future earnings".

f. The Harris Report takes note of the promised JJNI Payment to Terekhov, but concludes that since it arose subsequent to the Valuation Date, it was not a liability of CVMRI used in calculating fair market value.

g. CVMRI's Pre-Revenue Technology is assessed at a mid-point value of $1.5 million, based on secondary benchmark approaches, since CVMRI did not provide the requested financial forecasts for the company.

h. The Harris Report relies in part on Khozan's own affidavit evidence, in which he claims that CVMRI had many other clients apart from JJNI, suggesting that the Pre-Revenue Technology had significant potential value.

i. Only unaudited financial statements for CVMRI were available to Ms. Harris in the preparation of her report. As discussed below, these financials are of dubious accuracy, but CVMRI opted to not provide more detailed or accurate information.

j. CVMRC was incorporated in 2006 with the intention of acting as a holding company for CVMRI and other related companies. Based on information from Terekhov, the Harris Report assumes that CVMRI's operations were transferred to CVMRC in or around 2011, and that certain patents owned by CVMRI at the Valuation Date were subsequently assigned to CVMRC.

68. Appendix A of the Harris Report lists the "preliminary information required", a lengthy list of documents that were requested from CVMRI, and the bulk of which were not provided. Important items that were not provided to Ms. Harris include:

a. Corporate organization chart as at the Valuation Date, setting out all related and affiliated parties and shareholders;

b. Accounting records, including detailed general ledgers, for fiscal years 2001 to 2005;

c. Shareholders' registers and ledgers from inception to Valuation Date;

d. Access to the corporate minute book;

e. For fiscal years 2001 to 2005, schedules outlining:

- Transactions with any related or affiliated companies;
- One-time extraordinary non-recurring expenses; and
- Amounts paid to management, shareholders and persons or corporations with whom shareholders do not deal at arm's length.

B. Soriano Report

69. The Respondents opted to not deliver an expert report of their own regarding the valuation of CVMRI. Instead, the Soriano Report was delivered in order to undermine the credibility and findings set out in the Harris Report.

70. The underlying critique in the Soriano Report is that a Calculation Valuation Report (the type of report delivered by Ms. Harris) is "ill-suited for litigation proceedings other than as

illustrative examples of possible outcomes based on alterative circumstances, the underpinnings of which are to be established, or not, via fact evidence during the trial/arbitration". Mr. Soriano concludes that Ms. Harris' conclusions as to the fair market value of CVMRI is "unsubstantiated, and therefore unreliable".

71. The Soriano Report relies on guidelines from the Practice Standards of the Canadian Institute of Chartered Business Valuators ("CICBV"), which provide that "an engagement should not be accepted for which the level of assurance to be provided by the Valuation Report is not suitable for the purpose for which the Valuation Report is required". Simply put, the Soriano Report acknowledges that Ms. Harris did not have the information required to perform an Estimate Valuation Report, and concludes that she ought to have rejected the Claimant's retainer, knowing the valuation was sought for the purposes of litigation.

72. The Soriano Report goes on to critique individual elements of the Harris Report, largely on the basis that the underlying information available to Ms. Harris was not reliable.

C. Nathan Report

73. Shortly before the start of the Phase 2 Hearings, the Respondents delivered this report of Hartley Nathan, a corporate lawyer with Minden Gross LLP. The Nathan Report sets out an opinion as to the shareholders and shareholdings in CVMRI at various points in time, looking specifically at the time of the company's incorporation, the 2000 USA and the 2005 Resolution.

74. The Nathan Report draws the following conclusions:

a. At the time of incorporation, 100 common shares were properly allotted and issued, with Terekhov holding 20 and Net Process holding 80.

b. The Nathan Report does not refer to Popik ever receiving his 5 shares in the early history of CVMRI; it is apparent that this arrangement was not recorded in any formal corporate document.

c. The Nathan Report concludes that there is no evidence that the 1,000,000 common shares referenced in the 2000 USA were ever properly allotted or issued. Mr. Nathan concludes that following the 2000 USA, the share allotment remained what it was at the time of incorporation, namely 80 common shares for Net Process and 20 for Terekhov.

d. Regarding the 2005 Resolution, the Nathan Report examines the two main purported transactions therein, namely Net Process' subscription to 1,000,000 common shares at $0.10 per share, and the conversion of common shares to preferred shares.

e. Mr. Nathan concludes that while proper corporate procedure was not followed and there is considerable confusion in the corporate documents, the 1,000,000 common shares subscribed for by Net Process were validly issued and allotted.

f. As for the share exchange, Mr. Nathan notes that at the time of the 2005 Resolution, the preferred shares did not exist. It was not until December 2016 (long after this litigation was commenced and after my Interim Award) that articles of amendment were filed to create preferred shares. As such, the Nathan Report concludes that the share exchange contemplated in the 2005 Resolution was of no force and effect.

g. The current share structure of CVMRI, according to the Nathan Report, is that there are 1,000,100 outstanding common shares, with 1,000,080 held by Net Process, and 20 held by Terekhov.

75. Based on Mr. Nathan's conclusions, the Respondents' position in this arbitration changed significantly in Phase 2 as compared to what was argued in Phase 1. The Respondents adopted Mr. Nathan's conclusions, abandoning the position that Terekhov holds only preferred shares, and suggesting instead that Terekhov continues to hold common shares, albeit only 20 out of a total of 1,000,100.

IV. PRELIMINARY ISSUE: BINDING FINDINGS FROM THE INTERIM AWARD

76. An important preliminary issue to be addressed in this Phase 2 arises from the parties' disagreement as to the binding effect of my findings and conclusions made in the Interim Award. The Claimant relies on a number of these findings, and argues that the Respondents should be "prohibited from pleading facts, leading evidence or making submissions which contradict the findings [upon which they rely] or elsewhere in the interim award or procedural order".

77. To this end, the Claimant relies on the doctrines of *res judicata*, issue estoppel, and abuse of process, arguing that the Respondents are now mounting a collateral attack on the Interim Award and Procedural Order, contrary to the "principles of judicial integrity, finality and economy". The Claimant goes further in arguing that the issue of *res judicata* is itself *res judicata*, since the Respondents have already challenged the Interim Award both before me and before the Superior Court.

78. The Respondents submit that Phase 1 of this arbitration did not decide the merits of the case, that many of my findings made in the Interim Award were not "final" in nature, and that it remains open to me to rule as I see fit based on the evidence presented throughout the arbitration (and during Phase 2 in particular), without being bound by my findings from the Interim Award. The Respondents in particular allege that some procedural unfairness was visited upon them as a result of the timing of the delivery of the Harris Report, and the allegedly late pleading by the Claimant of the fraudulent concealment defence that I ultimately accepted in the Interim Award.

79. I am not persuaded that I must look to the doctrines of *res judicata*, issue estoppel, or abuse of process in resolving the parties' disagreement as to the current impact of my earlier findings. In my view, and based on the jurisprudence put before me, these doctrines are better reserved for

situations where issues previously decided in one proceeding are raised again by a party in a **subsequent proceeding between the same parties**.

80. This is not the case here. At issue is not whether findings are binding on a subsequent proceeding. It is the same proceeding. By agreement of the parties, this arbitration was bifurcated to permit the Respondents to bring a motion for summary judgment, leading to what I have defined as Phase 1 of the arbitration. If my findings made in Phase 1 were not "final" in nature as the Respondents suggest, it would retroactively defeat the entire purpose of having bifurcated the arbitration in the first place.

81. In refusing the Respondents' application to set aside the Interim Award, Justice Stewart made the *obiter* comment that "I consider this application as one which at its core seeks to appeal an interlocutory decision of the Arbitrator and therefore should not be entertained at this stage". Respectfully, I do not agree that the Interim Award was interlocutory, though I would emphasize that Justice Stewart's decision did not turn on this *obiter* comment. In the recent decision of *Houle v. St Jude Medical Inc.*, 2018 ONCA 88, the Court of Appeal summarized the distinction between interlocutory and final orders, and adopted the principle from earlier jurisprudence that for an order to be "final" as opposed to interlocutory, it "must deal with the substantive merits as opposed to mere procedural rights, no matter how important the procedural rights may be".

82. The Interim Award was not merely a procedural order. The relief sought by the Respondents was a declaration regarding Terekhov's share ownership in CVMRI, a question that goes to the heart of the substantive issues in dispute between the parties. Moreover, by raising a limitation period defence, the Respondents put in issue in Phase 1 a variety of substantive factual points, including questions that required findings on credibility.

83. The Interim Award was a determination of substantive defences raised by the Respondents, which required findings of fact and credibility that did not cease to exist once Phase 2 of this arbitration commenced. The fact that it was clearly labeled as an "Interim Award", rather that a procedural order, ruling or direction, is also important. Under section 41 of the *Arbitration Act*, the "arbitral tribunal may make one or more interim awards", as distinguished from the "procedural directions" that are provided for under section 25 of the Act. An "interim award", in my view, "means an interim final award that fully adjudicates part of the dispute that is before the arbitral tribunal […] The fact that the Arbitration Act uses the term "interim" does not change the nature of the award, which is final on the issues determined".[3]

84. That said, I also do not consider it necessary to go so far as the Claimant urges me to do, that is by actively ignoring or striking any evidence, pleadings, or argument made by the Respondents that seek to undermine my findings in the Interim Award. In Phase 1, the Respondents were obliged as part of their summary judgment motion to "lead trump" and put their best evidentiary foot forward. Had any evidence been presented during Phase 2 of this arbitration that was (a) reasonably unavailable during Phase 1 and/or (b) gave me cause to reconsider any findings from the Interim Award, it was open to me to seek submissions from both parties as to how to reconcile that possible conflict. In my view, having the full record of Phase 1 and Phase 2 before me now, there is nothing that compels me to reconsider any of my findings made in the Interim Award. On the contrary, during Phase 2 I agreed to hear all the evidence put forward by the Respondents over the Claimant's objection, and having done so, some of my earlier findings from

[3] See commentary on section 41 from Annotated Arbitration Act, 1991, Carswell, 2016.

the Interim Award, particularly those relating to Khozan's efforts to mislead Terekhov from 2004 to the time of his termination, have actually been reinforced.

85. With the above in mind, I would therefore repeat the following conclusions and findings from my Interim Award that are relevant to the issues at stake in Phase 2:

a. Khozan and Net Process are interchangeable: Khozan is the directing mind and alter ego of Net Process (para 26).

b. Regarding the competing narratives as to the 2005 Resolution and the conversion of shares, I find the narrative told by Terekhov and corroborated by Popik to be more credible (para 33). Specifically:

- Terekhov went along with the plan proposed by Khozan, but he did not understand the differences between common and preference shares and knew nothing about the finances of CVMRI. He followed Khozan's direction, believing him and his stated motive to protect him from potential liability from Falconbridge (para 31).

- Terekhov and Popik never held out any promise of obtaining business from the former Soviet Union; instead they were hired and given equity in CVMRI because of their technical expertise. While both men were grateful for the equity offered to them, they understood it was an incentive to develop new processes which could be used commercially by CVMRI (paras 32 and 33).

c. Regarding the competing narratives as to the JJNI Payment, I find the narrative told by Terekhov to be more credible (para 38). Specifically:

- In the wake of the JJNI Agreement and shortly after signing the 2005 Resolution, Khozan told Terekhov that a dividend was declared by CVMRI and that Terekhov's share was USD $1 million (para 34).

- Khozan told Terekhov that his USD $1 million was invested with his advisor at Credit Suisse, and that the investment was safe from any

fluctuations in the market. When pressed as to when Terekhov would get his money, Khozan told him it would be better to get it in small tranches and to make payments to Terekhov's wife to avoid tax consequences. Terekhov trusted this advice, and received a single USD $5,000 payable to his wife from one of Khozan's companies (paras 35-36).

d. I accept Terekhov's evidence that he did not have any real knowledge of CVMRI's finances. He did not understand the corporate documentation, and he relied on and trusted Khozan as to the meaning and effect of those documents (para 58).

e. Khozan misled Terekhov as to the purpose and effect of the 2005 Resolution. He misled Terekhov again regarding the promised JJNI Payment (para 62).

f. If no dividend was in fact paid out of CVMRI in respect of the JJNI Payment, and no funds invested for Terekhov (as claimed by Khozan himself, though these questions I did not resolve in the Interim Award), then Khozan deceived Terekhov, his minority shareholder and employee. This was a misrepresentation by Khozan: he intended for Terekhov to rely upon it and Terekhov did indeed rely upon it, which disentitles Khozan from relying on the limitation period (para 64).

g. The 2005 Resolution is part and parcel of the deception perpetrated by Khozan on Terekhov (para 66).

h. My conclusion that no preference shares had been authorized or issued, and that Terekhov was an owner of common shares as per his share certificate (para 67) was recalled in my Procedural Order. I would emphasize this last point: as a result of the Procedural Order, my findings in the Interim Award left open the **effect** of the 2005 Resolution, despite the findings of credibility as between Terekhov and Khozan's competing narratives. It is only as a result of evidence called during Phase 2 that I am now in a position to resolve the outstanding issue of the effect of the 2005 Resolution.

V. ISSUES IN DISPUTE

86. The key issues left to be determined in this Phase 2 are as follows:

a. What was the status of Terekhov's shareholdings in CVMRI following the 2005 Resolution?

b. Was Khozan's impugned conduct as against Terekhov oppressive within the meaning of the CBCA, and if so, against which Respondent(s) should liability for such oppression apply?

c. If so, what is the appropriate remedy for Terekhov? In particular, to what quantum of compensation is Terekhov entitled, taking into account Terekhov's claims for compensation based on the Harris Report valuation, the promised JJNI Payment, and the CVMRI Dividends?

VI. POSITIONS OF THE PARTIES

A. Issue #1: Terekhov's Shareholdings following the 2005 Resolution

i. Claimant's Position

87. The Claimant submits that the 2005 Resolution should be set aside as of no force and effect, relying on the doctrines of *non est factum*, misrepresentation, duress, lack of consideration, unconscionability, fraud, and oppression. To make out these claims, the Claimant largely relies on the findings made in my Interim Award, namely that Khozan deceived and misled Terekhov as to the purpose of the 2005 Resolution.

88. To the extent that the 2005 Resolution is void for the reasons above, Terekhov submits that on April 11, 2005, he continued to hold 175,000 common shares in CVMRI, shares that were granted to him at the time of the 2000 USA out of a total of 1,000,000 issued shares.

89. The Claimant submits that the Nathan Report should be disregarded as it reflects a view that is "singularly convenient" for Khozan, since it would "give Net Process the two things it most wants: (a) the reduction of the value of Terekhov's shares to close to nil, and (b) an argument that there is no need to extend dissent rights because there was no restructuring".

ii. Respondents' Position

90. As noted above, the Respondents' position regarding Terekhov's shareholdings have shifted since the delivery of the Nathan Report. The Respondents now adopt all of Mr. Nathan's conclusions, such that following the 2005 Resolution, Terekhov held 20 common shares out of a total of 1,000,100 in CVMRI.

B. Issue #2: Oppression

i. Claimant's Position

91. The Claimant's allegations of oppression against Khozan and the corporate respondents underlie this entire arbitration. According to the Claimant, all of the various conduct engaged in by Khozan, including his deception of Terekhov regarding the 2005 Resolution, the non-payment of the CVMRI Dividends, and the unfulfilled promise of the JJNI Payment, all support a finding that Terekhov has been oppressed. More generally, the Claimant submits that Khozan's oppression is made out by his disregard for Terekhov's rights as a minority shareholder in CVMRI throughout the relevant period, and in particular from the time of the 2005 Resolution to Terekhov's termination.

92. The Claimant submits that the statutory oppression remedy in the CBCA "serves to protect the reasonable expectations of the parties created as part of the compact of the shareholders". Terekhov argues that his reasonable expectations were breached on multiple occasions by Khozan's oppressive conduct.

93. The Claimant points to various jurisprudence for the following list of "indicia of oppression", and argues that all of these have been made out in the present case:

a. Lack of good faith on the part of the directors of the corporation;

b. Discrimination among shareholders with the effect of benefiting the majority shareholder to the exclusion or to the detriment of the minority shareholder;

c. Removal of assets that would prevent a plaintiff from recovering judgment against a defendant;

d. A corporation's failure to comply with substantive requirements of applicable corporate legislation, including the extension of dissent rights;

e. Conduct that is motivated by an improper purpose; and

f. A plan, or design, to eliminate a minority shareholder.

94. In support of the oppression claim, Terekhov relies on the findings made in my Interim Award, and on the additional evidence presented during Phase 2.

ii. Respondents' Position

95. The Respondents deny that Terekhov has been the subject of any oppression. Instead, the Respondents seek to paint Terekhov as a "sophisticated, crafty international businessman" who has engaged in a variety of deceptive techniques throughout the relevant time period, including during this arbitration.

96. The Respondents submit that Terekhov himself breached his own corporate responsibilities as a director and officer of CVMRI, to the extent that he had full access to the company's corporate records and legal counsel, but chose to remain actively ignorant of their contents. The Respondents submit that the "reasonable expectations" upon which Terekhov now claims oppression are not reasonable at all, but are instead the expectations of a man who actively chose to keep his head in the sand rather than fulfill his own corporate obligations.

C. Issue #3: Quantum of Compensation Owed to Terekhov

i. Claimant's Position

97. The Claimant submits that as a result of Khozan's oppressive and fraudulent conduct surrounding the 2005 Resolution, Terekhov is entitled to full compensation for the value of his CVMRI shares as of that date. Simply put, the Claimant submits that the Respondents excluded him from any participation in the equity of CVMRI and its successor corporations after the date of the 2005 Resolution to the present.

98. In the alternative, the Claimant submits that if the 2005 Resolution is held to extinguish the value of Terekhov's shareholdings, then he seeks damages for misrepresentation, with damages equal to the value of his CVMRI shares at the time of the 2005 Resolution.

99. As for the value of the shares, the Claimant relies entirely on the Harris Report in order to prove that Terekhov's shares in CVMRI as of the date of the 2005 Resolution was $1.751 million. The Claimant submits that in the absence of a competing valuation evidence, there is no reason to doubt the accuracy or credibility of the Harris Report. To the extent that there are deficiencies in the Harris Report, the Claimant contends, these are solely the result of the Respondents' unwillingness to provide the documents and access that Ms. Harris required.

100. The Claimant also submits that all of the evidence presented regarding Khozan's investments in HOROC and the subsequent corporate maneuvers as between CVMRI, CVMRC and Reprotech are irrelevant to the valuation of Terekhov's shares, since they took place after their preferred valuation date of April 11, 2005. To the extent that Khozan suffered some loss as a result of his Chinese investments, the Claimant submits, it has no bearing on the value of Terekhov's

shares. In any event, however, the Claimant points to more recent evidence dating from October 2017 that suggests Khozan's investment in HOROC may not have been a total loss.

101. Separately, the Claimant submits that Terekhov is entitled to both the JJNI Payment in the amount of USD $1 million (plus interest), and his pro rata share of the CVMRI Dividends (plus interest). Although these are advanced as separate heads of damage by the Claimant, the claims for the JJNI Payment and the CVMRI Dividends are also part and parcel of the Claimant's allegations of oppression, the remedy for which (according to the Claimant) is the payment of the value of Terekhov's shares as of the date of oppression, being April 2005.

102. The Claimant submits that the issue surrounding the CVMRI Dividends is straightforward:

a. The amounts were recorded on CVMRI's financial records as dividends;

b. There is no debate that Terekhov never received his *pro rata* share of the dividends;

c. It was incumbent on the Respondents to call Mr. Pajak to give evidence in support of their claim that the CVMRI Dividends were incorrectly recorded in the financial statements, and that these amounts actually represent some appropriate payments between affiliated companies. Having advised that such evidence was forthcoming, and then not bringing it forward, an adverse inference should be drawn that Mr. Pajak was not prepared to give testimony that would corroborate Khozan's description of events.

103. As for the JJNI Payment, the Claimant starts from the proposition that it was promised to Terekhov by Khozan, in recognition of Terekhov's contributions to the success of the JJNI Agreement. The Claimant acknowledges that no corresponding dividend was ever declared by CVMRI's directors, nor do the company's financial statements suggest that any such dividend was

paid out to other shareholders. That said, the Claimant submits that Terekhov is nevertheless now entitled to the JJNI Payment, on one or more of the following grounds:

a. The JJNI Payment should be treated as salary owed to Terekhov, since it was a promise of payment stated in the nature of a dividend, but made to a shareholder as compensation for his activities in the affairs of the corporation.

b. The JJNI Payment should be treated as a bonus owed to Terekhov, one that is binding on Khozan and that was accepted by Terekhov by his remaining on the job.

c. The JJNI Payment, despite never having been formally declared as a dividend through the proper corporate actions, may nevertheless still be considered a properly declared dividend. The Claimant submits that "the existence of a corporate decision is a question of fact", and that the declaration of the JJNI Payment as a dividend may have come into existence when there was a meeting of the minds of all those entitled to participate in the decision to do so, despite the "lack of observance of formalities pertaining to meetings and passing of resolutions".

104. The above arguments are all premised, in my view, on the same underlying position: based on Khozan's conduct through the relevant period of time, Terekhov had a reasonable expectation to the JJNI Payment.

105. Taken together, the Claimant submits that Terekhov is entitled to the following compensation (all amounts CAD):

Value of his shares in CVMRI, according to the Harris Report:	$1,751,000.00
The unpaid JJNI Payment:	$1,275,641.03
Pro rata share of the CVMRI Dividends:	$136,500.00
Prejudgment interest:	$524,916.12
Total:	$3,688,057.15

ii. Respondents' Position

106. For the same reasons as noted above, the Respondents deny that Terekhov has been the victim of any oppression, and in particular that no conduct of Khozan or the corporate respondents at or around the time of the 2005 Resolution would entitle Terekhov to be compensated for the value of his shares.

107. Regarding the valuation of Terekhov's shares, the Respondents contend that the Harris Report is of no assistance, relying largely on the Soriano Report as described above.

108. The Respondents also dispute that April 11, 2005 is the appropriate valuation date. Instead, they submit that if Terekhov is to be compensated for his shares in CVMRI, it should be done on the basis contemplated in the 2000 USA. Specifically, they rely on section 3.05 of the 2000 USA, which provides that where a non-incorporated shareholder ceases to be employed by CVMR, the other shareholders have the right to purchase his shares. As such, the Respondents submit that Terekhov's shares should be valued as of the date when he ceased to be an employee of CVMRI, in keeping with the process set out in the 2000 USA.

109. Regarding the CVMRI Dividends, the Respondents submit that the recording of the CVMRI Dividends was done in error, and that they were errors that Terekhov himself had a duty to correct in his capacity as corporate treasurer. The Respondents submit that Terekhov knew or ought to have known the CVMRI Dividends were never actually declared or paid by CVMRI, and that in fact the company incurred significant losses throughout that period, which would have made the declaration of such dividends illegal under the CBCA.

110. More generally, the Respondents highlight this as an example of Terekhov disclaiming his responsibilities as corporate treasurer and secretary. They submit that the unaudited financial

records are rife with inaccuracies, such as listing the issued shares of CVMRI as only 100,000 (contrary to the initial corporate structure and the purported share allotment following the 2000 USA), and providing that only $100 of share capital had been put into the company. The Respondents submit that the truth, which is not reflected in the financial statements, was known to Terekhov, namely that "Khozan was personally financing the company out of his own pocket with shareholder loans that paid his salary".

111. Regarding the JJNI Payment, as noted above the Respondents rely on the evidence of Khozan and Mr. Finley to argue that no such dividend was ever declared, let alone that any such amounts were paid to shareholders other than Terekhov. Furthermore, the Respondents submit that CVMRI was unable to declare the JJNI Payment as a dividend, given the company's financial situation, and that doing so would have been illegal under the CBCA. Finally, the Respondents argue that Terekhov's contributions to CVMRI were simply inadequate to justify such a large payment, whether qualified as a "dividend", "bonus" or "salary".

VII. ANALYSIS AND REASONS

A. Issue #1: Terekhov's Shareholdings following the 2005 Resolution

112. With the benefit of all the evidence presented during Phase 2, I am of the view that Terekhov owned 17.5% of the outstanding issued common shares of CVMRI at the time of the 2005 Resolution, and that his shareholding did not change as a result of the 2005 Resolution. I set out my reasons for this conclusion below.

113. The various corporate documents from the time of CVMRI's incorporation to the 2005 Resolution are inconsistent in setting out the company's share structure, and neither party provided a compelling explanation for these discrepancies. It is clear, however, at least from the time of the

2000 USA, Terekhov, Khozan and Popik had the shared understanding that Terekhov owned 17.5% of CVMRI's outstanding and issued 1,000,000 common shares.

114. Regardless of what Khozan may have believed at the time of the 2000 USA, in this arbitration the Respondents now take the position, relying on the Nathan Report, that the 2000 USA was ineffective in creating 1,000,000 common shares.

115. In my view, nothing turns on the effectiveness of the 2000 USA. It is not my task in this arbitration to repair or reconcile CVMRI's muddled corporate history. For the purpose of resolving what, if any compensation may be owed to Terekhov if his claim of oppression is made out, I must only determine the proportion of CVMRI's common shares that he owned at the relevant time. Put another way, I am of the view that it makes no difference, for my purpose, whether Terekhov owned 175,000 common shares out of 1 million or 17.5 out of 100.

116. For that reason, with great respect to Mr. Nathan, I am not inclined to ascribe much weight to Mr. Nathan's opinion as to the intention of the parties in the 2005 Resolution. The Nathan Report examines CVMRI's corporate documents in a vacuum, without any regard to the surrounding circumstances, and in particular, without any regard to CVMRI's unaudited financial statements. The unaudited financials, which were only presented in this arbitration during Phase 2, show that CVMRI had an unlimited number of authorized shares and 100,000 issued common shares between 2002 and 2013. The share capital is listed as $100 throughout this period. Mr. Nathan notes in his report that he reviewed the unaudited financials, but that they are "clearly wrong", and that he did not rely on them in formulating his opinion.

117. With all due respect to Mr. Nathan, I ascribe more importance to the unaudited financial statements of CVMRI. As noted above, these statements were approved at various points by both

Terekhov and Khozan, and despite both parties' efforts to disclaim their accuracy and reliability for their own strategic purposes in this arbitration, I am able to draw important conclusions from them. Specifically, there was no change in CVMRI's share structure throughout the relevant time period: no additional common shares were allotted to Khozan (through Net Process) and no additional share capital was ever put into CVMRI by Khozan. It is accepted that Khozan financed the company; but the financial statements demonstrate that he did so with shareholder loans from time to time, which were repaid.

118. As for the effect of the 2005 Resolution on Terekhov's shareholdings, the Respondents now concede, relying on the Nathan Report, that no swap of common shares for preference shares ever took place.

119. Despite the Respondents' reliance on Mr. Nathan's evidence and their effort to disclaim the effectiveness of the 2000 USA, on my reading of the 2005 Resolution – which was drafted by Khozan without the assistance of Mr. Finley or any other lawyer – it is clear that Khozan had the expectation that there were 1,000,000 outstanding common shares, and that he was appropriating those shares that previously belonged to Terekhov and Popik.

120. I agree with Mr. Nathan's opinion that Khozan failed in his attempt to convert the minorities' common shares to so-called preference shares with the 2005 Resolution. I am of the opinion that the whole of the 2005 Resolution failed to change the relative shareholdings of the parties. I agree with Mr. Nathan that the document is somewhat puzzling, however it is my task to determine the intentions of the parties, and in particular Khozan's intentions as he was the draftsman of the 2005 Resolution. In my view, Khozan would have had the relative shareholdings set out in the 2000 USA before him when he drafted the 2005 Resolution. That is clear from the

2005 Resolution, which speaks of 175,000 common shares owned by Terekhov and 50,000 owned by Popik. Whether these numbers are accurate or not, they could only have come from the 2000 USA.

121. Further, Khozan spelled out in the 2005 Resolution that Net Process would subscribe to "all the Common voting Shares issued and outstanding". This could only refer to the common shares belonging to the shareholders as described in the 2000 USA. It was clear from Khozan's evidence that he intended to appropriate Terekhov's and Popik's shares and to hold 100% ownership of CVMRI's common shares. I cannot accept Mr. Nathan's opinion that one should bifurcate the 2005 Resolution in order to find one part void and ineffective (the swap of common shares for preference shares) but conclude that the balance of the document is valid (the issuance of an additional 1,000,000 common shares to Net Process).

122. I would reiterate that Khozan drafted the 2005 Resolution with no assistance from anyone. Therefore any ambiguity in the document should be resolved against him. I note further that Khozan himself, in his e-mail to Popik dated May 5, 2005 (after the 2005 Resolution), stated that there were 1,000,000 common shares in CVMRI.

123. It is my task to determine the intentions of the parties as a question of fact. It is my conclusion that Khozan intended by the 2005 Resolution to appropriate all the outstanding common shares in CVMRI for himself. He did not intend to have CVMRI issue additional shares. Had that been his intention other considerations would have been applicable under the 2000 USA including the rights of the minority to participate on a *pro rata* basis.

124. In my respectful opinion, for the foregoing reasons and for the reasons discussed below on the subject of oppression,[4] I am of the view that the whole of the 2005 Resolution was effectively a sham in its entirety, and that any purported corporate action by which Khozan subscribed to 1 million common shares in April 2005 or converted preference shares for common shares was ineffective. Also for reasons discussed below I am of the view that the date of the 2005 Resolution is important for the purpose of assigning value to Terekhov's shares.

125. I therefore conclude that the formal shareholdings in CVMRI never changed through this relevant time period, that is from at least as early as the 2000 USA up to the termination of Terekhov's employment. As a result, Terekhov held 17.5% of the issued and outstanding common shares of CVMRI at the time of the 2005 Resolution (both immediately before and immediately afterwards).

B. Issue #2: Oppression

126. The parties generally agree on the legal principles applicable to a claim for oppression. In particular, the Respondents submit, referring to various case law, that there "are no absolute rules", and that "the question is whether, in all the circumstances, the directors acted in the best interests of the corporation, having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner". The Respondents also rely on case law that speaks to the same "reasonable expectations" test as is relied on by the Claimant, such that there "must be articulated expectations; they must be reasonable; they must have been breached

[4] I would emphasize that my findings in respect of the 2005 Resolution are independent from my findings in respect of Terekhov's oppression claims.

oppressively, or in a manner that is unfairly prejudicial or unfairly disregards". The Respondents submit of course that Terekhov has not met this reasonable expectations test.

127. In determining whether the Claimant's oppression claim is made out, I would first address the credibility issues as between Terekhov and Khozan. Although I made findings of credibility in the Interim Award, I would emphasize certain conclusions here that have been reinforced in light of the Phase 2 evidence and argument.

128. Put simply, Terekhov's narrative as to the impugned events is more credible than the narrative advanced by Khozan and other witnesses called by the Respondents. Khozan is a sophisticated and worldly commercial entrepreneur, but throughout his testimony he was evasive, argumentative, and inconsistent. A considerable portion of his testimony was dedicated to advancing arguments as to why Terekhov should not be believed, and why he was undeserving of anything approaching the USD $1 million JJNI Payment. Khozan's testimony was frequently internally inconsistent, such as his attempt to persuade me that he had put millions of dollars in CVMRI and its related corporate entities, none of which were profitable. On more than one occasion, he sought to minimize Terekhov's contributions to any success that CVMRI may have had, and yet failed to reconcile that position with the fact that he had given Terekhov 17.5% of the company.

129. Other facts that reinforce my findings on credibility include:

a. As noted above, Khozan gave varying and inconsistent accounts as to his motives with respect to the 2005 Resolution.

b. I cannot ignore that Khozan drafted the 2005 Resolution knowing that CVMRI did not have an authorized class of preference shares to enable the conversion contemplated therein.

c. When responding to Popik in his e-mail of May 2005, Khozan knew that the preference shares were non-existent yet told Popik that they did exist and simply hadn't been issued to employees.

d. Khozan withheld the existence of the 2005 Resolution and the fact that Terekhov was a shareholder in CVMRI from his friend and lawyer, Mr. Finley.

e. Khozan sought to rely on the unaudited financial statements when it served his purpose but rejected them when it didn't.

f. Khozan undertook to have the unaudited financial statements, and in particular the existence of the CVMRI Dividends, explained by his long-time accountant, Mr. Pajak, but never produced that witness or offered any reasonable explanation for the entries recording the CVMRI Dividends and other management bonuses.

g. Khozan offered no credible explanation for the muddled corporate records, other than to try and blame Terekhov and sometimes his accountant.

130. In my respectful view, Khozan tried to have it both ways: he was worldly, experienced, successful and knowledgeable, but somehow was taken in by Terekhov.

131. On the other hand, I found Terekhov gave his evidence in a straightforward and credible manner throughout, answering questions without argument and candidly, with no attempt to avoid or evade. I accepted in the Interim Award, and still find, that Terekhov was inexperienced in corporate matters and that he had a reasonable basis upon which to rely on and trust Khozan to deal with such matters.

132. The Respondents' main arguments in defence of the oppression claim are premised on an underlying submission as to Terekhov's personality, namely that he is a crafty, deceptive character who has manipulated Khozan and these proceedings from the beginning. I was unable to accept that premise in the Interim Award, and my views as to the credibility of Terekhov's narrative as opposed to Khozan's have only been reinforced with the benefit of Phase 2 evidence. I do not

agree with the Respondents' characterization of Terekhov as deceptive and crafty, nor do I accept the Respondents' argument that Terekhov himself breached his obligations to CVMRI by failing to better inform himself of the company's financial and corporate activities.

133. The Respondents argue that Terekhov ought to have done more to examine CVMRI's financial records, while at the same time alleging that those records are rife with errors and inaccuracies. Similarly, the Respondents' submission that Terekhov had access to, but failed to avail himself, of CVMRI's legal support (including Mr. Finley) is not persuasive. Mr. Finley was clear in his evidence that he was unaware of most of the significant developments at issue in this arbitration until the Statement of Claim was delivered: he knew nothing of Terekhov's status as a shareholder and nothing of the 2005 Resolution. This evidence leads me to conclude that it was Khozan who intentionally kept his lawyer in the dark, and Khozan who must bear the burden of failing to consult Mr. Finley on his efforts to "expropriate" Terekhov's interest in CVMRI. I am satisfied that Mr. Finley was not a party to Khozan's oppressive acts, as described below.

134. Turning then to Khozan's efforts, and with the above in mind, I have no difficulty in concluding that the Respondents' conduct, and Khozan's conduct in particular as the directing mind of the Respondent corporations, was oppressive towards Terekhov. The oppression, simply put, was by Khozan dealing with the affairs of CVMRI both before and after the 2005 Resolution in total and unfair disregard of his minority shareholder, Terekhov. Looking to the indicia of oppression put forward by the Claimant (and not seriously challenged by the Respondents), it is clear that many are present in this case. Specifically, Khozan actively deceived Terekhov and Popik as to the purpose and effect of the 2005 Resolution, conduct that qualifies on any reasonable standard as a lack of good faith in his role as a director.

135. CVMRI's financial records also show that bonuses and dividends were being paid out by the company, and I accept Terekhov's evidence that he never received his share of any such amounts. Khozan sought to explain these financial matters away by promising to call his accountant, Mr. Pajak, who could explain everything; Mr. Pajak was ultimately never called to give evidence. Similarly, in preparing her report Ms. Harris requested a wide array of documents that might have shed light on CVMRI's financial transactions involving Khozan and the other corporate respondents that he controlled; no such documents were provided to Ms. Harris by the Respondents. On both counts, I would draw an adverse inference as against the Respondents. Although I cannot make any finding as to the specific amounts in question, I am left to conclude that at least some part of these amounts recorded on the company's financial statements ultimately made their way to Khozan or to companies he directly controlled. In doing so Khozan did indeed discriminate as against his minority shareholders, with the effect of benefitting himself (through Net Process as the majority shareholder of CVMRI) to the detriment of Terekhov.

136. Khozan engaged in this conduct with an improper purpose, namely to squeeze Terekhov and Popik out as common shareholders because Khozan wished to exclude them from what he expected would be great profits arising from the JJNI/HOROC venture. Whatever Khozan's true motivations, the Respondents did not advance any credible evidence or argument from which I could conclude that his conduct was anything but oppressive towards Terekhov.

137. Putting these indicia of oppression aside for a moment, I would return to the reasonable expectations test as articulated by the Respondents themselves: a finding of oppression requires "articulated expectations; they must be reasonable; they must have been breached oppressively, or in a manner that is unfairly prejudicial or unfairly disregards". In my view, this test is easily made out on the record before me. Terekhov's expectations were clearly articulated, namely that he

would receive the JJNI Payment as a dividend as a result of CVMRI's success in securing the JJNI Agreement. This expectation was entirely reasonable, given what Terekhov knew about the JJNI Agreement, and it was articulated to Khozan on more than one occasion. In fact, Terekhov's expectations were nurtured and driven by Khozan's own conduct in leading Terekhov to believe that the JJNI Payment had been safely invested in Switzerland.

138. For the reasons set out above, Terekhov's expectations were indeed breached oppressively, both in a manner that is unfairly prejudicial and that unfairly disregarded Terekhov's interests. Having deceived Terekhov as to the significance of the 2005 Resolution, Khozan believed that he had successfully squeezed him out as a common shareholder. Over the following years, the evidence shows that Khozan ran CVMRI as if he were the sole shareholder, without any regard to Terekhov's interests.

139. Khozan's conduct was "unfairly prejudicial" to Terekhov within the meaning of how that phrase has been defined by the courts. In *BCE Inc. v. 1976 Debentureholders,* 2008 SCC 69, the Supreme Court stated (emphasis mine):

> [93] The *CBCA* has added "unfair prejudice" and "unfair disregard" of interests to the original common law concept, making it clear that wrongs falling short of the harsh and abusive conduct connoted by "oppression" may fall within s. 241. "Unfair prejudice" is generally seen as involving conduct less offensive than "oppression". **Examples include squeezing out a minority shareholder**, failing to disclose related party transactions, changing corporate structure to drastically alter debt ratios, adopting a "poison pill" to prevent a takeover bid, **paying dividends without a formal declaration, preferring some shareholders with management fees** and paying directors' fees higher than the industry norm.

140. In *Paul v. 1433295 Ontario Ltd*., the Superior Court referred to Markus Koenen's leading text on oppression with approval, which states (emphasis mine):

> Oppression is conduct that is coercive or abusive. It has also been described as conduct that is burdensome, harsh and wrongful, or **an abuse of power that results in an impairment of confidence in the probity with which the company's affairs are being conducted**
>
> Unfair prejudice has been found to mean a limitation on or injury to a complainant's rights or interests that is unfair or inequitable. Examples of unfair prejudice from corporate cases include
>
> • **squeezing out a minority shareholder because of a personal desire to exclude her**;

141. Having made the above findings of oppression, I would pause here to address the issue of liability as between Khozan and the corporate Respondents. There are two parts to this issue, in my view: first, whether all of the corporate Respondents are Khozan's alter ego (as I found was the case with Net Process in the Interim Award), and second, whether Khozan should also attract officer's and director's liability for his role in the oppression.

142. For the first part, on the basis of the full record now before me, I have no trouble concluding that all of the corporate Respondents are indeed Khozan's alter ego. During the Phase 2 hearing, Respondents' counsel effectively conceded this point, noting that Khozan had accepted that he "and his various companies and interests will all be treated as Mr. Khozan". On the balance of Khozan's testimony throughout this arbitration, I conclude that he clearly identified himself personally with the corporate Respondents, which were not treated as meaningful separate legal entities. This is a case where, to borrow the language from the Court of Appeal's decision in *642947 Ontario Ltd v. Fleischer,* Khozan completely dominates and controls the separate legal personality of the corporate Respondents, and I conclude they are his alter egos to prevent Khozan from using those corporate entities as any sort of shield for his oppressive conduct.

143. As to whether Khozan should attract officer's or director's liability, the Respondents submit that the Claimant has not pleaded nor led any evidence to support a claim of personal liability, or to show that Khozan was acting outside his capacity as director and officer of the corporate Respondents. I do not accept that submission. The Amended Statement of Claim does indeed claim oppression relief as against Khozan personally in his capacity as a director of CVMRI, and specifically pleads that the corporate Respondents are the "alter ego of each other, and that the obligations of any one of them to Terekhov is the obligation to all of them".

144. The Claimant also relies on the Supreme Court's decision in *Wilson v. Alharayeri*, 2017 SCC 39, in which Justice Côté found in the context of oppression remedies that "personal benefit and bad faith remain hallmarks of conduct properly attracting personal liability". The Court went on to note that in situations where a director both acted in bad faith **and** obtained a personal benefit, it will be "clear-cut" that he should be personally liable for oppression.

145. Based on my findings above, it is clear that Khozan did act in bad faith and he obtained some personal benefit from his conduct; as a result, I conclude that he is personally liable as a director for the oppression suffered by Terekhov.

C. Issue #3: Quantum of Compensation Owed to Terekhov

146. Khozan acted to the detriment of the interests of the minority shareholders in CVMRI from April 2005 onwards at the latest, and probably from much earlier. From April 2005, by his own admission, Khozan believed he was sole shareholder and acted in total disregard of Terekhov's minority interest. Therefore the appropriate remedy is for Khozan and the corporate respondents, all of whom are Khozan's alter ego, to pay the fair value of Terekhov's 17.5% shareholding in CVMRI as of April 2005.

147. Were it not for more cogent evidence, I would have no difficulty accepting the opinion of Ms. Harris as to the value of Terekhov's shares as of April 2005. The Respondents must bear the consequence of any shortcomings in her assessment of value insofar as they refused to produce the documents she requested. I reject Mr. Soriano's conclusion that she should not have accepted her retainer in the circumstances.

148. In my view, regardless of the shortcomings of the Harris Report, there is a better approach to assessing the value of the shares owned by Terekhov as of April 2005. By their conduct, the evidence shows that Khozan and Terekhov effectively agreed on a value for Terekhov's common equity interest in CVMRI in April 2005: the USD $1 million JJNI Payment.

149. It is on the basis of Khozan's representation that he would pay the JJNI Payment that Terekhov was convinced to sign the 2005 Resolution and to place his full trust in Khozan. It was on the basis of Khozan's representation that the JJNI Payment had been safely invested on Terekhov's behalf in Switzerland that Terekhov was content to allow Khozan to exercise full control over CVMRI in the following years. In effect, the JJNI Payment was the *quid pro quo* for Terekhov's willingness to allow Khozan full equity control of the company. As I have found, the 2005 Resolution was an ineffective sham perpetrated by Khozan and the JJNI Payment was never made nor safely invested in Switzerland, but they nevertheless formed the basis of Terekhov's reasonable expectations as to the value of his ownership of CVMRI, expectations that were created and encouraged by Khozan.

150. As I concluded above, Terekhov's relative shareholdings of CVMRI did not change from the time of the 2000 USA through to his termination: he continues to own 17.5% of the common shares of the company. This conclusion is consistent with CVMRI's unaudited financials, which

contradict Khozan's evidence that he put additional capital into the company at the time of the 2005 Resolution.

151. Khozan did not pay for Terekhov's or Popik's shares, nor did he put additional capital into the company to subscribe to any newly issued shares. The only significant change that took place in April 2005 is that Khozan believed, as a result of his efforts with the 2005 Resolution, that he had effectively excluded Terekhov from ownership of CVMRI's common shares. Khozan was able accomplish this through his promises – now known to be false – that Terekhov had no reason to worry and that the JJNI Payment was securely invested with Schefer in Switzerland.

152. In light of Khozan's conduct, it would of course not be a fair result to leave Terekhov with 17.5% of CVMRI, particularly given more recent actions taken by Khozan to remove assets from CVMRI and to transfer those assets to his other corporate entities. Fairness dictates that Terekhov should receive damages for the oppression he suffered equal to the fair value of his shares as of April 2005. In the result, for the foregoing reasons, I find that Terekhov was entitled to USD $995,000 (taking into account the single $5,000 payment previously made by Khozan to Terekhov's wife) for his shares in CVMRI as of April 2005. While I accept Ms. Harris' evidence that Terekhov's shares may have been worth more than that in April 2005, owing to CVMRI's various business prospects, I cannot ignore the clear evidence of the *quid pro quo* expectations formed as between Khozan and Terekhov.

153. Despite my findings of oppression, I am also not inclined to award Terekhov additional damages in respect of the CVMRI Dividends. Although the amounts were recorded on the unaudited financial statements, the evidence showed that no such dividends were ever properly declared or paid to any other shareholders. I am willing to draw an adverse inference in respect of

the Respondents' failure to call Mr. Pajak to provide the explanations Khozan said were forthcoming. That adverse inference, however, does not lead so far as to find that Terekhov is entitled to compensation for the CVMRI Dividends over and above his compensation for his shares as of April 2005. Instead, the adverse inference, as noted above, reinforces my findings on credibility as between Khozan and Terekhov and my conclusion that Khozan acted oppressively and in bad faith.

VIII. CONCLUSION

154. For the foregoing reasons, I conclude and order as follows:

a. The corporate Respondents are each the alter ego of each other and of the individual Respondent, Khozan.

b. The Respondents, including Khozan in his individual capacity as a director of CVMRI, engaged in oppressive conduct as against Terekhov.

c. Terekhov held 17.5% of the outstanding and issued common shares of CVMRI, both immediately before and immediately after the 2005 Resolution.

d. The 2005 Resolution was effectively a sham perpetrated by Khozan, and it had no impact on the share capital of CVMRI or on Terekhov's shareholdings.

e. Terekhov is entitled to damages for oppression equal to fair compensation for his shares in CVMRI as of the time of the 2005 Resolution. The appropriate quantum of compensation is the value effectively ascribed to Terekhov's shares by both him and Khozan at that time, namely USD $1 million. Taking into account the previous $5,000 payment made by Khozan, Terekhov is entitled to USD $995,000.

f. This award shall be enforceable against all of the Respondents.

IX. COSTS AND INTEREST

155. If the parties are unable to agree on costs and/or the pre-judgment interest applicable to the above amount owed to Terekhov, I invite submissions in writing. The Claimant will have 3 weeks from today's date to deliver his submissions in respect of costs and/or pre-judgment interest, and the Respondents will have 2 weeks thereafter to respond.

Dated at Toronto, this 3rd day of April, 2018

STAN FISHER, Q.C.
ARBITRATOR