

**Dates of hearing:**

**November 9 to 13 and 16 to 19 November 2015 and February 8 and 9, 2016**

**DECISION**

The reader will take note of the coming, on July 18, 2016, of section 172 of the Act relating primarily to the implementation of certain provisions of the March 26, 2015 Budget Speech; It has the effect of replacing the name of the Bureau of Decision and Review with that of the Administrative Tribunal for Financial Markets (hereinafter the "Tribunal"). In subsequent paragraphs, the words "Bureau of Decision and Review" and "Bureau" are replaced by "Tribunal administratif des marchés financiers" and "Tribunal", even if reference is made to facts which occurred before 18 July 2016.

**HISTORY**

On April 8, 2014, the Autorité des marchés financiers (the "Authority") filed a request for an ex parte hearing with the Tribunal under sections 93 and 115.9 of the Financial markets and sections 265 and 266 of the Securities Act. The aim was to reach the following conclusions:

- A cease trade order against Karatbars International GMBH ("Karatbars"), Robert Larivière, Michel Desroches, Antoni Snopek and Michel Galipeau; and
- An order prohibiting the practice of counseling against Karatbars International GMBH, Robert Lariviere, Michel Desroches, Antoni Snopek and Michel Galipeau.

Following an ex parte hearing on April 9, 2014, on April 17, 2014, the Tribunal rendered the decision sought, pronouncing the following orders against the respondents

"WELCOMES in part the request of the Autorité des marchés financiers;

REJECTS the Authority's request relating to Michel Galipeau, respondent in this case;

- "Ex parte cease trade order, pursuant to section 93 of the Act respecting the Autorité des marchés financiers and section 265 of the Securities Act:

PROHIBIT the persons whose names appear below from carrying on any activity for the purpose of carrying out, directly or indirectly, a securities transaction in all forms of investment covered by the Law on Securities issued by Karatbars and , Without limiting the scope of the foregoing, including but not limited to, through websites or otherwise. These people are:

- Karatbars International GmbH;

- Robert La Rivière;

- Michel Desroches; and

- Anthoni Snopek.

• Ex parte prohibition of acting as an advisor under section 93 of the Act respecting the Autorité des marchés financiers and section 266 of the Securities Act:

PROHIBIT the persons whose names appear below to carry on the activity of advisor, as defined in section 5 of the Securities Act;

- Karatbars International GmbH;

- Robert La Rivière;

- Michel Desroches; and

- Anthoni Snopek. [4]

On May 2, 2014, the respondents filed a notice of challenge to this decision, pursuant to section 115.9 of the Act respecting the Autorité des marchés financiers. An amended application was filed by the Authority on September 25, 2014, adding conclusions of administrative penalties and measures to ensure compliance with the law.

A pre-hearing conference was held on October 27, 2014, during which some admissions were made. The hearings were initially scheduled for May and June 2015. Meanwhile, new prosecutors were appointed to represent the respondent Karatbars. A revised application was submitted by the Authority on 6 November 2015.

The hearings on the merits finally took place from 9 to 19 November 2015, while the representations of prosecutors were presented on 8 and 9 February 2016. At the hearing on 9 November 2015, the Tribunal rejected the applications in severance of proceeding from the respondents Robert Larivière, Michel Desroches and Antoni Snopek.

## **THE DEMAND**

The original request of the Authority is reproduced in the ex parte decision of 17 April 2014. The Tribunal invites the reader to refer to it. On 25 September 2014, the AMF filed an amended application requesting, inter alia, that the Tribunal add the

following findings to its original application under section 94 of the Financial markets [6] and sections 5, 11, 148, 265, 266 and 273.1 of the Securities Act [7], namely:

- A ban on any affiliate of Karatbars International GmbH to recruit other persons resident in Quebec to become Karatbars affiliates and, as a result, to engage in any activity related to securities transactions in Karatbars;
- An order to Karatbars International GmbH to block access to the Karatbars website, known at the Internet address <http://www.karatbars.com>, for any IP address in Quebec. In order to prevent any person residing in Québec from consulting this website;
- An order to Karatbars International GmbH to block the admission of any new Affiliate resident in Quebec to the Karatbars Affiliate Program;
- The imposition of an administrative penalty on Karatbars International GmbH for an amount of thirty thousand dollars (\$ 30,000) for having practiced as a dealer and adviser without being registered in these securities and for making investments in Québec without having previously prepared prospectuses;
- The imposition of an administrative penalty on Robert La Rivière in the amount of five thousand dollars (\$ 5,000) for having practiced as a dealer and adviser without being registered in these securities and for making investments in Québec without a prospectus having been established;
- The imposition on Michel Desroches of an administrative penalty in the amount of five thousand dollars (\$ 5,000) for having practiced the activity of broker and adviser without being registered in these securities and for placing investments in Québec Without a prospectus being drawn up beforehand;
- The imposition of an administrative penalty on Antoni Snopek in the amount of five thousand dollars (\$ 5,000) for having practiced the activity of broker and adviser without being registered in these securities and for placing investments in Québec Without a prospectus having been established; and
- Authorization for the Autorité des marchés financiers to collect the payment of these penalties.

[8] Finally, on 6 November 2015, the Authority filed a revised application with the Tribunal.

## **THE HEARING**

[9] The Tribunal notes at the outset that during the hearing days which took place from November 9 to 19, 2015, and on February 8 and 9, 2016, Robert Larivière, Michel Desroches, Antoni Snopek, , Did not cross-examine any witnesses of the Authority and Karatbars, presented any evidence in defense or made any submissions. The Court of First Instance first examined the evidence at the request of the Authority and then of Karatbars' defense.

## Proof of the parties

The Authority's evidence

The testimony of the investigator of the Authority

The interrogation

[10] The Attorney General of the Authority first introduced the testimony of an investigator employed by that agency. It presented the evidence of the facts described in the Authority's application and filed the supporting documents. The Tribunal notes from her testimony that the Applicant's investigation dates back to September 2013 as a result of denunciations filed with this organization. It explains that Karatbars has a pyramid structure and that it was necessary to prepare a prospectus for the investment of the forms of investment it sells to the public and to be registered as a broker with the Authority.

[11] She testified that she had done extensive internet research on the subject, attended a meeting organized by Karatbars, but also attended online meetings. In the course of its investigation, it identified Robert Larivière, the respondent in this case, who initiated the activities of this company in Quebec. She also identified Michel Desroches and Antoni Snopek who acted for Karatbars in Quebec. She explains that Karatbars is a company which was incorporated in 2011 in Stuttgart, Germany; This company is not registered in Québec and has no place of business. The general manager is Harald Seiz. It is filing a communiqué dated 8 August 2011 from the Financial Conduct Authority of Great Britain [8] which states that Karatbars would provide financial services in that country without being authorized to do so.

[12] She files a document [9] describing the respondent company, namely, "Karatbars International GmbH is a company specializing in the sale of small 999-millimeter fine gold bullion and giftware . Karatbars offers a range of unique products, including collectibles; To mark an event such as a birth, an anniversary, a wedding. Christmas or simply to please "[10]. The same document deals with free or paid storage options and delivery. Karatbars will market its products in more than 70 countries, she testifies. She adds that this company announces that its vision is to contribute to the financial security of everyone and everyone.

[13] Always from the same play, the witness explains how Karatbars works, namely by affiliation / partnership:

"The affiliation or partnership program has long been an appropriate model for the development of sales and turnover on the Internet.

You have the possibility as an affiliate partner of our merchandise items as well as our online shop.

Whether you are buying from our online store and benefiting from GoldBack, or want to develop our website on the Internet, you have the opportunity to do so.

Register and build your business with us! "[11]

[14] She then explained that Karatbars was available in Canada and then referred to the text of that same play relating to the London Bullion Market ("LBMA") "an off-exchange shopping center for gold and silver ..." One of the world's leading commodity trading centers in London. This association indicates since 1919 the price of the world market of the gold and since 1897 the price of the world market of the money. Trade co-ordinates the London Bullion Market Association (LBMA) "[12]. It is Karatbars, she explains, who insures the delivery of gold, by FEDEX, explaining the costs or the possibility of storing it for free. The document refers to Robert Larivière as distributor [13]. The witness further noted that Karatbars does not hold any registration with the AMF, is not a reporting issuer in Québec and has not filed a prospectus.

[15] It deals with the involvement of Robert Larivière and his presence on various websites [14], which he applies to describe, and his association with Karatbars and his activities with Karatbars. Robert Larivière provides seminars, invites people to watch videos, open a Karatbars account and buy a package. It points to a picture that the Karatbars site would have received 12,366 visits, without, however, the period specified [15]. There is also an invitation to participate in a Karatbars day, Ste-Adèle, the Hotel Le Chanteclerc [16] and the launch of an event in Montreal.

[16] There is also a presentation in French for the purchase of gold and the announcement of the presentation of a 12-week program to acquire a residual income of \$ 4,500. Further on, we discuss the "12 Week Plan", the estimate of incomes and the various plans offered, namely:

W Bronze Digital Package Level (\$ 130);

W Silver Package Level (\$ 300);

W Gold Package Level (\$ 750); and

W VIP Package Level (\$ 2,000);

[17] This plan can work if an affiliate meets as a team with two other people and if all do the same [18]. Following the presentation by the Authority of a video of a meeting held at the Hôtel Le Chanteclerc on 6 February 2014. Special guests were present, including Harald Seiz, President of Karatbars, Thomas Schraner, Karatbars America and Robert Larivière, senior partner of Karatbars. The Tribunal retains the presence of Michel Desroches, Antoni Snopek and of course Robert Larivière, all three respondents to this case, and the role they play during this meeting. They invite participants to training, to know how to start a business. For example, Antoni Snopek explains, in English and French, how he found affiliates and how he signed them.

[18] The whole is connected to Karatbars and the sale of gold. We talked about the work done, the meetings, the affiliates. It explains how a new affiliate is invited to visit a virtual office in which he will find the necessary tools to make money, all, related to gold. According to the explanations provided, the idea behind all this is that it is necessary to provide some work to make money, involving other people who must in turn provide some effort and involve other people, always in the field of gold. It explained how it was possible to enter as a customer or as an affiliate, by paying nothing.

[19] was introduced Michel Galipeau, introduced as a tax specialist, and instructed to explain how the Karatbars system respects the law. Daniel Girolmo then came to explain how he became an affiliate of Karatbars, how many calls he made, and that he now has 27,000 people in his organization. Another person named Joe Norman stated the following:

"He's been crunched the numbers and he's put together the following very attractive offering and that is, when you register a Karatbars account and if you just want to do nothing but go after customers, one hundred (100) Over one thousand dollars (\$ 1,000.00) a week in residual income for you. One hundred customers doing one week, one thousand (1,000) a week, more than that, that's fifty thousand (50,000) a year from a hundred customer. "[19]

[20] During this conference were heard Thomas Schreiner, America director of Karatbars and Harald Seiz, president and founder of this company; Both came from Germany to talk about her activities and ways to make money with gold.

[21] The Authority's investigator then went on to deal with the activities of Michel Desroches, the respondent, on the Internet, in connection with Karatbars, the 12-week plans, visits to the Karatbars site and affiliate programs . In fact, the same information is found on the websites to which Robert Larivière is associated. The investigator then testified at a Karatbars conference she attended on October 21, 2014, in Drummondville. Robert Larivière made a presentation online and then there was a question period. Michel Desroches was also present.

[22] The witness then addressed the various products offered by Karatbars on a website [20], as follows, all payable by credit card or bank transfer:

1) the money package, including one gram of gold, three bonus cards worth € 100, three bonus cards giving a 3% discount on gold and brochures;

2) the gold package, including 2 grams of gold, 7 bonus cards worth € 100, 5 bonus cards giving a 3% discount on gold and brochures;

3) the VIP package, consisting of 3 grams of gold, 20 bonus cards worth € 100, 10 bonus cards giving a 3% discount on gold and brochures, the latter for a price of 1,595 [21].

[23] The interviewer then dealt with Karatbars' "Affiliate Compensation Plan" [22], the client acquisition bonus and the Karatbars Pool. In this document, reference is made to the issue of "shares" [23]. The witness does not really know whether it refers to shares or shares. She then filed the Karatbars Marketing Plan [24]; It describes seven ways to make money, namely i) Direct Commission, ii) Unilevel Bonus, iii) Generation Bonus; Iv) Bonus Package; V) Dual Team Bonus; (Vi) Karatbars Pool and (vii) Karatbars Gold Fund [25]. This document explains these various ways to earn points and income. The Bonus Package is described as follows:

"If you decide to purchase a package, you will receive a 10%, 15% or 20% direct commission. All available commissions in the Unilevel Bonuses. "[26]

[24] The interviewer also deals with the Karatbars Pool and its functioning. She then presented in evidence the video of an online conference of Robert Larivière who was listened to in audience [27]. The latter deals with Karatbars, an e-commerce company, of the program components that are optional, with no purchase obligations. He explains that Karatbars operates in 114 countries, sending gold bullion LBMA. It also deals with Prosegur where Karatbars gold is stored. He explains the reasons for buying gold and the utility of gold in a changing economy. He explains the 12-week Plan of Karatbars. This is to save an amount in the bank every week and find two other people to do the same, each finding two other people doing the same thing in turn, and so on.

[25] Robert Larivière invites the acquisition of a business package, such as the gold package, for example, according to the desired level. He explains that commissions are paid through a Mastercard Karatbars. He talks about the revenues that can be contemplated with these activities, depending on the efforts that are made. He said that he had set up a team of 5,000 people, ending his presentation by saying that the opening of the account is free and talking about the purchase of packages. The investigator of the Authority then continued her testimony to deal with Karatbars' income forecasts, depending on the purchase of the various packages. It recognizes that the purchase of gold is only suggested to affiliates; But it is not mandatory.

[26] She explains how to buy gold from Karatbars, comparing it with the price of the LBMA and the Bank of Canada; She felt it was cheaper on the same date. She testified that she did not find evidence that Prosegur was storing gold for Karatbars. This was also the case with Degussa, another company with gold. She then discusses the value of the various packages offered by Karatbars. She filed lists of Karatbars websites [28] and company ads [29]. She then explains how, after identifying a Karatbars ad, she sent an email under an alias to take information, to invest. She explained that she spoke to a person who told her about the 12-week plan to make money, buying packages and gold, paying commissions on Mastercard, storing The role of Michel Desroches, identified as the one who had brought Karatbars to Quebec.

[27] She then sent an email saying she was interested in investing. Her interlocutor invited her to a meeting in Drummondville, where she went. She attended a Karatbars presentation on gold, including an online presentation by Robert Larivière. Michel Desroches was present and explained the packages, even talking about shares paying dividends. Provided explanations on the cycles, recruitment of people and their place in the organization, payment of commissions and sponsorship. Later, she contacted her interlocutor to offer to put \$ 10,000 into Karatbars. He was then told about shares and dividends. His interlocutor also told him that it was possible to take a position free of charge in Karatbars and make profits without flat-rate sales on gold.

[28] The witness of the Authority then dealt with advertisements of Karatbars placed after the Tribunal had pronounced its decision against it. She spoke with a person identified in these ads who told her that Karatbars' only restriction was that she could no longer hold presentations before a group. She talks about her exchanges with this person. The witness then explained how she enrolled at the Karatbars site on 9 June 2014, under an alias. This gave her the opportunity to be a client and an affiliate. It has acceded to its "back office" [30]; Among other things, the price of gold was displayed as well as the place of the interviewer in the organization. She bought a "silver" package for € 278.16, which included one gram of gold, three bonus cards of € 100, three bonus cards of 3%, and Brochures [31]. It paid by electronic transfer [32].

[29] It revises references to the Karatbars Bulletin; One of them requires "please refrain from the use of the word investment" or "do not offer tax advice unless you are a licensed professional". It then revises many of the documents it has printed. It draws attention to various bronze, silver, VIP and Exclusive VIP packages [33]. It also draws attention to a warning appearing on May 5, 2014 on the Karatbars website, which states that "In view of recent allegations coming from the AMF in Quebec, "[34]. It lodged warnings sent in 2014 by the financial authorities of Holland [35] and the island of Aruba [36] warning the public about investments with Karatbars.

## **Cross-examination**

[30] The Karatbars prosecutor then cross-examined the witness of the Authority. She says she has opened two affiliate accounts with Karatbars, but no customer accounts. She has not studied e-commerce in general. She explains what an affiliate program represents for her:

"For me, an affiliate program is an SEO program. Generally, companies need to find clients and they use people they sometimes call affiliates, sometimes other words to recommend them to clients.

The Karatbars affiliate program was particularly interesting to me in terms of the packages that were purchased and that's what I looked at more specifically, the packages and then the revenue associated with the packages.

So, yes, the Karatbars program is an affiliate program in the sense of what I explain. Here. For me this is an affiliate program. That of Karatbars has something special that has caught my attention and it is the purchase of packages in order to generate income.  
"[37]

[31] She acknowledges that the Royal Canadian Mint has an affiliate program. But she did not know that other companies had programs similar to Karatbars to sell gold; It did not carry out the analysis of such programs set up by other companies. Cross-examined as to whether the acquisition of a Karatbars package by an affiliate is mandatory, she replied that she was told that a package was bought, that one gram of gold was bought, and that two People who do the same. The Karatbars prosecutor cross-examines it on some of the alleged contained in the revised request of the Authority, namely that the price of gold requested by Karatbars would be injured. It deals with the price demanded by Karatbars for the sale of gold as well as the price for the redemption of gold by this same company.

[32] In reference to Exhibit [38], she is asked to compare the price of gold requested by Karatbars (€ 48.26) and the price of gold, which is displayed on US dollar tables and , All in relation to the price on the London Bullion Market Association ("LBMA") that the witness retained. She does not know if Karatbars was buying gold at a price higher than the market or whether her competitors were selling gold at the same price as the latter. She relied on the price indicated on the LBMA. Revising certain parts [39], it is found that Karatbars buys gold from investors at a price higher than the price posted on the LBMA. Several questions are asked to ascertain whether the Authority has compared the methods and whether Karatbars' claims are comparable to those made by those who operate in the same field. Few comparisons seem to have been made thus. She explains her understanding of how affiliates purchase gold and discusses the content of packages.

[33] The Authority's investigator referred to a person who encouraged people to buy five grams of gold per month; She would be the only person who did that. The witness did not see anything like that in the rest of the evidence. It understands what an SEO program is; We refer people who want to buy products and make money with this reference. She adds that the 12-week program of Karatbars is a way to promote her SEO program. It revises certain points of the conference of 9 February 2014; The lawyer asked him if plans other than the 12-week plan were presented. She explains that there are also people only interested in buying gold; They have no place in the 12-week plan.

[34] Reference is made to referring other consumers who buy gold and who refer other people who also buy gold. The representations made as to the use of gold are dealt with in relation to the allegations of the revised application of the Authority. The witness acknowledges that in the presentations there is a lot of emphasis on the work that needs to be done to get there and that it takes time. We are dealing with the referencing of two people. It then deals with the Karatbars Marketing Plan ("Marketing Plan"). The investigator then states that the AMF has not received any complaints from the 5,300 Karatbars affiliates in Quebec regarding the quality of the gold or unpaid commissions.



## The buyer's testimony

### The interrogation

[36] The first witness is a co-owner of a natural health store and a shareholder in a spectacle. He stated that he joined Karatbars in November 2013, buying the VIP package from that company. He attended an information session in Laval, after being invited by a friend. Karatbars business opportunities were discussed. This lasted an hour; The contents of a document were reviewed [43]. Antoni Snopek was there and introduced one of his lieutenants. About thirty people attended the meeting. The witness states that he was seduced by the idea of saving by using a physical asset, that is, gold. He was less interested in the e-commerce component of the plan. He made a purchase online and the gold was delivered by FEDEX. The document submitted refers to the 12-week plan [44]. He talks about the snowball effect and the ability to earn commissions by bringing in new members. He talks about leverage.

[37] After attending two Karatbars meetings, he bought the Exclusive VIP package. He understood that by taking this package he could get shares of the pool of profits from the company. He said that after a few years he could make his \$ 10,000 investment worthwhile. He paid with his credit card at the end of November 2013. He states that he created an account on the site, adding that "Anyone can buy and buy gold without buying a package" [45], And that "it's just that [...] to have commissions you have to buy a package" [46]. He also said that many shipped to make residual commissions while he wanted to buy gold. He explained that several members did not buy gold but only wanted to have commissions. He quickly revises the packages presented in the Karatbars document and the commissions to which they give entitlement.

[38] When affiliates received commissions, they were paid through the Karatbars Master Card or the eWallet. But he claims to have misplaced this credit card and may have lost a few hundred dollars. He stated that he had attended a second, then a third meeting of Karatbars. Michel Desroches animated one. Robert Larivière also attended. It was the same presentation that he had already attended. At the meeting in Longueuil, there were about a hundred people. For his decision to purchase a package, the witness said he felt confident due to the presence of Robert Larivière, a former banker of a private bank in the United States. The latter would have presented himself as a financial adviser or retired financial planner. For the witness, he was the gray eminence of Karatbars in Quebec and even the first to lead his network.

[39] This is where the witness embarked, seduced above all by saving in "physical gold" but also to have shares in corporate profits. For him, it was a business decision, but not necessarily an investment, as he became a member and cybercommerce with the Karatbars platform. He bought 50 to 60 grams of gold, then he stopped buying when Karatbars was put on ice in Quebec. He noted that there was a tax expert who assured the participants of this meeting that the project had the green light from the Authority and that it was a "no brainer". After his investment, he received a document entitled "Profit Pool Share" which gave him the right to profit from the profits of Karatbars in Quebec because he had bought the exclusive VIP package as two or three others Québec City and Area.

[40] In the first few months, he received between \$ 2,000 and \$ 3,000 in commissions and recruited 16 to 18 people. He received 5 grams of gold and promotional cards entitling him to discounts. He said he was afraid of being deceived over his participation in the pool's profits; His shares have barely brought him anything. This sharing of profits was nebulous and Karatbars did not answer him on this subject. He no longer acceded to his account because he had forgotten his password. He acknowledges the Karatbars business plan document [47] which he saw on the company's website. It is not easy to understand, escaping his understanding. He does not know if he can sell the shares he bought, what he would like to do because he did not get what he deserves.

[41] The witness testified that he attended the meeting at Chanteclerc in Ste-Adele, a meeting he described, attended by several high-ranking leaders of Karatbars. They embroidered around business opportunities, using the document he had received at the

first meeting. He says not to have embarked in the motivational speeches. Everyone left to the document that had been distributed the first time. He was not obliged to refer people but at the same time, to aspire to financial freedom, it is necessary to bring members. He personally bought 50 to 60 grams of gold, to hoard. The whole was duly delivered to him. He has hardly embarked on the 12-week business plan, hardly believing in it. He recruited 15 or 16 direct members who in turn recruited 30 indirect members. He says he has 30 or 35 people in his tree. He had no information about them.

[42] He says that since the spring of 2014, everything is on the ice. He stopped and his godfather gave up. He found that the people he recruited did not buy gold but all bought packages, especially the bronze package. 6 people would have done business for 3 to 4 months. Everything fell in the spring of 2014. Members would have made losses. He received 2,500 euros which were paid on his Master Card. He could use the discount cards to buy gold. He explains that he bought leaflets and calendars for distribution to the people he was asking for. Referring to Exhibit [48], he noted that he had not received all of what came with the purchase of the exclusive VIP package. He adds that he did not use the discount card. He stored the gold he bought, for which he did not have any records. He did not receive the bonus promised in Karatbars' letter of 13 March 2014. He claims to own two shares of Karatbars and to have received a third part in promotion.

[43] He explains that the commissions he earned were converted into gold and handed over to the mutual account. He adds that his knowledge of securities is low. He is neither a director nor a director or shareholder of Karatbars. He claims to be a "shareholder of profits" [49].

#### **Cross-examination**

[44] The witness testified that he understood English and understood what the leaders of Karatbars said at the Chanteclerc meeting. [50] He acknowledged that commissions paid to an affiliate could be paid in grams of gold. This is the origin of the gold that is in his account. For him, the opportunity of Karatbars was a solid and promising business opportunity; With the assurances he received at the meeting, he was ready to embark. He acknowledges that he did not read the Affiliate Agreement [51]. He met with the investigator of the Authority before whom he testified. He explained that he had already been involved in several other multi-level sales cases.

[45] This enabled him to be able to provide his customers with natural products. It lists the products in question, recognizing that these companies put products on the market through an SEO program. He also acknowledges that these various companies are asking for referral by a sponsor, that there is binary, that commissions are paid each month, that there is an entrance fee and that there is The presence of an operational back office. It also receives marketing tools, online tools, from the back office. There are also competitions where you can win prizes. "It's a bit like Karatbars" [52], he says. What interested him in Karatbars is the gold savings plan and e-commerce, to diversify the savings in gold. He adds that if you want to earn a living in a multi-level marketing ("MLM"), you have to put the focus on it 100%.

[46] Raising the Karatbars' 12-week plan, he declares that it seems ridiculous to allow financial freedom to flourish within this period. But he declares that he did not allow himself to be caught in this game; It was low floor marketing. He is not aware of the Karatbars marketing plan. For the witness, this company is not an MLM, even if it looks like it. He admits that it is possible to join Karatbars without buying a package, without seeing the interest. He also acknowledges that Karatbars does not recognize itself as an MLM because there was no obligation to buy or maintenance fees. He talks about his godfather he met in Organo Gold. That is, he says, a person who makes a living with different network marketings. He is, he continues, riveted to his network almost day-night and "does not make money watching football on television." [53]

[47] The witness discusses his earnings with Karatbars. He says he has so far earned € 2,000 and a watch with this company but since he lost his password he can no longer access his site and no longer knows what his winnings are. Upon resuming the interrogation the next day, the witness recalled that he bought an Exclusive VIP package; The decisive selling point for this package was the opportunity to earn income from \$ 500 to \$ 1,000 per unit per year. He bought two shares and won one later. He then testified that after losing his password to access the Karatbars website, he had turned the page on this case. But after his testimony, he was able to retrieve his password, return to the back office of this site during the hearing and find that he had received commissions in the amount of € 1,408.66, representing the total royalties paid Every six months. There are also 5 grams which are stored at this company. He talks about other sums of money he had previously earned with Karatbars.

[48] The witness then explains that he "pulled the plug" from his operations with Karatbars after receiving an email from Robert Larivière, sent to all members by the end of April 2014; It stated that the activities of that company were suspended as a result of a decision of the Authority. He then explained that he bought the VIP Exclusive package because it included two shares that he believed were worth \$ 8,000 on the \$ 10,000 purchase price of the package; It is the shares that interested him, he says. He then returns to the meeting at the Hotel Chanteclerc. He said he was "drunk" [54] by the motivational speeches that were made there. He also recalled that there were warnings not to talk about investments or MLM. We were talking about e-commerce and a savings plan in physical gold. He knows that the way to get involved in an MLM is to devote himself to 100%.

[49] But he wanted instead to participate in Karatbars to diversify his savings by purchasing physical gold, making e-commerce time lost, but also to have shares entitling him to sharing the profits of the company. [55] . As for the concept of planning for 90 days or 12 weeks, he stated that "I do not care" [56]. He recalled that at one of the meetings held in Laval, the present tax adviser advised the participants to declare their income.

### **The testimony of an interested party**

#### **The interrogation**

[50] The next witness from the AMF was the branch manager of an insurance company, an insurance company and a mutual fund representative. He and his family attended a Karatbars meeting in Laval on January 29, 2014, where about forty people were present. He attended a presentation of Karatbars. Were present Michel Desroche, former financial planner, who explained his position within Karatbars. It revises the Karatbars presentation document [57] which deals with gold, its value and why it should be purchased. The heart of the presentation revolved around the Plan of Twelve Weeks:

"It was bringing two people underneath us and helping people bring in two more people, and so on, on a twelve (12) week plan, although we were getting some financial security. "[59]

[51] It was represented to him that one begins by creating a Karatbars account and that one then has to buy a Bronze, Silver, Gold or VIP package; It is according to the package purchased that will be determined the commissions that will be received thereafter, over 12 weeks. He adds that the purchase of a gram of gold is not compulsory but highly recommended and that in any case the royalties affected would pay it. The differences between the packages were explained, while recognizing that it would take more than one evening to properly assimilate the system. "What they are telling us is that our job is to get two people in, and they always keep two people underneath them. And our job is to mentor them, help them recruit their staff and explain the Karatbars system. "[60]

[52] He then explained the functioning of the various cycles [61], the money it can bring, depending on the packages purchased, and the need to balance the cycles in order to be paid. It explains the "power of 2" which leads to exponential revenues. But, he adds, if you stop working and recruit people and you do not help the people who are underneath, you get more income. He adds that the income is paid by Karatbars through the delivery of prepaid Master Card with which to buy things. During the meeting, he asked if the Authority endorsed the plan; We were told that we had checked and that there was no problem. He talks about the pressure on him by his in-laws, who are very involved in these kinds of plans.

[53] He stated that he had spoken with an employee of the Authority with respect to the activities of Karatbars. On February 19, 2014, he participated in another meeting of this company, once again in Laval. The representative who spoke to them said that the senior management of the company did not want any more talk about the leverage of gold. For the rest, the presentation was the same as at the first meeting. It was confirmed during the meeting that the Karatbars project was legal and that it was not a financial product. The Respondent Antoni Snopek was present; He explained his journey and said that the Karatbars cards could be used to pay for the purchase of products. He then spoke personally to Antoni Snopek; He told him that in Quebec, because of the Authority, there was no speculation about the gold market.

[54] On February 25, 2014, he had a private meeting with Antoni Snopek. He told her about the \$ 10,000 VIP package, which, he said, had higher revenues. He could then receive shares of the company, not necessarily voting, and participate in the Karatbars Pool Fund. This would give him the right to acquire shares in the company. The witness stressed the complexity of this particular project. The witness participated in a new Karatbars meeting on 26 February 2014, with the same presentation. He noted that there were financial advisors attending the meeting. There was also a tax specialist who explained that "it was quite legal for the AMF" [62]. He also stated that by joining Karatbars, he became a self-employed worker, entitling him to deductions to pay less taxes.

[55] The witness points out some of the gestures of the hand (which he reproduces) used by this tax expert to evaluate what Karatbars (high) purchasing packages could be worth compared to other places where people can file Their money (lower). He confesses that he got a bit off the hook when he was told to a lady present who had some savings and was told to sell her assets to invest in precious metals. He participated in another meeting in Laval. He explained the possibility of trading cards of gold bullion at market value in financial institutions. But he called several financial institutions on this subject; None of them bought gold bullion.

[56] During this meeting, he spoke with Antoni Snopek about gold reserves, wondering if it was not virtual gold. He did not receive a precise answer on this subject. It deals with the K-Exchange and the companies that deal with it; He was then told that it was not yet functional. He talks about his family's involvement with Karatbars. They participate in private meetings in private homes and they promote on the Internet.

### **Cross-examination**

[57] On cross-examination, the witness is invited to discuss his professional activities and work experience with the insurance company for which he works. From texts on the Sun Life website, he is invited to speak about his experience as a self-employed worker and his advising activities and to draw a parallel between his working conditions and those of the Karatbars affiliates. The Karatbars prosecutor explains that he will "demonstrate that the Sun Life model, in the way it is structured, is extremely similar to what Karatbars has." [64] For him, the SEO contract, complex commissions, the presence of self-employed workers who have to pay some of their expenses, who have to do canvassing, who are given unlimited high income, Demonstrate that the Karatbars affiliate contract is not an investment contract and that the Tribunal therefore has no jurisdiction over the whole.

[58] He reviews with the witness the content of documents obtained on Sun Life's website and explains how the activities of this company are carried out and the methods of operation, including compensation and rewards. The witness also discussed the method of payment of commissions by Sun Life. He also testifies that he never became an affiliate of Karatbars, explaining why. He has never sailed, or very little, on the Karatbars website and has not seen the company's marketing plan. He explains the things that disturbed him in the presentation of Karatbars including some lame examples given in the presentation on gold. He explains that he had already joined a similar network, but to help a member of his family, for which he was reimbursed. It deals with its contacts with the staff of the Authority and its meeting with the investigator of that body.

## **The testimony of the second interested party**

### **The interrogation**

[59] The following witness from the Authority, after describing his training and experience, explains that he is a consultant and business coach. He declared that he knew Karatbars and Michel Desroches. He explains that a friend brought him to a presentation in Laval on December 4, 2013. He was attracted by the purchase of gold. About thirty people attended. The presenters spoke of a savings plan to buy gold, that the company was returning royalties and that it kept the gold for them. He received explanations on the various packages available [65] and also explanations on the residual income for each package [66] and the Twelve (12) Week Plan. It deals with the various packages offered, their respective costs, the portion of grams of gold to which this gives right. He finds the small gold portion and the high price. He speaks of the sharing of commissions and of the pyramidal character "the last one returned nourishes others with his money" [67].

[60] It explains the difference in revenues according to the packages purchased, the revenues being much less for the bronze package than for the Exclusive VIP. He talks about the cycles and says to have gone on the Karatbars website. He asked the presenters what Karatbars was doing with the money that was not on gold but they simply referred him to the website, where he did not find an answer. Invited by the same friend, he attended a second meeting held at the same place in Laval, very soon after the first meeting. 50 to 60 people attended and it was the same speakers who made this presentation. It was a visual presentation that was the same as the first time, with very brief explanations. The two presentations lasted 30 minutes.

[61] On December 9, 2013, the witness and his companion signed up, but did not buy anything. He states that they wanted to take their place in the pyramid, "to see" [68]. He took his place under the friend who had brought him. The idea was to place herself at once so that there would be many more people below them than above, where there were not many people. But he did not buy a package. This position could not generate any income, as he could not receive commissions on the sale of packages, unlike the friend who had brought him, who, having bought a package, could receive commissions. He testified that he did not take steps to find people or buy gold from Karatbars. But he bought it from other suppliers. According to his understanding, Karatbars did not follow the market price to sell gold. According to his position on the Karatbars website, he found that there was no one under him in the tree.

[62] He reported that in January 2014 he attended a third meeting in a private house where he was offered a special offer. There was Robert Larivière, who presented himself as an investment manager. He made the same presentation on the screen as at the previous two meetings and provided the same explanations. Robert Larivière then invited participants to invest \$ 10,000. The conclusion of the witness is that he has one tenth of the sum and 9/10 that is not gold. Robert Larivière explains to him that it is the sharing of commissions with the people of the company. The witness goes on to say that Robert Larivière's offer was not part of the packages usually offered on the Karatbars website. It offered income over twelve weeks, but higher. He also talked about commission sharing. But the witness refused to embark, while his friend took a package.

[63] He did nothing afterwards. He declares to check regularly on the site of Karatbars to see who is under him in the tree. But he finds nothing because his friend does not put anybody in it. The witness then testified that he was invited to another Karatbars meeting, held this time in Ste-Adele on February 4, 2014. The meeting was to last a day and consisted of presentations and training. He went there at the end of the day (16:00). There were 200 to 300 people. He says, "It's kind of a show to convince people." [69] But he could not approach those who were presenting. He saw a person from Germany who was in charge of the whole. He remembers that someone said they made \$ 15,000 in one week. He stayed an hour and a quarter. Approximately 15 to 20 people made presentations. This is the last presentation he attended. His friend told him there was a chance he would not find his ten thousand dollars. [70] Finally, he states that his knowledge of securities is weak.

### **Cross-examination**

[64] On cross-examination, the witness indicated that he knew the SEO companies. He claims to have made multiple levels and binary plans. He talks about the company of natural products Visalis with which one buys products. People are then recruited to buy and receive commissions for their purchases. He explains that a person is going to have two people as distributors. He talks about ACN selling screen phones. He did not know who was above him, his income being determined by the sales made below him. This does not require any special training. He adds that he has often come to see him for services to be given to distributors in multiple levels. We pay for it if there are sales. But it does not enter the network.

[65] He confirms that these "people" who refer to a program will have to work hard and work to get referrals, but they will look for services and pay for how to get referrals. It is the witness who shows them how to have a strategy to know how to develop a network. But he does not make sales. He cites other multi-level companies that practice blitz, with referral programs and commissions. This witness confirms to the Karatbars prosecutor that "In essence, the multiple levels is instead of having a store on the street where they sell the product, they develop a network to sell the product" [71]. He says that he did not buy a plan in Karatbars but that he registered on the site. But he does not remember clicking on the terms and conditions to accept them. He remembers little of the Karatbars Business Plan [72].

[66] The witness explained that with Visalis it was necessary to register and that a number of products came with this inscription, such as kits and presentation kits. He was provided with tools and other products. Visalis sold products with starting kits. He recognizes that there are incentives in the Karatbars packages. He also acknowledged that the 12-week plan was a suggestion and never an obligation; There was no pressure. He goes back to the Ste-Adèle conference where there were 200 to 300 people. He acknowledges that at that time his mastery of English was not very good. He does not recall seeing Robert Lariviere at this meeting. He saw the owner of Karatbars, Mr. Seiz. He confirms that he did not buy any Karatbars packages.

### **The proof of Karatbars**

[67] At the resumption of the hearing on 16 November 2015, the Karatbars prosecutor introduced his first witness; He is a consultant employed by the company.

### **The testimony of the Karatbars consultant**

#### **The interrogation**

[68] The witness first explains his academic and professional background. It was introduced to the company Karatbars in 2012, when he was working for a company providing services to employers and employees. His employer was considering using the services of Karatbars to establish a service for the benefit of its employees. He expected to set up accounts for his employees and pay their bonus in gold rather than cash. He was then instructed to carry out a thorough check of Karatbars; After doing this, he was satisfied with the validity of this German company based in Stuttgart, Germany. The witness became an affiliate of this company in March 2013. In May 2013, he acquired a Karatbars package. He then learned how it worked and began to work as a consultant because "it appeared that some of my strategic planning skill could be used by the company and so we started working on a consulting arrangement at that point" [73].

[69] The witness is therefore both an affiliate of the company and a consultant; This gives him an intimate knowledge of Karatbars. He explains what he is charged with doing. It indicates that the primary product of Karatbars International GMBH is gold, in quantities of one gram, two grams and a half and five grams, embedded in a card; The company also sells promotional products such as sweaters, watches, etc. It was incorporated in Germany in 2011 and is headquartered in Stuttgart, where 50 employees work. It tells the story of the company whose model is to distribute gold in small quantities, at an affordable price, to the public. It began selling gold in December 2011 and their packages in the fall of 2012. The company holds the required German licenses and its chairman is called Harald Seiz. He is a member of German business associations. The Karatbars trademark is about to be registered in Canada [74].

[70] The witness then attempts to demonstrate that Karatbars is not the only company to sell gold in Canada. He stated that he had reviewed several websites of Canadian financial institutions whose content was in agreement with that of Karatbars. It testifies on the institutions that do it, their way of acting, depositing the documentation relating to these various institutions and businesses. He deduces that Karatbars is far from being the only company that sells gold in the amount of one gram, one and a half grammes and five grams, including the Royal Canadian Mint. Some institutions, like Karatbars, have a gold deposit program. By means of a document [75], the witness describes the company, its views on the gold and the general products it distributes. It specifically describes the maps containing gold bullion [76]:

«This card has the Karatbars logo minted into the reverse side of the card. It has the refinery's logo and hallmark on the front side along with the serial number. And we also have a UV ink so that, under UV light, and I have one if you want to see how, we can help protect the security of the card. This is laminated in here so it will be tamper-evident if someone tries to remove the gold from the card. It has a hologram on the reverse and we also have a forensic DNA taggant that we apply to the surface of the gold so that we could tell that it was produced by us. "[77]

[71] He describes the various gold cards produced by Karatbars representing national flags, various logos, gift cards, a gold gram mounted in a coin-shaped holder and 3D gold cards. It describes the security measures of these cards. He filed various license agreements between Karatbars and a few companies and organizations for the production of gold cards. He files the Karatbars electronic product catalog, which is available daily on the Affiliate Back Office and on the Karatbars website, which is accessible to customers. The witness says that Karatbars sells 99.999% pure gold; It is 24 karat gold. It states that the London Bullion Market Association (LBMA) is the regulating authority for gold; It explains the nature of this organization. Karatbars is buying gold from Nadir, Turkey. This company is accredited to the LBMA.

[72] The witness, with the concurrence of the Tribunal, filed a document affirming the cooperation between Karatbars and Nadir for the gold supply of the first by the second. He adds that Karatbars also deals with two other companies, namely Atasay and Degussa; He shall tender the invoices and the shipping information. The witness states that Karatbars has enough gold to cover customer orders and that the company does not use the gold futures contracts. The Karatbars consultant witnessed the quantities of gold stored and exported by the company in 2015. He specified that gold was stored either at the suppliers' premises or at Karatbars in Stuttgart or at a bank in the same location city. In response to the Authority's allegation that

Karatbars does not possess the gold it claims to possess, the witness indicates the value of the gold stock held by him at September 30, 2015; He files the company's monthly report in this regard.

[73] The witness explains why Karatbars never used Securlog's storage facilities, its relationship with Prosegur, and why the information about these two companies was removed from the Karatbars website. He explains that from now on, Federal Express carries gold for Karatbars. It also deals with the relations of Karatbars with Degussa, relations to which the latter put an end. The witness then explains how Karatbars established the price of gold at retail, from a troy ounce of gold (400 ounces or 31.1 grams) broken down for the consumer in price per ounce, a troy ounce divided by 400, To get the price of the ounce of gold, all according to the daily value on the LBMA, morning and afternoon, Karatbars using the morning price. The whole is then converted into grams; It becomes the basis of the price at which Karatbars negotiates with refineries.

[74] It explains why it is possible that the price of one gram of gold that Karatbars sells may be higher than the spot price. He then explains what are the various scholarships and associations of the gold industry and their operation, including the physical delivery of gold and the weight of gold delivered. The explanation for the higher price is derived from the desire to make a profit based on the volume of gold processed, the method of distribution, overhead and the source of gold. He concludes that according to his research on the Internet, "Karatbars is priced competitively in the market place for the products we offer" [79]; It tables a document [80] and gives concrete examples in this regard. It appears that several of the examples on this exhibit demonstrate that on a given date Karatbars sells the same quantity of gold as some of the companies listed but less expensive. But others sell it cheaper.

[75] The witness then explains that Karatbars affiliates or customers sell nearly 200 products. The name of this company is registered in Germany. Karatbars sells gold on its website to its affiliates and customers. It demonstrates how to do this on this site. Gold can be paid by credit card, bank transfer or ewallet. It deals with information on the price of gold on the site, the storage of gold or its shipment to the customer by FEDEX, at a price which it submits to be very competitive with that of the other sellers [ 81]. And he files the insurance contract entered into by Karatbars to cover the goods that are shipped to customers. He also recalls that this company does not impose a gold storage fee on its customers, unlike many of its competitors.

[76] He then testifies to the Karatbars gold buy-back program; He explains the price and methods and, comparatively, the gold buy-back program of other companies. The witness concludes that contrary to what is alleged by the Authority, there is a resale market for Karatbars gold. On the following day of questioning [82], the witness explained that Karatbars had about 50 employees at its headquarters in Germany. But this company, he continues, does not have a workforce, does not have a branch office or does active advertising on the media. Karatbars instead operates through independent affiliates that operate as a sales force composed of distributors.

[77] He then explains the affiliate program of Karatbars, following the example of what many other companies do. These independent affiliates subscribe by contract to this company to market. It defines "Affiliate Marketing" as follows:

"Affiliate marketing is typically where somebody is marketing to people that they do not necessarily know. It really involves a company selling its own website. In the case of Amazon, somebody would refer to Amazon and you would buy it directly from Amazon. It's also similar with Karatbars. "[83]

[78] It also explains the nature of Network Marketing. For the witness, Karatbars' approach is similar to marketing with affiliates because the company sells its products on the Internet but also acts through network marketing, because compensation plans allow People to develop teams and multiply their time and efforts to develop a communication platform to sell the company's products. Using documents, the witness explains how affiliate networks in Amazon, EBay and iTunes work. He explains that there



are also affiliate networks for the sale of gold, such as the Royal Canadian Mint, Cache Metals, Sprott Money; It provides a dozen examples.

[79] The witness then referred to his experience at Amazon as a partner, which made him understand the ability to do business on a website, all in the following terms:

"But the idea of a product is a lot of business," he said. And I've seen authors use it where they're promoting their books, where they're being sold by Amazon and so, who will have a website and they use Amazon's infrastructure to manage the distribution and shipping and all the other things that go Along with their book sales so that they do not have to use their own staff resources to do it. And, in exchange for that, they accept a commission from Amazon. They may get something from the publisher as well, for that actual sale, it becomes a very efficient way of managing the promotion of your products. "[84]

[80] This led him to take the same means to make money with the sale of gold:

"Absolutely. Absolutely. There are many people who write websites on the state of the economy, the state of politics, the state of finance and all the things. Some of them play on the fear that the public may have about the stability of the currency or fears of terrorism or any other things to promote gold as an alternative investment or that which is available for safety, so that it was catastrophic to The financial system, much like 9/11 but maybe more importantly they were suddenly faced with a situation where cash was promoted by many people on different websites for their own purposes The retailers will be more than happy to sell their product, which is gold, according to their terms and conditions,

So, these programs are very efficient for these companies to market their products and are typically done very low-cost because they do not have to pay for any of that marketing expense until there's an actual sale. "[85]

[81] This can allow people who join such programs to make a lot of money. Thus, he explains, a person can convert visitors on a website to customers of the Royal Canadian Mint. The latter has something to pay only if it makes a sale. For a merchant, this is an advantage because there is no other overhead to cover than its infrastructure and technology. He then goes on to explain the operation of e-commerce or e-commerce, to come to the network marketing industry or multi-level marketing "). With the network marketing industry, it becomes possible to develop, guide, educate, educate and educate affiliate teams on the company's products, compensation plans and best practices in communication and Of Information Distribution [86]

84] So rather than having an employee, it is best to have an agent who can make as much money as you, using the example of real estate brokerage. To keep this agent, you have to give it the same chance to grow as yourself. How? By creating a structure where everyone has the same chance of making money, By allowing an agent to have its own agents. There is then an incentive, because it allows everyone to make money. Some may believe it is a pyramid and imagine that those who are on top make all the money, while those who are down do all the work. It is then explained that in a chain of command, those who are at the top of a company's structure make more money than those who are below.

[85] He who is at the top can claim the highest wage because he has under him working employees; It takes advantage of their productivity, being the only one that has such a lever. In the model proposed, each individual has the same opportunity to use the same lever. This structure is network marketing, following the principle that to arrive at this true lever, it takes a situation where everyone can earn the same amount. However, in the traditional way, a company that wants to sell phones, for example,

has to spend a lot of money to advertise, establish call centers and hire sales representatives, Having sold a single phone. This is compared with the company AT & T which has established a joint venture with a network marketing company.

[86] The latter then only has to send an email or a telephone message to its brokers and agents and, in an instant, they buy the phone. Brokers teach agents how to market it. And with network marketing, AT & T only starts spending money when a phone is sold. That's why so many companies have established joint ventures with network marketing companies. A relationship is established between time and productivity, inviting people to train to get more work done. In network marketing, you are rewarded exponentially if you agree to train people effectively. The others are taught to repeat what you do; This is network marketing. You have to work hard but it's worth it.

[87] At the end of the video, the witness explains that in this industry, people form their team and develop an affinity with each other. He explains that becoming an Karatbars affiliate does not entail disbursements and that it is not necessary to buy a package to earn an income. He says that 260,000 affiliates who are registered with Karatbars have not bought packages from Karatbars, while 80,000 affiliates have. It thus appears that 75% of Karatbars affiliates can earn income from sales or sales reference to Karatbars without having purchased anything. For him, all affiliates can have access to compensation completely free of charge. He then explains that the commissions paid are based on the sale of products through the Karatbars website. Affiliates mainly refer to the purchase of gold or packages.

[88] Affiliates, he continues, can promote Karatbars on their blogs. Other affiliates who have network marketing experience can choose to create a team and show them how to promote sales but also communicate the benefits of earning an income with Karatbars by creating a team. He adds that Karatbars provides a link that affiliates can use to register the name of a person who referred a business opportunity to Karatbars; This creates the relationship with that company. Karatbars provides a presentation of its activities, information on products, terms and conditions and a marketing plan. It is a demonstration for the Tribunal. He indicated that there are warnings on the Karatbars website highlighting the need to dedicate time and effort to succeed, have a vision, work hard, create a team and various strategies to use to create a team.

89] He talks about the tools offered by Karatbars that also offers answers to specific requests or indicates a phone number that an affiliate can use during business hours, which phone will eventually be available 24 hours a day. It states that there are rules governing the relationship between Karatbars and its affiliates, ie, an Affiliate Agreement. [87] The latter must formally agree to comply, by clicking on the company website. This agreement also includes the Karatbars Marketing Plan [88]. The witness then explained that there are seven types of commissions for affiliates. First there are 5 types of commissions for affiliates who do not purchase packages:

1. Double Income;

2. Direct commission / unilevel bonus;

3. Generation Bonus;

4. Karatbars Pool; and

5. Karatbars Gold Fund.

[90] He adds that Karatbars provides two types of optional commissions that they can receive after acquiring a marketing package, namely:

6. Bonus Package; and

7. Dual Team Bonus.

[91] The first five options are free and commissions are payable monthly while for the last two, commissions are payable weekly. The witness then explains the content of each of these options, developing what can be sold, what the commissions represent, the nature of the products sold, including a laser engraved aluminum card in which is mounted a gold coin . It deals with the reference of a customer by an affiliate and the reason for payment of commissions by Karatbars:

"Because Karatbars wants an affiliate to be able to effect some amount of work, find some customers and have a particular product that has some tangible value and the gold has some special feature in the metal To help them get started in the affiliate referral business. "[89]

[92] The witness reviews all the primary income options offered by Karatbars and the ranking of the affiliate in the hierarchy, the commissions earned and the importance of the work invested by affiliates and their affiliates and points that The work brings them. It says commissions are paid on the first of each month. It explains the distribution of income to various affiliates, according to their position in the organization's triangle and how this is meant to motivate people to work harder and develop more business, to earn more commissions:

"So, when this begins to happen and this affiliate is not earning that, the commission because this affiliate is catching up, it tends to motivate people to do additional work and start developing additional lines of business so that they can earn more commission. "[90]

[93] It states that Karatbars compensation plan is relatively straightforward and straightforward within the framework of the network marketing industry. He then explains that the commissions paid may reach a certain ceiling, when the affiliate is returned to a certain percentage of commissions. So if someone gets cut income in this system, it will be a person who is at the top of the triangular structure rather than a person who is downstairs. But, adds the witness, the Karatbars Pool is there to acknowledge the efforts of those whose commissions are capped, with the payment of certain compensations. He explains how it works. It then discusses payable options for affiliates that are willing to purchase marketing packages that contain hardware, bonuses, discounts, CDs, and "it's really designed for somebody who wants to be a dedicated marketer for Karatbars. And, in exchange for somebody buying the tools and getting some of the gold as maybe a show-and-tell type of thing, we'll pay them an additional amount of direct commission. "[91].

[94] These bonuses are calculated according to the package you have purchased and allowing the accumulation of units you can pick up. Dealing with the Dual Team Bonus, he explains the structure by which the affiliates are placed on each side of the structure, for the calculation of the units. It is, he continues, creating a left-wing team and a right-wing team and, as long as the members have bought a package, they accumulate units, by selling the products of Karatbars. He adds that several companies are using this dual system in the network marketing industry because it encourages team development. It explains the

transformation of units into payment of commissions. It then deals with the sales incentives offered to affiliates, such as a leather suitcase, a pen, a car, etc., depending on the amount of gold that is sold. It is even possible to win a villa.

[95] He explains that there is no limit. It's all about accumulating points. It deals with the "autosave system"; This is payable in gold and cash. Part of the commission is paid in gold. He then discusses the optimization of the marketing plan to indicate how Karatbars imposes a ceiling on commissions payable in the Dual Team Bonus system. Affiliates can introduce as many people as they want into the system, but Karatbars must come to a ceiling on commissions. The witness explains the method. It also explains how Karatbars can continue to make money with the sale of gold, even if there are no new affiliates who join the system. It also states that if a person recruits only one other person, She can not make money. It must absolutely provide a certain amount of labor; She must build a team and, failing that, she will not receive commissions, even if she bought a Karatbars package. Commissions are the result of its productivity.

[96] The witness explained that the payment of commissions due to affiliates who have purchased the Dual Team Bonus Package is made on a weekly basis using a prepaid MasterCard. And affiliates can track their revenue growth in the back office of the Karatbars website. Asked about the "Karatbars World Pool certificates", the witness explains that these documents identified as certificates or "shares" are not certificates of shares giving an economic interest in the company. They serve, he continues, only to recognize a right to participate in a "pool" that was created as a result of sales of gold. 1,000 certificates were issued and half were distributed. Karatbars ended the program in November 2015.

[97] With the help of exhibits [92], the witness then explains the detailed content of each of the lump-sum purchases and the value of each item in the market. These are the bronze, silver and gold, the VIP and Exclusive VIP package. And, according to this witness, the value of what is sold by Karatbars is comparable to other companies that work in the field of network marketing. The optional packages of this company are customary in an industry where it is common to buy a package to start doing business activities. He explains this:

"You typically will pay an enrollment fee or you'll pay some kind of package fee or you might buy a package of products that they hope for you in retail or inaudible. The goal of this project is to provide a high-quality, high-quality, high-quality, reliable, high-quality, high-quality, , In order to qualify for commissions, the company's products. "[93]

[98] A little later, the witness added:

"Well, the requirement is that you agree to the terms and conditions and then you market their products. A lot of times you will have a monthly fee that either country for a website or country some kind of a subscription service or something like that. And so, in a sense of a commitment for that many companies, as long as you're paying the fees or purchasing their products, then you're entitled to work with the company. And if you do not, eventually, the company will inactivate your account. "[94]

[99] The witness then describes companies that operate in the network marketing industry, whose compensation model is similar to that used by Karatbars, such as Usana [95] or Organo Gold, a coffee distributor [96]. The witness details his compensation plan to compare it with that of Karatbars, such as the dual team bonus, with a team on the right and then a team on the left, the unilevel bonus. Unilevel Bonus ") or the Global Pool Bonus. The witness also details the compensation plan, dealing with methods of payment whose concepts are similar to those of Karatbars. Thus, dealing with the double team bonus, he states that:

"So, the dual team bonus, again, is going to be very similar to the dual team that we drew here, that it's going to require to the right side in order for the affiliate to be paid. And then, you'll see that they also have qualifications in order to participate in this particular dual team, so not only do they have to be an affiliate but they have to meet some kind of personal production qualification as well in order to participate in The compensation. "[97]

[100] He concludes this point by talking about commission ceilings and then giving other examples of companies in the network marketing industry whose methods are similar to those of Karatbars. After talking about the Power of Two [98], this witness explains the 12-week Plan of Karatbars. This is a plan to train affiliates and demonstrate what is minimally needed to generate income. It is presented, not as a prerequisite to become an affiliate but, for demonstration purposes. [99] For the witness, this was aimed at the free program for affiliates, although this fact was not sufficiently stressed and was an example of a perfect situation that does not happen often in real life. Moreover, Karatbars saw the Week Plan as a training tool, but after reviewing the Tribunal's decision, it prohibited its use in consultation with its round table.

[101] It also deals with press releases sent by Karatbars to its affiliates who invite them to invest time and effort in their affairs, that the company can not guarantee their success and can not be held responsible for their successes or failures that are Due to decisions they have taken on the basis of information presented to them. [100] The witness then proceeded to discuss the Karatbars press releases, among others, in the Back Office of the company's website; For example, the use of certain materials, the disclosure of commissions earned by affiliates or projections of income. [101] He said that after the Karatbars 12-week Plan was abandoned, it was possible that it continued to be evoked on the Internet and used, given the nature of the web.

[102] He then explains the Karatbars method to ensure compliance with these rules (compliance). It appears that a Karatbars affiliate must first agree to these rules and follow them. This also requires reviewing the training, tracking company webinars and sending all to the affiliates they have referred to and keeping them informed about the company's products. The witness referred in particular to a Karatbars communiqué of September 2013 in which she asked her affiliates not to use the word "investment", which it reserved for registered professionals, and not to give tax advice. The witness indicates other instruments used by that company to communicate to its affiliates the need to comply with its regulations.

[103] The witness refers to other ways in which Karatbars communicates its compliance instructions to its affiliates, namely:

- support staff;
  
- a banner;
  
- a help button on the company's website;
  
- a compliance officer responding to requests for compliance investigations;
  
- Karatbars support staff; and
  
- Affiliates themselves when working with their team members.

[104] The witness testifies to the complaints sent to Karatbars and the responses of the compliance officer. He then explained that following the Tribunal's decision in April 2014, Karatbars ceased its sales activities in Quebec and was able to cancel transactions that had already been made. The company also adopted a program to prevent the registration of an account from Quebec and the Karatbars affiliates were informed on the company's website. He then submits that Karatbars' financial statements are published on the German government website. The witness ends his testimony by returning to a number of statements made in the course of the Authority's evidence. [102]

[105] He indicates that Karatbars did not invest in gold mines or refineries. He submits that Karatbars receives many investment offers, such as the offer to sell him large quantities of gold, but does not rely on it. He adds that Karatbars operates in many countries, exporting its products there. He refutes the assertion that Karatbars would have had the green light from the Authority; It is rather an affiliate of the company that would have said that. He refutes that the purchase of packages is obligatory for the affiliates. And if Karatbars encouraged affiliates to buy gold, it is still they who ultimately decide. He refutes that five grams of gold could be bought for the price of four grams. He also refutes the claim that Karatbars sells his gold more expensive than the market price to make money on the back of the affiliates; It has been demonstrated that the price of gold for this company is competitive with the markets.

[106] He states that Karatbars does not encourage customers to store their gold in Germany. He denies that the shares in the Karatbars World Pool are Karatbars category 3 shares; It is only an interest in pooled funds for compensation. There are no rights as shareholders attached to them, nor do they give rights in the company, which does not sell them. And Karatbars no longer distributes such shares. Finally, he states that "Karatbars itself does not promote buying gold as an investment, it does not promote our product as a tradable type thing for someone who is trying to trade A brokerage account "[103]. He adds that Karatbars does not encourage speculation about the price of gold through the use of his products. [104]

### **Cross-examination**

[107] Cross-examined by the Prosecutor of the Authority, the witness indicates that he is not an officer, director or shareholder of Karatbars. It indicates being an affiliate of this company and having purchased Karatbars packages. He received a share of the World Pool as an incentive. He states that he has 14,000 affiliates under him in his organization, but to his knowledge, he does not count any Quebecers. He does not know how many packages his affiliates have bought. Karatbars has 80,000 affiliates who have purchased packages; 5,300 of them reside in Quebec. Karatbars has 260,000 affiliates who have not bought packages. The witness then explained that the 12-week Plan of Karatbars is a method of training affiliates; They must understand that by working and buying gold for a certain period of time, they will be able to pay for this gold through the commissions paid to them.

[108] He indicated that, following the Tribunal's decision of 17 April 2014, [105] this plan was amended, removing the most expensive packages because they represented extremes in terms of a mathematical model; All that was left was the bronze package. The plan was also amended to include a free plan and free affiliate accounts. And in Quebec, the witness states that after this decision, Karatbars stopped all presentations. The witness shall then revise with the Prosecutor of the Authority a document which he has entered into evidence, [107] either a table containing the names of gold traders, the products they sell, In euros, then in Canadian dollars, shipping, warehousing, etc. The prices used on this piece are compared with those found on the websites that were used to prepare this piece.

[109] He comments on price differences that may arise, explaining that they may be due to several reasons, such as the use of floating exchange rates, the fact that he does not know how these websites calculate Their exchange rates, variations due to the time of the day they are taken, or because the price can be fixed only when the gold purchase is made. He commented on other

differences between the references to Exhibit IK-30 and those of the exhibits from which the information was obtained. He then turns to the Karatbars Marketing Plan which was filed in evidence by Karatbars and the Authority [108]. It explains some differences between these two documents, changes reflecting the adoption of new programs, the introduction of Marketing Plan Optimization and commission ceilings, a change that the witness does not consider to be substantial since this information Already published in a Karatbars press release; This was added only for the sake of clarity [109].

[110] From a chart he drew, the witness explains the possibility of earning revenue from the sale of packages by affiliates who are in the triangular structure. The witness finally deals with his website; He acknowledges that it contains a reference to the 12-week Plan of Karatbars, with a reference to an income forecast, something that Karatbars had banned.

[111] Re-examined by the Karatbars prosecutor, the witness returned to the contents of his website to clarify certain details and indicated that he had not consulted him for a long time. He also refers to the contents of the table he prepared [110]. It deals with the differences between the websites of the same company. He testified that the prices used to prepare his painting were, to the best of his knowledge, accurate and reflected what he found on the websites.

### **The testimony of Karatbars affiliate**

#### **The interrogation**

[112] Karatbars' second witness is an affiliate who resides in British Columbia. She has been a full-time member since January 2014. She deals with her personal background, her academic background and previous work in the catering industry; She operated up to five restaurants, which she closed in 1997. She then worked a year in telemarketing, which introduced her to the network marketing industry. Invited by a friend, she attended a presentation of an Amway branch; It interested him and put him in the stirrup. For her, companies using this model do not advertise but rather ask individuals to refer friends and families to them, for which they are compensated. And in Multiple Level Marketing, you get the opportunity to be paid in multiple levels, due to the efforts of others.

[113] For this witness, these are business activities; We operate as an independent contractor. It describes what Network Marketing (MLM) is:

"It's a business. We are currently looking for an experienced contractor to work with our clients. Our income is solely based on our efforts, and of the efforts of developing a team. So, the business of MLM is that you develop people, that you find people and that you spend your time, your energy, your money developing them. So, it's a lot of work, yes. "[111]

[114] Income is not guaranteed, it is necessary to put energy and develop contacts with people. Many companies use this method, such as Amway, Avon Mackay, Young Living, etc. She talks about her experience with Amway, at a time when she did not have much experience. When we referred someone, we received a commission. The rank was determined according to his efforts and those of his team. At that time, she referred few people. She then joined The People's Network as an independent distributor. She bought a business kit that contained materials explaining the company's activities. She was paid there to refer people, had to build a team whose members were partners, the gains resulting from the efforts of the group. She adds that you have to believe that. She gained a lot of experience on this occasion, but little money.

[115] This company amalgamated with another company named The Legal Shield; It remained with the merged entity resulting from the merger which was also a network marketing company. This company provided people with the ability to access legal services for a monthly fee of \$ 25. It was to refer people to that company; The latter could either pay for legal services or become independent distributors themselves. It was for her to sell a membership and create a network. She testifies that she took this commitment seriously, working full time for this company. She was required, she said, to prepare a list of contacts, invite them to her house and present a video; An experienced person was there to answer the questions of the participants and then she could collect the signatures of the interested parties.

[116] They were then asked to do the same, either to establish a contact list, to organize a meeting at their home, to present a video, and then to collect the signatures of those concerned. From 1997, she did so network marketing full-time and started making some money. It then explains how it began operations in Canada. She left the legal services company to work with Coastal Vacations, which sold travel packages; It was not a network marketing company but it was doing direct selling as a distributor. She was referring people to travel packages. She could refer affiliates and earn commissions on their first sales. She developed her abilities, built a team and earned good income. She made several sales, developed a website and organized events to meet her team.

[117] She developed a network of which she supported the members. She worked there for seven years. But with the onset of the recession, people traveled less and there was a loss of momentum. Then, Coastal Vacations did not have a customer support system, which frustrated his team. At that time, there were 10,000 people. Because she had a good reputation, she was approached by a new company called Platinum One Destination that wanted to develop the same product. She started working for them and 1,700 members of her team followed her. But, due to the recession, the company went bankrupt after a few months. The witness then evokes his other experiences. In 2011, a friend told her about Visalus Sciences, a company working in weight loss and physical fitness. Feeling ready, she got involved and loved it.

[118] A fee had to be paid; There were two packages, one for \$ 500 and one for \$ 1,000. Three teams were built in a trinary system. People are being sponsored and distributed among three teams. The progression is done according to the volume that can be generated and the bonuses that are received. She says she took it very seriously. The method is ultimately always the same, she says. The essential elements are: you start with contacts, you invite people to your home, you have them try the product, you present them a video. Then, an experienced person answers questions, either in person or through Skype. Then you have them sign as a customer or as a distributor. She did this for three and a half years at Visalus, with success, she says. She had set up a team of 6,000 people.

[120] She believes that the Karatbars system is similar to those of other members of the network marketing industry, with a double team. This is a binary system where you put people on one side and the other to receive commissions. But if you do not work, she says, you are not paid. You must develop an important team, committing you for several years, to grow it. You develop leaders who do what you do and you earn a residual income, which is why people are joining a business of this nature. The witness then explains that she bought a Karatbars package, namely the VIP package for 600 €. It describes its content. She bought gold every week, using the discount cards.

[121] She resigned from her former company, and then drew up a list of 200 contacts she called. 60% of them watched the presentation of the Karatbars webinar. 30 people signed up for a free Karatbars account, then 17 bought a package. Others continued to buy gold and could refer other people and make money. Others were content to be customers. If affiliates who have joined for free refer others, they receive commissions. More than half of its affiliates were free of charge. The idea for her was to call these two hundred people from the beginning of her involvement, so as to build her network quickly. When questioned about the 90-day plan, she responded firmly, for the following reasons:



"Yes, I am a firm believer of the ninety-day (90) plan. I've built several businesses using ninety-day (90) action plans. I did it myself and I still do it. So, what this basically means is, at the beginning, when you join a business, Karatbars, that's when the people are more focused, that's when they're more excited. So, that's where you have a chance to really get their attention and have them work.

So, ninety-day (90) plans work because you can give people action steps on what they need to do and keep them accountable. So, you know, as a leader, you would constantly revisit with them to see if they're following through on what they want to do, what they say they want to do. So, if you put a good burst of energy at the beginning and can commit to at least ninety (90) days of concentrated efforts, you can get your business started, you know, right, you can continue to build momentum. And then, one ninety-day (90) cycle takes you to the next ninety-day (90) cycle, which takes you to the next. "[112]

[122] She did so, worked very hard during this period then, showed other people to do the same. This is a strategy commonly used by companies to form networks. She cites a well-known consultant on this subject. She then explains that she uses a video presentation on a webinar explaining the support she gives her team, such as weekly coaching calls and face-to-face meetings three times a year. All his time is now devoted to the support of his team; It's a daily job. She works with her team, her leaders and their contacts. She does training, webinars and presentations. She travels where her most important teams are. She ensures the leadership of her team and supports her leaders.

[123] She also does this for any new affiliate who joins her team; She devotes more time to any new person she personally recruited. She has prepared a training guide and a video presentation. It has developed at its own expense a video presentation on gold of about twenty minutes by a public relations firm; It was approved by a lawyer and by Karatbars. She introduces him. It deals with the role of gold in the economy, how it can be used to build its financial independence, against a dollar that is constantly devaluing, and at prices that rise all the time, in a An economy that threatens the rout. The value of gold is rising steadily while the dollar is not based on anything. Gold offers financial insurance.

[124] However, Karatbars said that this was a way to acquire gold in small quantities, in grams. This can even be used as a payment tool. The purchase of gold, it declares, is guaranteed against the devaluation of paper money. We can build a gold reserve against inflation. One invites to make a purchase of gold every month. Karatbars sells gold in small denominations; The whole is embedded in a card that has the size of a credit card. It is also possible to become an affiliate of Karatbars and be rewarded for referring other people who buy gold, which lowers the price of gold purchases. Commissions are paid in cash, gold or incentives. It is also possible to build an online business in your spare time or even to exercise a full-time occupation, especially by building a team and leveraging the efforts of others.

[125] And some of the winnings can be automatically converted into gold purchases. Affiliates can join for free. The video also deals with the 12-week Plan. It is recalled that the affiliates are not financial or tax advisors and that no income can be guaranteed. We add that Karatbars requires a constant effort, for a time to get results. The video explains the steps to be taken, namely: (i) open a free account on the Karatbars website and acquire gold; li) the second stage is optional with the double team system; We are building two teams of unlimited size, all over the world, to earn weekly income obtained by the efforts of this team. People might then need to hone their registration and get one of the affiliate marketing packages; And (iii) begin to exchange paper money into a gold bullion and save.

[126] The witness files the video as evidence [113]. It then deals with the K-Exchanges of Karatbars that are set up to exchange gold that has been acquired by people for cash and where they can eventually exchange their products and services for the benefit of the " gold. She talks about her personal experience in one of these centers, where she could have exchanged her gold. She explains that the 12-week Savings Plan helps people save money by using gold. This is to entertain some of the income earned in savings through the purchase of gold. The witness then explained that when she started her activities with Karatbars, there was a 12-week Strategic Plan that had been developed by the affiliates. For her it is a way to develop a team.

[127] This is primarily a mathematical formula to demonstrate what would be its potential if you provide such a quantity of work. This is based on the ability to find two people who would save one gram of gold per week and also find two people in their first week. If this scenario were followed, it would bring up to \$ 4,500 per week. But it is a plan that it has stopped using as a result of the Authority's investigation. Karatbars, from September 2014, by press release [114], forbids making projections of income beyond the Bronze package. She and her team have complied. It is now no longer allowed to make income projections at Karatbars. But other network marketing companies still use them. But, she says, when Karatbars used his 12-week Plan, he did it by presenting a disclaimer.

[128] It stated that income was not guaranteed, that it depended on the efforts of the affiliate and his team, that it was a mathematical formula, and that Karatbars could not be held responsible. She stated that she had submitted the 12-week Plan before it was banned. She made some comments about the use of her video that would have been made by some affiliates without her consent. She worked to stop it. This witness says he currently has about 40,000 affiliates in his organization. She continues to work daily, teaching, constantly training and pushing her team forward and showing her team leaders to do the same. She hopes that in a few years, her organization will continue to grow without her having to do anything. She does not know how many people in her organization work full time; She personally knows 50 to 100. The others are doing this part-time. In general, people who join the organization work part-time at first.

[129] She recalls that it is open to all. It describes the characteristics sought in people who join the organization. She invites them to consider this a business. But as it is small enough at first, people do not always take this seriously. But, if they cling, are serious, follow the established plan, it can end. The construction process is very methodical. This witness states that she spends 12 to 18 hours a day, six to seven days a week. She always has her phone at hand. Her business is developing all over the world, where she travels. It describes its activities. She says she has to manage the expectations of her team, otherwise they think they have to join her and that suddenly everything will be simple and the money will come from heaven. She makes a full-time career for a long time.

[130] She explains that it is necessary for her because it is her obligation when we embark on this matter. When you sponsor someone, she adds, you're responsible for coaching her and working with her. It is about working with his team, which is his asset. It must develop people. She describes the means and tools she uses to do this, including webinars on her website that her affiliates can view whenever they want. It submits one in evidence, [115] then explaining its purpose:

"So, the purpose is to make the team that it's going to take work, to establish the team that in order to get to the top, we have to help other people and to follow a methodology that says help the new people get I have a lot of money to make money. When we do that in Karatbars, that's the manager rank. When we do that, everything else will fall into place. So, that's the methodology I follow, that's the methodology that I teach today and that's the methodology that has helped fifty (50) We have helped two hundred fifty (250) hit the level of Director and above, and over twelve hundred (1200) people hit the rank of Manager." [116]

[131] She adds that for newcomers, this results in cash inflows each week and gold obtained through the system. This strengthens their confidence and they can begin to teach others to do the same, which feeds the whole system.

### **Cross-examination**

[132] The witness, cross-examined by counsel for the Authority, stated that his website had been approved by Karatbars, which he said included a statement stating how to develop income of \$ 4,500 over a period of 12 months. Weeks. The witness states

that this will be removed very soon. She declared that she was not a director or administrator of Karatbars. It is not a shareholder either, because it does not. She adds that she never worked in Quebec. She confirms that she joined Karatbars as a free member and then bought a package, which she then upgraded to a VIP package. This allowed her access to the Kasratbars World Pool, of which she holds five shares.

[133] As she holds the VIP package, she receives 20% commission if she refers a person as an affiliate. It confirms that it has 40,000 affiliates in its organization and reiterates that there are between 50 and 100 people working full time and with whom it works very close. She estimates that half of her 40,000 affiliates have bought a Karatbars package. She personally referred 50 people, 20 of whom bought a package. There are no Quebecers among its affiliates.

[134] Re-examined by the Karatbars prosecutor, the witness states that the part of his site dealing with income projections is dedicated to the Karatbars; It does not serve to attract new members. She finally states that she bought her first package on January 29, 2014.

### **The parties' arguments**

[135] Whereas the respondents in the proceedings, Robert Larivière, Michel Desroches and Antoni Snopek had waived the defense, the Tribunal considered that the presentation of the evidence of the parties to the dispute was closed; He could hear the arguments of the parties.

### **The Authority's arguments**

[136] The Attorney General of the Autorité des Marchés Financiers reminded the Tribunal that on April 17, 2014, the Tribunal issued ex parte orders against Karatbars International GmbH, Robert Larivière, Michel Desroches and Antoni Snopek [117], which they disputed. The Authority has since filed an amended application and a revised application before the de novo hearing proceeds. The Authority's claim in the present case is that Karatbars offers an investment plan which allows interested persons to subscribe to packages and to recruit two other persons who will in turn recruit two other persons and so on. The expected benefit in this case is the possibility of obtaining a percentage of the amounts disbursed by the persons recruited who bought packages and made purchases of gold grams from Karatbars.

[137] The Prosecutor indicated to the Tribunal that the Karatbars affiliate program took the form of a 12-week plan, submitting that it was an investment contract, a form of investment in Under the Securities Act, [118] that the respondents in the file did not distribute this affiliate program without obtaining a prospectus covered by the AMF, contrary to section 11 of the said Act [119] that they acted as brokers and advisers without being registered as such with the AMF, contrary to section 148 of the same Act. Accordingly, the Prosecutor of the Authority requested the Tribunal to confirm, following the hearing held at its headquarters, the decisions it had pronounced against the respondents on 17 April 2014 and to render the decisions which are Listed above in this text. [121] This prosecutor then summarized the evidence presented during the hearings of November 9 to 13, 2015 and November 16 to 19, 2015, which the Tribunal has dealt extensively with in this decision.

[138] First, he summarizes the testimony of the investigator of the Authority as well as the testimony of the three witnesses who participated in the meetings organized by Karatbars; One of them bought a package and the other two did not buy anything. The Prosecutor then summarized the testimony of the Karatbars consultant who testified about the company's gold sales activities. He pointed out that he was not a director, director, shareholder or employee of Karatbars, as he was insisted on only one person

who had obtained mandates from that company. He concluded that this testimony was merely his personal interpretation of Karatbars' activities and that it should not take precedence over that of an affiliate holding a package. The prosecutor then dealt with the testimony of a Karatbars affiliate who is not a director or administrator. His testimony was, he said, only his personal experience.

[141] The Attorney General also invited the Tribunal to adopt an interpretation that the investment contract must be examined by making the essential connections between the various elements of the definition. [129] As the Quebec Securities Commission had already determined, it is a question of examining all the operations, the sales methods used, the representations made to buyers, the identification of the economic reality of the activity And the proposed investment; It allows to consider the substance beyond the form and to know if one is indeed in the presence of an investment contract. The Prosecutor then addressed the notions of multi-level marketing, e-commerce and sales to refer to the definition of multi-level marketing:

"55 (1) For the purposes of this section and section 55.1, multi-level marketing means a product distribution system in which a member receives remuneration for the supply of a product to a person Another participant who in turn receives remuneration for the supply of that same product or other product to other participants. "[131]

[142] In its argument book, the Authority noted that other pieces of legislation dealt with multi-level marketing and pyramid schemes, including the Criminal Code, [132] which prohibited them. But it is recalled that in determining whether the Karatbars affiliate program is an investment contract under the Securities Act, it is not necessary to demonstrate that it is a multi-level marketing And pyramid schemes, or that the plan is fraudulent, as determined by the case law. [133] And the Tribunal has jurisdiction to deal with this matter, despite the multiplicity of laws that could manage it. The Authority's solicitor subsequently brought a number of decisions in the case-law concerning multi-level marketing and pyramid selling to this proceeding.

[143] In one of these cases, [134] he argued, it was determined that the fact that an investor was required to provide some measure of effort to earn a profit could not automatically prevent the conclusion that What was sold was an investment contract; A more realistic test is whether the efforts of others than the investor were undoubtedly significant. These are essential administrative efforts affecting the failure or success of the enterprise [135]. By studying these jurisprudence cases, the Attorney General of the Authority has attempted to determine the cases in which there were investment contracts, whether or not there was a purchase of a product , But also according to the economic reality of the plans sold.

[144] After proceeding to analyze the facts of this case in the light of his right, the prosecutor submitted to the Tribunal that an analysis of the Karatbars affiliate program taken as a whole Isolate each of the components, leads to the conclusion that this program is an investment contract, a form of investment under section 1 of the Securities Act, as this proceeding has jurisdiction over the whole. He first submitted that there was a contract by which a person binds himself; There is a membership contract in the present case, causing the person concerned to create a Karatbars web account, accept the terms of the affiliate agreement and acquire a package. This person then undertakes to find other "investors", to recommend to him the products of this company, which undertakes to pay him commissions. The witnesses of the Authority have filed for this purpose.

[145] This prosecutor also argues that Karatbars has seen a profit under his affiliate program; These profits are comprised of a percentage of the sums invested and sales of gold. In fact, this prosecutor is revisiting the 12-week plan, where profits of up to \$ 4,500 per week or \$ 15,000 per month are being raised. The website of the Karatbars affiliate who testified refers to an income of \$ 4,500 in the next 12 weeks. An affiliate, relayed by Karatbars, has already reported revenue of \$ 15,000 after 12 weeks. The notion of participation in the risk of a case by means of a contribution leads the Authority to declare that any investment involves a risk and even "more in a structure such as that proposed by Karatbars" [136].

[146] For the Prosecutor of the Authority, this risk arises if no new investors join the affiliate program; The lowest-level investor may not make a profit. The risk is therefore the level of profits to be realized by new investors who join the Affiliate Program and the sales of gold that must be made. As for the contribution, it is either a disbursement of money by the purchase of a package or services rendered to the company to find new members of the affiliate program. The public prosecutor refers to the concept of cases, as developed by the case-law [137], ie the set of stages constituting the complete investment plan in an undertaking. Accordingly, the case, he argues, involves the design, planning, financial, legal and tax structure, obtaining funds, organizing, controlling the project and eventual marketing.

[147] For the Prosecutor of the Authority, the Karatbars Affiliate Program is such a case within the meaning of the jurisprudence. He explains that investors give back a sum of money that they risk losing, all in a structure that he calls pyramidal set up by Karatbars, in which each right to find new members to allow the movement of the " Silver from the bottom to the top of the pyramid. He continues to analyze the concept of an investment contract and then discusses the notions of (i) knowledge required for the conduct of the case and (ii) failure to obtain the right to participate in decisions concerning the conduct of the case [138]. Submitting that Karatbars' structure and remuneration plan are complex, he submits that users can not understand how they work and that little information reaches them.

[148] According to this prosecutor, the process of circulation of gold is confused. The Authority's witnesses, he argues, do not possess the knowledge required to design and plan the legal and tax structure, obtain the funds and organize the program and market it. For the Authority, therefore, no witness has the right to participate directly in the decisions concerning the conduct of the case, with affiliates only adhering to the Affiliate Program, which was already developed before As the Tribunal determined in Battah [139]. And these same affiliates are called upon to use marketing materials prepared by Karatbars and its websites. He adds that Karatbars unilaterally changed the course of the case following the order of the Tribunal. The Authority's prosecutor concludes that the participants do not have the knowledge required for the running of the case and that they are not directly involved in the decisions concerning its progress.

[149] The Attorney General of the Authority has therefore concluded that the Karatbars Affiliate Program constitutes an investment contract since it contains the elements described in the law. He then sought to reject the arguments that the Karatbars prosecutor sought to plead, according to the evidence presented at the hearing. Rather, it submitted that the amount paid by an affiliate does not represent the value of the acquired assets, considering that, with the exception of gold grams, other promotional items received by affiliates have no value or at best Have very limited value. Thus, the expectation of profit can only come from lump sums, the value acquired by the participants being minimal for the Authority. As for the efforts required by the participants to generate profits, it is not the significant efforts affecting the success or the failure of the company. Nor do they have the specific knowledge required; This knowledge should be that of the whole course of the case, that is, the set of steps that constitute a plan.

[150] It also appears, he continues, that the details of the 12-week Plan of Karatbars were known, despite what the consulting witness of this company could claim. The evidence is clear in this respect. This plan was frequently raised by witnesses. The prosecutor also referred to the "shares" of the Karatbars Pool Fund, which it equates to the sharing of profits by shareholders of a company and which, he said, resembles shares. It invites the Tribunal not to be influenced by companies operating in a similar way to Karatbars and that the company's warnings have no value. The prosecutor then submits to the Tribunal that the placement of the Karatbars Affiliate Program, a form of investment within the meaning of the Securities Act, in the absence of a prospectus under the jurisdiction of the Authority, is in contravention of section 11 of that Act. And it was the respondents on the record who sought and found investors for this affiliate program, committing this contravention.

[151] It also appears that these respondents acted as advisers and brokers without being registered as such with the AMF, as evidenced by the latter. They therefore contravened section 148 of the Securities Act and the applicable law. There was ample

evidence in that regard. Among other things, Robert Larivière, Michel Desroches, and Antoni Snopek, respondents in this proceeding, conducted acts, publicity and solicitation on securities transactions through webinars, conferences, Information, to promote affiliate programs and the 12-week Plan. The Authority's witnesses proved this, he said. He also submitted that the orders sought against the respondents are justified because the Tribunal has the power to adopt them on the basis of the public interest.

[152] For the AMF, it is not a matter of asking the Tribunal to issue remedial or punitive orders, but to protect the public and market efficiency, although these decisions may be dissuasive. The prosecutor then submitted to this proceeding that the respondents acted as registrants without being registered with the AMF and placed a security without a prospectus covered by the same body. He added that the information provided to participants is complex, confusing and even false. The quality of the information is not controlled and the promotion continued after the original decision of the Tribunal in this matter. Finally, this promotion targets vulnerable investors. The AMF therefore requested the Tribunal to issue the orders it sought to have the respondents cease operations to the detriment of the investors.

[153] She also requested that the Tribunal impose the administrative penalties described in its application, based on the factors identified by the Tribunal in some of its decisions, all to ensure that the objectives of the And compliance. The protection of the public and the integrity of the markets are, said the prosecutor, to consider when determining an administrative penalty; The fact that companies with a mode of operation similar to that of Karatbars operating in Quebec should not influence the Tribunal. He then listed the following factors in determining the administrative penalties requested, namely the frequency of conferences and presentations offered on the Affiliate Program, the many websites that promote it, and the large number of participants in Quebec.

[154] Added to this are the complex representations made to them, the silence on the Karatbars gold reserves, the "lame" benefits of one witness, the poor quality of the information given to the participants, the willingness of the respondents to Confidence in a target audience, vulnerable investors and the real risks involved. The Attorney General also refers to risks incurred at the expense of the integrity of the markets and the respondents' lack of repentance.

### **The argument of Karatbars**

[155] The Karatbars prosecutor told the Tribunal that the Authority submitted what it considers to be an unprecedented position regarding the scope of the interpretation of the investment contract, namely that where a participant in a contract Case does not have a complete knowledge of the way of the latter, including its origins, it must be deduced that it is an investment contract. It also submits that, according to the Authority, the effort criterion is not relevant for determining whether an investment contract exists. It provides some examples in this regard, including the activities of a franchise contract. In the latter, a franchisee must pay a fee to have the right to use a complete and detailed model, but without necessarily knowing the whole business model of the franchisor. According to the Authority's interpretation, this would be an investment contract.

[156] He gives the example of a Sun Life counselor, who is a self-employed person who does the same work as a Karatbars associate, namely, looking for clients and referring them to a product, 'insurance. He must incur expenses, which he describes. This advisor does not necessarily have an intimate knowledge of how Sun Life operates. It submits that all multi-level SEO and marketing companies have the same model that has been presented in evidence as an analogy, some of which have been operating in this sector for a long time (Amway, GWT, Organo Gold). According to this prosecutor, the Authority contends that such activities should be the subject of a prospectus referred to by it. It recalls an American decision [140] where the US Supreme Court ruled that the success of the case was not solely from the work of others [141] and that, investment. And in Glen W. Turner Enterprises of the US Court of Appeal [142], it was stated that a "modicum of efforts" should be added, a symbolic effort, and one would deviate Of the investment contract.

[157] However, he continues, several people have tried to describe all sorts of contracts, including franchise contracts, as investment contracts. For example, franchisees engaged in contracts where the franchisor's control was extreme. The decisive effort was that of the franchisor and his model. He cites the recent Rossi judgment of the same United States Court of Appeal, [143] where it was held that "Nevertheless, [144]. [144] In the case of an arbitrator, the arbitrator has the power to do so. He argues that under this law, which should be applicable in Québec, investment contracts must be those in which the participant only makes nominal and symbolic efforts, which have little direct effect On the receipt of profits by promoters.

[158] In reading these decisions, the Karatbars prosecutor submits that this is the reason why these undertakings, whose model is very similar to that of Karatbars, can operate since that time, [145] without having to prepare Prospectuses, to offer self-employed workers the opportunity to earn a second or third income, from networking or referencing. He criticizes the Authority for going backwards and seeking to induce the Court of First Instance to argue that an effort, albeit significant, which partly determines the income of the participant, the franchisee or the referent, is an instrument which should be covered by prospectus. He suggests that he has proven that the multi-level marketing and SEO industry is widespread, and even flourishing. It may well be a rapid enrichment process, but it is not necessarily an investment contract within the meaning of the Securities Act, as stated by the Colombian Court of Appeal -British in Bestline [146].

[159] Many well-established businesses can promise their future employees to make unlimited income, even if a large percentage will not. Such representations are quite common. But companies that do them should not be prohibited from operating. The Karatbars prosecutor accuses the Authority of trying to portray it as suspicious and a pyramid scheme on the verge of collapse. In response, he submits rather that Karatbars makes representations on gold similar to those made by large financial institutions and that his prices are competitive for both purchase and delivery. And the storage of gold is free. The market for the resale of Karatbars gold ingots is important and diversified. If the retail buyout price is lower than the selling price, it is for the traders to realize a profit, even though the redemption price is higher than the London Bullion Market Association ("LBMA").

[160] He also submits that her client, according to the evidence, delivers the vast majority of her products, holds all the gold stored by her clients and has an additional reserve. There may have been some confusion in that regard, but it has been corrected. He goes on to state that all Karatbars' affiliates must read and accept the Affiliate Agreement electronically and that, contrary to the Authority's assertion, several of the types of commissions payable to Affiliates are available without Have nothing to pay. Karatbars packages are in line with industry practices and are always priced below the retail value of the items included in the package. The company's 12-week program, which is a fairly common form of formula in the networking industry, has been presented as a perfect mathematical formula that does not reflect the income an affiliate can expect or Set up by Karatbars. He has since been outlawed. Finally, the company's prosecutor indicated that the so-called pyramidal system of Karatbars includes ceilings ensuring its continuity; They affect the incomes of the most senior members, not those of the more recent ones.

[161] The Prosecutor therefore submits to this proceeding that the opinion of the Authority as to Karatbars is erroneous and incomplete, attempting to create an impression. He adds that the facts reveal that Karatbars is a serious e-commerce company. It sells gold, like other companies of the same kind. It delivers it, stores it, its gold is first-rate, and like many other multi-level marketing companies, it uses a marketing model that is not common but is still very widespread, By which self-employed workers are hired to sell the product. We want them to sell gold and sell a lot of it. Is the Karatbars affiliate program, with package, that allows people to sell, full-time, but for the majority, part-time, to earn additional income, is an investment contract?

[162] This is not the case, he says. In promotional packages, there is no contribution. And all the evidence, including that of the Authority, proved that not only serious efforts were needed to succeed. Thus, one witness, the only affiliate who testified, said that it was necessary to devote himself to 100%, a fact that Karatbars does not conceal; It takes a lot of work. And this work is that of all SEO companies, either generate traffic. This distances the present situation from that described in the Pacific Coast

Coin Exchange, [147] where the role of the investor was merely to make money when the sponsor succeeded. There is nothing of the kind in this case. Karatbars has only fifty employees and the marketing of its product is entirely made by its affiliates. It can not be argued that the work of affiliates is merely symbolic and has no impact on the success of the company. The economic reality is quite different. Here, there is no shop with street gates, with sellers and with advertising on the panels.

[163] Reviewing the orders sought by the Authority against his client, the Karatbars prosecutor finds that these are not only a prohibition on the sale of gold by that company, but also a blockage of Access to its website, which is tantamount to forbidding him to sell gold. The prosecutor submits that the Authority wants to prohibit the sale of promotional packages, while the vast majority of Karatbars' affiliates have not subscribed to such packages.

[164] Referring to the Tremblay decision of the Tribunal [148], the Karatbars prosecutor referred to the fact that in de novo hearings, following an ex parte decision, the Tribunal had to decide both the facts as well as on developments since the original decision, to determine whether or not the latter should be maintained or even changed. Some aspects of the Karatbars business model were changed following the delivery of the Tribunal's decision of 17 April 2014 [149]. Thus the 12-week Plan was eliminated, as were the Exclusive VIP packages and the shares of the Karatbars Pool Fund, to which the aforementioned flat rates gave rise. It expresses its agreement with the AMF that the terms of the investment contract, as defined in the law, are interpreted in the light of Canadian and US law. But Karatbars differs from this organization in terms of the notion of contribution and the effort required.

[165] The prosecutor then dealt with Karatbars' business model, submitting in part that his evidence is partly documentary and also relies on the testimony of the consultant and affiliate of that company. The latter has an intimate knowledge of the company and has received a power of attorney from its chairman to testify in its favor. He did not doubt his ability to represent the company and rejected the allegation by the Prosecutor of the Authority that this witness would not be able to testify on behalf of Karatbars. "Suspect". The prosecutor then said that the company is a gold seller and wants to make it accessible. It explains what it sells, including accessories that contain gold, based on the evidence that was provided throughout the hearing.

[166] He submits that Karatbars is a young company, which must make communication efforts. The business model of referencing and multi-tiering that it uses eliminates the usual expenses of ordinary businesses, expenses that it subcontracts to self-employed workers; They will give themselves the means to promote, by buying promotional material, what all these multi-level businesses are selling. So 80,000 people around the world bought Karatbars packages. But this is not the main objective of this company; She does not sell packages, she sells gold. It is a business in good standing; It uses third parties to market its products, earning revenue on the promotional expenses of these third parties.

[167] The Karatbars prosecutor deals with the various gold ingots sold by the latter, as well as its derivatives. Its gold is of good quality and comes from duly accredited sources. Its prices are competitive, which has been demonstrated by the testimony of the Karatbars consultant; The prosecutor strongly rejects the Authority's position in this regard. Commenting on the exhibit filed by this witness [150], a list comparing the price of Karatbars gold ingots with those of several other vendors, the prosecutor submits that it was made up of real-time information from websites and not the printed extract, despite attempts by the Prosecutor of the Authority during the cross-examination of the Karatbars consultant, to suggest otherwise. He recalls the witness's denials to that effect.

[168] He concludes that the prices of Karatbars' gold and products are competitive in its market. The shipping costs are also, the company has enough gold in stock to fulfill its orders and can either store or deliver gold, according to the testimony of the Karatbars consultant. And some of the mistakes that the Authority blames this witness for having committed are good faith errors that are relatively minor and do not challenge his credibility. He points out that Karatbars stores the gold bullion of its customers with Pro Aurum and Volksbank. She does not speculate on the gold of her clients and still has 2 to 10 kilograms of gold in addition to the gold she stores for her clients.



[169] The Karatbars prosecutor then explained what listing marketing was by the company. This is, in connection with the consultant's testimony, an e-commerce model. He explains that this model is the model by which companies replace traditional marketing expenses with commissions paid to independent affiliates who promote the company's product, gold. This is why Karatbars has neither stores nor sellers in its employ. The company has only fifty employees in Germany and does not advertise. All its marketing goes through its affiliates. The Karatbars consultant testified to that effect. For him, Karatbars promotes and distributes gold through its independent affiliates "[151] Independent Affiliates," as stated by this witness.

[170] This solicitor recalls that the consultant testified that the system used by his company is also used by Amazon or Ebay, through websites, to promote their products; They use the service of independent affiliates who contract by contract with companies to provide marketing performance efforts. It is an e-commerce system, with features of network marketing, but also affiliate marketing. He recalled that, for the witness, Karatbars was affiliate marketing by selling his product through his Internet network and network marketing "[152].

[171] The prosecutor also recalls that the investigator of the Authority had itself acknowledged that her client was an SEO company. He then pointed out that Karatbars was not a multi-level marketing undertaking, since it did not require a minimum purchase of products by its affiliates, did not charge The clients they refer to rather than through a margin that its affiliates would make to resale. The Attorney General explained how her client interested her self-employed, people seeking a second or third income, to promote her products; It takes a compensation plan and a compensation plan.

[172] This plan, he says, has much in common with that of Organo Gold; It operates with cumulative compensation methods, which are seven different types of remuneration. Five are free, while in the case of others, affiliates can invest in their personal business selling, by purchasing a package that contains promotional material. He recalled that all the remuneration methods of the affiliates are related to their performances or those of the team they developed. None is tied to the company's results, regardless of reaching sales trays. He recalled that the Karatbars consultant had testified to the objectives of the various remuneration schemes. He explains that the dual commission is an accelerated commission to help an affiliate start its SEO business. The "unilevel" aims to keep people motivated to maintain a top ranking and not be cut off from incomes. The prosecutor explains the other remuneration systems.

[173] This method is very widespread in the industry, he continues, and ensures that the person at the top will look to sell a little more, to make a difference with the person below and continue to get Of commissions. As for the Generational Bonus and the Karatbars Pool, they aim to compensate for the effect of the "Unilevel"; We reward affiliates who are cut off from income. He insists to emphasize that people who can be cut are always up. If growth continues, the people whose commissions are falling are always those at the top. This allows the prosecutor to disagree with the Authority's assertion that Karatbars is a model of Ponzi; On the contrary, it is at the higher level that people are amputated from income. So it's always possible to do downscaling, as multi-level companies do, depending on their model.

[174] He notes a confusion by the Authority over the Karatbars Pool concept, which is linked to the performance of affiliates, and Karatbars International World Pool, in which some people may hold shares by purchasing an exclusive VIP package [ 153], reaching certain targets. The first is an integral part of Karatbars' compensation plan, which is available to all affiliates, including those who have not purchased packages. This component is related to the productivity of the affiliate that must reach certain sales levels to access it. This is reported in the Karatbars Marketing Plan [154]. Finally, the Karatbars prosecutor rejects the Authority's claim that the latter's plan is complex, since the consultant of that company stated that it could appear at first sight, but Industry, it was a relatively simple compensation plan. This plan, he adds, is in fact similar to the programs of other multi-level marketing firms. [155]

[175] And if the Authority asserts that none of its witnesses could explain it easily, the Karatbars prosecutor asserts rather that one of the witnesses of this organization did not care, that another Did not recall having consulted or studied it and that a third, branch manager at Sun Life, did not look at the company's website in detail and did not read his compensation plan. It submits that, in this respect, the Authority's position is not convincing. He concludes this part by saying, as one of the Authority's witnesses, that the plan may not be for ordinary mortals but can be understood by someone in the industry. Then, discussing the viability of Karatbars' business model, he indicated that Karatbars has put in place mechanisms to ensure that its compensation plan is viable.

[176] The Authority suggested that it was only after the Tribunal's orders were issued that her client put these mechanisms in place, while the consultant of the Tribunal testified that they had always been in place. These mechanisms provide for ceilings to ensure the viability of the compensation plan; Each level has its ceiling. This is typical of this industry. And it is the person who is at the top of the unilevel plan that is cut, [156] what he explains. For the prosecutor, because of these limits, a person who arrives later in the program may well succeed in making gold sales. He then discusses Karatbars' rules of conduct and submits that neither this company nor its affiliates put pressure on the members or potential customers. There is no evidence in this regard. A witness from the Authority even testified that he had not been pressured. This is contrary to what is said in Glen W. Turner [157].

[177] He referred to the policies and rules that Karatbars had adopted to ensure the ethical character of the promotion of its products by its affiliates, which it had communicated to them by bulletins and press releases. And these affiliates have the duty to inform themselves, as well as training materials, and to transmit this information on their network. He points out that Karatbars is a young company; But it has compliance assurance mechanisms, including a support service, a compliance officer, explaining its role, and roundtables. Karatbars also asks its senior affiliates to pay particular attention to compliance with their team members. Then, in terms of transparency, the company produces audited financial statements and publishes them on the German Federal Gazette. Lastly, it states that no other prohibition has been imposed on Karatbars in the world other than that of the Tribunal.

[178] The Karatbars prosecutor then addresses the 12-week Plan. The evidence shows that it was created by affiliates to monetize the opportunity offered by Karatbars. The presentations of the plan were not endorsed by the company, which was unaware of the details. And the consultant testified on this, stating that "I think Karatbars was aware of the 12 week plan, especially, you know, as a training tool for affiliates. I do not know what to say about the potential impact of how the 12 Week plan was being used "[158]. And he rejects the Authority's statement that this testimony is not credible. It also indicates that 12-week plans are quite common in the SEO industry. He submits that there is nothing in the evidence presented by the Authority to show that Karatbars knew how the 12-week Plan was presented, even though it knew of its existence.

[179] He recalls that the Karatbars consultant rather presented this plan as a training tool for the affiliates without really understanding all the details or the potential impact of its use. The prosecutor submits that, at the time Karatbars realized the details of the case, especially after the Tribunal's decision was pronounced, it sought to greatly limit its use. She issued a statement calling for the immediate withdrawal of the 12-week Plan, stressing that it was rather an affiliate's strategy that did not reflect the views of society. In addition, it stated in a news release that affiliate revenues depend solely on their ideas, techniques, skill and time spent in their independent business and that the company does not guarantee earnings or earnings averages [159].

[180] The prosecutor also drew attention to a document [160] illustrating Karatbars' warning about income projections. It recalls that in August 2015, the company decided to ban all forms of income from its affiliate programs. [161] He indicates that Karatbars affiliate said that by making this ban, this company has gone far beyond the practice of the SEO industry which uses this method widespread. This demonstrates, among other things, that the company has taken the Tribunal's decision very seriously, going further than other participants in this industry.

[181] At the same time, this prosecutor asks the present court not to exaggerate the character of a plan of promotion which is rather common in industry and which is above all a perfect mathematical model, as presented by the affiliates, and which does not Will not be realized in reality; A witness from the Authority even testified to that effect. He concludes on this point that the 12-week Plan, now outlawed, is nothing more than a way to monetize the Karatbars remuneration program and that it has no impact on whether the Affiliate Contract Of that company is an investment contract.

[182] The Karatbars prosecutor went on to define the investment contract, using two criteria to define the investment contract; It is the criterion of the contribution and the effort or the work performed by the participant. Referring to the concept of contribution, he submits that without it there is no investment, referring to the Bestline decisions of the Supreme Court, [162] and then by the Court of Appeal [ 163] of British Columbia, which he summarized and commented upon. In this case, the company set up a housekeeping system and sold its products through a multi-level sales organization. He submits that for the courts, the monies paid by the purchasers of products were not investment contracts, contrary to what the British Columbia Commission believed.

[183] The latter considered this disbursement as a person buying the opportunity to earn income. But for the courts in this province, the sums disbursed by the buyers were totally devoted to the purchase of equipment, leaving nothing more that would have been invested in Bestline. According to the Court of Appeal, the whole thing may have been a combination to make a fortune quickly, but it did not make it an investment contract. [164] The Karatbars prosecutor then pointed out that the Court of First Instance had, in its ex parte decision [165], cited that judgment; He shows the situation of his client to that of Bestline [166]. He distinguishes this latter case from an Alberta decision [167] in which the Supreme Court of this province determined that a product sold was akin to an investment contract, since some of the money paid by distributors To a company was used to build its store, purchase inventory and provide management funds. Here, he concludes, there is no such contribution in Karatbars.

[184] This prosecutor then recalls that the participation in the affiliate program of this company is free, that is to say, Free commissions; This has been confirmed by the testimony of the investigator of the Authority [168] and the documentation filed in evidence by that body. [169] It is possible to buy a package ("dual team") but this is optional and it is not a prerequisite to qualify to earn an income. It only appears, he argues, that it is possible to increase his income by purchasing such a flat-rate, according to the Karatbars Marketing Plan filed in evidence by the Authority [170], but that the former Commission type plans are completely free of charge. But it is especially important to note that for the free part of the program of those wishing to obtain commissions by referring clients to Karatbars, there can be no contribution or investment, as exemplified by other SEO companies Quote.

[185] The Karatbars prosecutor recalls that the purchase of a package is intended for a serious person who wants to become an affiliate and wants to buy a package to have tools to sell and promote products; It's about selling gold and convincing other affiliates to do SEO. If they purchase a package, they will be entitled to other commissions. The Karatbars prosecutor submits that Karatbars is in the same situation as Bestline, and even better. As for the value of the products, an affiliate who buys a package receives a value equal to or even greater than the amount he pays. He denounced the approach taken by the Authority, which reduced the value of promotional items; He submits that this is a mistake, in light of the Bestline jurisprudence where the Court of Appeal found that a "dirty kit" was a legitimate marketing charge, not a contribution. [171] .

[186] He argues that if the AMF's interpretation were to be upheld, several referral plans would be considered investment contracts. He recalls that at Sun Life, according to one of the AMF's witnesses, he buys promotional material from this company, including his business cards. Obtaining this type of equipment from a company does not mean investing; We may even wonder why we would buy the promotional material of a company in which we invest, if the success of the latter does not depend on our efforts, as the marketing of products is not our responsibility. The purchase of this material proves on the contrary that a buyer is

not a passive; It has a role to play in product promotion. He denies that the Karatbars cards may have any value, as the Attorney General of the Authority has commented, when they are cards that contain gold.

[187] And to claim that it was not possible for an affiliate to buy gold with the € 100 Bonus card, as the investigator of the Authority said, Had no value, was wrong, because she had to recognize in cross-examination that it was possible. And even the brochures that affiliates can get are valuable because it's hard to imagine that Karatbars will produce them without incurring expenses. It also recalls that according to the Karatbars model, affiliates do not buy products that they try to resell and with which they can remain caught, as was the case in Bestline; They refer clients and they are paid for it. He adds that all the packages sold by Karatbars have a value less than the retail value of the items that make up them, a thing normal to him, contrary to what the Authority claims. It is logical that according to the rule, the retail value of products taken separately is always higher than that of a basket of those same products. He gives an example of this.

[188] The Karatbars prosecutor subsequently revised the case-law decisions referred to by the Prosecutor of the Authority. It distinguishes them from the case of Karatbars, where often the value of the product sold to an investor was minimal in relation to the total price paid, making a good portion of that price actually an investment. He concludes that the study of the concept of contribution in the present case makes it possible to conclude that in the case of Karatbars we are not in the presence of an investment contract. Even if the Court were to conclude that part of the amount paid for the flat - rate payment was to be regarded as an investment in Karatbars, which he denies, he submits that the second important criterion in the definition of the contract of " Investment, or the work provided by Karatbars affiliates, ensures that there is no such contract.

[189] Counsel for the company particularly draws the attention of the Tribunal to Glenn W. Turner, [172] where the court reassessed the test developed in Howey. [173] In Glenn Turner, the court had noticed from the outset, it was demonstrated that "defendants' scheme is a gigantic and successful fraud." [174] He went on to describe the meetings held in that case; It shows how proponents deceived the interested parties, in order to get them to spend their money in all the ways. The United States Court of Appeal was led to distinguish what the United States Supreme Court had decided in Howey:

"For purposes of the present case, the sticking point in the Howey definition is the word" solely, " All the other elements of the Howey test have been met here. There is an investment of money, a common enterprise, and the expectation of profits to come from the efforts of others. Here, however, the investor, or purchaser, must himself exert some efforts if he is to realize a return on his initial cash outlay. He must find prospects and persuade them to expect Dare Adventure Meetings, and at least some of them must then purchase a plan if he is to realize that return. Thus, it is possible to make a profit from the efforts of others."  
"[175]

[References omitted]

[190] The court then stated:

"We hold, however, that in the light of the remedial nature of the legislation, the statute policy of affording broad protection to the public, and the Supreme Court's admonitions that the definition of securities should be a flexible one, the word" solely " Not restricted or restricted on the definition of an investment contract, but rather shall be construed realistically, so as to. "[176]

[191] She then commented that too strict an endorsement of the notion that profits should "come" solely from the efforts of others may be too restrictive in the definition of the investment contract,

"Strict interpretation of the requirement that the profits to be earned must come" solely "from the efforts of others has been subject to criticism. See, e. G., State of Hawaii v. Hawaii Market Center, Haw.1971, 485 P.2d 105. Adherence to such an interpretation could result in a mechanical, unduly restrictive view of what is and is not an investment contract. It would be easy to evade a modicum of effort. So the investor has a lot of money to make sure that you have a good investment. To do so would not serve the purpose of the legislation. Rather we adopt a more realistic test, if the efforts made by those other than the investor are undeniably significant, those essential managerial efforts which affect the failure or success of the enterprise. "[177]

[Our underlining]

[192] The Karatbars prosecutor then raised the Lino case [178], pointing out to the Tribunal that there were then cases of investment contract cases at that time, whereas the legislature had not heard that they be judged as such. In the Lino case, there is a system of searching for franchisees for franchises intended to bring their product to market; It's a multi-level form to find franchisees, "he says. One of the franchisees argued that he was in possession of an investment contract, since the major part of the effort was the franchisor's and the franchisee's effort was not significant.

[193] The United States Court of Appeal then decided to agree with the notion that there may be an investment contract where the investor is required to make certain efforts, provided they are Symbolic or limited, and that they would have little direct effect on the receipt by the participants of the benefits promised by the promoter. [179] But if the participant's efforts are not symbolic or limited and if they have direct effects on the receipt of the benefits promised to him, there is no investment contract. In Lino, the US Court of Appeal concluded:

"Lino is required to make significant efforts. He has to open a sales center, staff it, and devote full time and best efforts to his business. He must recruit area distributors for FI programs and train them. The agreements are not nominal or insignificant. FI representative "[180] He must recruit a FI representative,

[194] The Karatbars prosecutor points out that this decision was followed in the same way by the United States. [181] This model is that the success of the franchisor is completely dependent on that of the franchisee. He then points out that many SEO companies are now able to operate because of these decisions, without the products they sell are confused with investment contracts. He also submits that his client's evidence proves that the success of his affiliates depends on their efforts; There is a company of 50 employees where all the marketing goes through its affiliates, except for the preparation of sales literature and software, as in any e-commerce company.

[195] As to the knowledge required for the conduct of the case, he disagrees with the interpretation of the Authority's public prosecutor. When you become a participant in a business, as a self-employed, franchisee or associate, you do not really need to know how it was set up, or how it functions. He recalled the testimony of the Karatbars affiliate in this regard:

"If you have coachable, if you have coachable, if you have coachable, To succeed, these are the characteristics of people who will keep people going forward and not quitting. "[182]

[196] He recalled that the Authority's witnesses were generally involved in the area of network sales. Specific experiences are not really sought, as long as a person has had experiences in the past and also has a desire for success; That is what will determine if a person can do that. A sales experience is not to be neglected because that is why we are committed. He also points out that

according to the evidence, affiliates are responsible for developing their SEO networks and free to determine how, as an affiliate of Amazon would like to promote its business. For example, affiliates with experience in network marketing may choose to build a team, train and promote sales through personal consumption, or communicate the benefits of earning an income by building a team. [183] .

[197] But, he continues, Karatbars' evidence has clearly demonstrated that an affiliate's activities are a "job." It may not be a full-time job for all, but it can be a job to get a second or third income. He recalled that the witnesses of the Authority, the witnesses of Karatbars, the documentary evidence, were unanimous in saying that such a job required work, citing some examples in this respect. It recalls that the investigator of the Authority even advised a witness to be careful not to duplicate the work that would be contrary to the regulations. He reports several testimonies on this subject. In the case of the Karatbars affiliate, the latter works full-time. And in some cases, she has assumed certain expenses out of her pocket, including preparing a video for her team.

[198] This prosecutor also states that it will be theoretically possible to make money by referring only one person; But this affiliate should not expect much. If there is no extra effort on his part, his income will be proportional to his productivity; It will no longer be successful. But it is clear, he argues, that the marketing of Karatbars' products passes through the affiliates of Karatbars and by others. It is then, he adds, very far from symbolic or limited efforts that would have little effect on the receipt of profits promised to the participants, that is to say the American rule developed by the jurisprudence he cited. Turning to the above-cited Glenn W. Turner case, [184] he submits that it has no relation to the present case; We were at first in the presence of fraud and that the sellers had essentially no role to play.

[199] For this reason, there is no investment contract. There is no input, and even if there was input, there is no need to stick to a minimum of effort to gain. The earnings are rather proportional to the work done by a person. He recalled that, according to Pacific Coast Coin, [185] emphasis must be placed on "economic reality". However, the Authority submitted to the Court that all the evidence Karatbars submitted on other undertakings was irrelevant. But, he submits, in the context of the decision to be made, one has to take cognizance of the economic reality of an enterprise like that of its client. Otherwise, some legitimate businesses that have the same business model as the respondent could be prevented from doing business because a widespread business model would be discontinued.

[199] For this reason, there is no investment contract. There is no input, and even if there was input, there is no need to stick to a minimum of effort to gain. The earnings are rather proportional to the work done by a person. He recalled that, according to Pacific Coast Coin, [185] emphasis must be placed on "economic reality". However, the Authority submitted to the Court that all the evidence Karatbars submitted on other undertakings was irrelevant. But, he submits, in the context of the decision to be made, one has to take cognizance of the economic reality of an enterprise like that of its client. Otherwise, some legitimate businesses that have the same business model as the respondent could be prevented from doing business because a widespread business model would be discontinued.

[200] Three witnesses from the Authority (other than the interviewer) participated in multi-level SEO or marketing ventures. One of these witnesses was employed by Sun Life; It has been suggested, he suggests, that the economic reality of Karatbars is a widespread economic reality, highlighting all the similarities that can exist between the economic models of these two enterprises. Among other things, it highlights how the knowledge required to work at Sun Line is similar to that required at Karatbars; They do not need any particular knowledge or experience, although a sales experience may be an asset. They are workers who do referencing and networking. He cited other examples in this regard, paralleling the activities of Karatbars and Sun Life. It even appears that the advisers of the latter are not obliged to buy in order to be able to work there. This is the case for the affiliates of Karatbars, he adds.

[201] The respondent's counsel then deals with the complexity of the compensation plan; It may not be clear to ordinary mortals but it is very clear to an individual in the industry. He points out that the duty of cooperation imposed on a franchisor results from the pursuit of a joint venture and that the franchisee is dependent on the expertise and means of the franchisor, as stated in Dunkins Donuts [186] Of the Quebec Court of Appeal in this regard. He referred to the testimony of the Karatbars consultant on the use of Karatbars cards as a form of payment in shops. He explained that this use was hypothetical, as the plan would only take effect within one year. He acknowledges that there may have been some exaggeration in this regard during the presentations. But this does not justify a total closure of the company.

[202] He comments on the statement that Karatbars had the green light from the Authority. According to testimony in this regard, [187] this was primarily to the effect that the sale of gold did not fall within the scope of the Act respecting the distribution of financial products and services. [188] He concluded that although the courts have interpreted the provisions of the Securities Act very broadly, the interpretation must remain reasonable and faithful to the essence of what constitutes an investment contract, A passive investment by an investor whose activities are only symbolic and which have little direct effect on the latter's receipt of the promised benefits promised by the promoter. Finally, the Karatbars prosecutor submitted that her client complied with the initial order of the Tribunal, [189] taking all necessary steps to ensure compliance, as evidenced by the testimony of the consultant company.

#### **The Authority's reply**

[203] In response to Karatbars' submissions, the AMF's prosecutor submitted that, first, his client's position related to the Karatbars paid-for packages. The Authority does not intend to sell gold or free packages to the company. It requests that the third conclusion of the AMF's amended request be amended by 'ordering Karatbars International GmbH to take the necessary measures to prevent anyone with an IP address from Quebec from purchasing a package' " Bronze ", " Silver ", " Gold " or " VIP " .

[204] This prosecutor then addressed the point of confusion regarding the "shares" of the Karatbars International World Pool and the Karatbars Pool; At the request of the Court of First Instance, he indicated that the shares are shares. Turning to the value of the packages of this company, he submits that the discount card of Karatbars of 100 € has no value and is without interest for the investors who buy the packages. Discount cards of 3% are only for limited use, for a period of one year, to pay a delivery fee. The knot of the case lies in the discount cards of 100 €. Turning to a document adduced in evidence, [190] he reviewed the discounts granted in the packages, submitting that Karatbars did not disburse money for the discounts granted.

[205] The Tribunal submits that if the Tribunal accepts the position of the respondent company, it would create the danger of circumventing the Securities Act, allowing companies to include in their packages discounts that are worthless and for them and for Investors. He then submits that in the present case, investors first buy a profit expectation. Commenting on the US decisions cited, he recalled that in 1982 the law included the definition of investment contract that our courts commented on. It is these principles that are applicable today.

[206] As for Karatbars' comments on Sun Life, it recalls that Sunat distributes investment products that are subject to the prospectus and that those who distribute them are registered with the Authority, as is one of the witnesses of This organization. Let Karatbars do the same and sign up.

[207] The Karatbars prosecutor replied that the shares of the Karatbars International World Pool are no longer distributed. Finally, the respondents Robert Larivière, Michel Desroches and Antoni Snopek declared to the Tribunal that they had nothing to add.

## THE ANALYSIS

[208] On 17 April 2014 [191], the Tribunal imposed prohibitions on trading in securities and acting as an ex parte adviser against Karatbars International GmbH, Robert La Rivière, Michel Desroches and Antoni Snopek, pursuant to sections 265 and 266 of the Securities Act. [192] In accordance with the law, these persons addressed the Tribunal in order to be heard. As a result of this application, this proceeding held an 11-day hearing, consisting of nine days of evidence and two days of oral argument. From the outset, the Court emphasizes that much of the case revolves around the definition of an investment contract; it is his presence that determines the jurisdiction of the present proceedings to accept or not the Authority's request, as amended and then revised, also in accordance with the defense submitted by Karatbars.

[209] It should be noted that the three respondent natural persons attended the hearing days but did not present any evidence in defense or argue. Their fate will follow that of Karatbars, on the basis of the evidence presented by the Authority in respect of them and the defense submitted by that company. In addition, this proceeding is part of a de novo hearing following an ex parte decision. As argued by the Karatbars prosecutor, citing Tremblay [193] of the Tribunal of 10 March 2010, a de novo hearing is a procedure which allows a person affected by an ex parte decision to obtain an ab Initio. But this is not merely a review of the allegations made during the ex parte hearing but also a study of what happened after the first decision.

[210] It is generally accepted that an investigation by the Authority may have evolved after the issuance of an initial decision and that it may adduce evidence of additional evidence which it has since discovered, The respondent may present any relevant evidence in its defense. In other words, this hearing de novo does not serve to prosecute the ex parte hearing, but may extend the debate "both on the old facts and on the developments since the original decision, Determine whether the original decision must be upheld, lifted or varied "[194]. In this case, the AMF has essentially chosen to stick largely to the evidence it presented at the hearing on April 9, 2014.

[211] Nonetheless, it added certain facts about Prosegur and Degussa, where gold was to be stored, other events that occurred after the Tribunal's ban, including the registration of an affiliate. As for Karatbars, it extended its evidence to also demonstrate the transformations of its activities as a result of the Tribunal's decision, transformations otherwise inspired by it.

### **The investment contract**

[212] As discussed above, the discussion in this case revolves around the concept of an investment contract. Is the Karatbars affiliate contract such an instrument? For the Authority, there is no doubt about that. For Karatbars, this is absolutely not the case. If the Tribunal finds fault with the respondent company, that will stop there; In the absence of that instrument, the condition for the opening of the jurisdiction of the present proceedings will be non-existent and the Tribunal will only be able to lift its previous prohibitions. If its determination is that there is an investment contract, it may, on the basis of the evidence presented, allow the Authority's request, maintain its original decision and determine whether administrative penalties should be imposed Required, and measures to ensure compliance with the law.

[213] The investment contract is a form of investment provided for in section 1 (7) of the Securities Act [195] and defined in the last paragraph of the same article. [196] Jurisprudence has established that the purpose of the aforementioned Act is to protect the public and to promote the functioning of the securities market. This protection of the public is accomplished, inter alia, by disclosure of material facts relating to a security [197]. In this regard, it is understood, as the Supreme Court of Canada has pointed out, that "such protective legislation must be given a broad interpretation that takes into account the realities it



addresses". [198] The decisive element being the background and not the form [199]. The Court of First Instance therefore proceeds to examine the concept of the investment contract, analyzing it in the light of the economic realities referred to in the present case, adopting a broad interpretation beyond the form.

[214] In the Battah decision of 2012 [200], the Tribunal had thus broken down the parts of the investment contract in order to better explain its meaning:

"[166] This definition includes many elements that should be listed one by one:

(1) a contract by which a person engages;

(2) in the hope of the benefit he has been given;

(3) to participate in the risks of a case by way of a contribution or a loan;

(4) without the knowledge required for the conduct of the case or;

(5) without obtaining the right to participate directly in decisions concerning the conduct of the case. "[201]

[215] The Karatbars prosecutor suggested that the investment contract should include the following basic elements: (a) an investment, (b) a joint venture, (c) the profits of which depend mainly on the work of an investor, Others. According to him, participation in the affiliate program, which is the subject of the present case, is free, the value of the package is higher than its cost and the success of the affiliates depends essentially on their own efforts. It becomes important at this stage to look at the economic reality of the Karatbars activities, knowing how central this problem is, as determined by the Supreme Court of Canada.

[216] The Karatbars prosecutor called two witnesses in support of his client's contentions, namely those identified by the Tribunal as the consultant and Karatbars affiliate. Their testimony enabled the Vice-President, the undersigned, to draw up a clear picture of the general activities of this company, as well as the affiliate contracts and their operation. To paraphrase the words of a witness of the Authority, these contracts are not for ordinary mortals, but they are not so complex as to become incomprehensible. The testimony of these witnesses was invaluable in clarifying the lantern of this case. The consultant of Karatbars was denounced by the public prosecutor of the Authority as being neither an officer nor director, shareholder or employee of that company; He seriously questioned his credibility as a witness. He therefore requested the Tribunal not to give precedence to this testimony on the part of the purchaser affiliated with a package which the Authority has heard.

### **The economic reality**

[217] This point brings us to the heart of what the Tribunal must consider, namely the economic reality in this case. It appears from Karatbars' evidence that the economic model she has chosen has a direct impact on the relationship that this consultant has with her. Even if it does not have a snoring title by Karatbars, it does not influence the status it has and the serious role it

plays. Again, the choice of an economic model by Karatbars means that if this witness works for this business without necessarily bearing an executive title, it is nevertheless the one that the company chose to testify on its behalf, with A power of attorney signed by the president of Karatbars. Let us add that this consultant testified in a coherent and complete manner; The Tribunal considers that it has demonstrated an intimate knowledge of this company, the skill of which it has cleverly dissected.

[218] But what does Karatbars do? According to the consultant, which was not contradicted by the Authority, this company sells gold. She sells gold bullion, in different formats. This item is embedded in cards in credit card format, some with effigies. According to an uncontradicted proof, it is gold of quality, of great purity. Karatbars also sells promotional products. His evidence is that the price paid for this gold is competitive. The Authority had alleged that it might have been overpaid but, in cross-examination, the Authority's investigator had to retrace her steps and acknowledge that she had not always exercised the Check the prices of the competitors of this company. The Tribunal finds that Karatbars has presented overwhelming evidence that the price at which it sells the gold is a competitive price, based on the LBMA price.

[219] The same is true of the position of the Authority as regards the storage of gold by Karatbars or the delivery thereof; The plaintiff submitted that the company claimed to store the gold at Prosegur but that it was false or misleading. Karatbars' final evidence may have revealed some errors in this regard, but ultimately the company was able to re-establish the facts and satisfactorily prove, through the testimony of its consultant, that the concerns expressed by the Authority Delivery costs and warehousing were no longer valid. And, it has been shown that the gold of this company is stored with institutions intended for this purpose.

[220] The same is true of the costs of transportation which, according to evidence satisfactory to the Tribunal, are competitive. Evidence also convinces that Karatbars has enough gold to fulfill its orders. The Court is satisfied that the evidence of that company is paramount in the identification of its suppliers in Turkey or in Germany. The allegations made by the Authority in this respect could not be confirmed and the Karatbars consultant's explanations are complete, properly substantiated and credible; On the contrary, they discard the calculations. Finally, the possibility for a person to exchange gold to buy goods and services is, according to the evidence, a project that Karatbars has not yet completed. This was confirmed by a witness from the respondent company.

[221] This brings us to the economic model chosen by Karatbars, which is one of the most important issues in this case. The testimonies of the Karatbars consultant and affiliate proved valuable on this point. It is clear from an overriding piece of evidence that Karatbars sells its products under an SEO program; It pays commissions to independent affiliates who promote the gold sold by that company. The depositions of the witnesses of the company but also that of the second interested person introduced by the Authority are to the effect that these affiliates have the role to find people to buy the products of the company. We sell ! Karatbars does not have a store, does not have a salesman in its employ and does not advertise. This is what the Karatbars consultant testified on [202].

[222] Karatbars has 50 employees in Stuttgart, Germany, but, according to the evidence, its real labor power is elsewhere. It is the 340,000 affiliates that, according to the affiliate, sell Karatbars products. In fact, according to the witnesses, Karatbars essentially depends on these people to market their gold. This is its sales force! The consultant of the company has in fact filed an extension video with the authorization of the Tribunal, which allowed us to familiarize ourselves with these concepts. This proceeding accepted the filing of this exhibit during the hearing, considering that it came from a practitioner familiar with this model and that it had a good explanatory value. Having carefully listened to the content, the Tribunal recognizes its validity with respect to the neutral explanations it contains, which explanations have not been contradicted in evidence.

[223] What is it actually about? From a company that can be successful, while having few employees, few accounts payable and receivable, little inventory. We are developing in a growing market, with a unique product that can attract consumers

repetitively, at a favorable time for a buoyant trend. Agents are used rather than employees, but they are given the opportunity to make that much money by having their own agents. The latter therefore have the opportunity to use the same leverage as the initial promoter of the project. According to this model, these agents can obtain the product sold but also market it, devoting efforts to train other agents to do what they have done themselves. If this is done effectively, the reward is exponential. This is network marketing; It consists in teaching others to repeat what you are doing. But, it is said, this requires working hard.

[224] This system, referred to as multi-level sales, relational marketing, multi-level marketing, cooperative sales, cooperative sales, is in fact a sales network structure in which resellers or distributors can Sponsor new sellers and be paid by a commission assessed as a percentage of sales of recruits. The multilevel sale eliminates recruitment and training costs but also spends advertising by replacing it with word-of-mouth. [203] Income consists of commissions paid to agents, residual income, passive income, recurrent income, calculated according to the personal turnover of the representative and his organization, according to the plan Remuneration of the multilevel corporation. [204]

[225] If we go back to Karatbars, it was alleged that it is such an SEO company; She does e-commerce to bring her products to market, through network marketing. This is what the consultant of this company testified to and what the investigator of the Authority even acknowledged in his testimony. At the same time, Karatbars has been detailed in uncontradicted evidence that Karatbars does not require a minimum purchase from its affiliates, that it does not charge a mandatory entry fee and pays its Affiliates for the clients they refer to. Thus, Karatbars' activities may vary somewhat from those of other network marketing companies, but the evidence shows that its activities do not differ from the latter in many respects. The company has seven cumulative compensation modes as listed in its Marketing Plan set out in evidence. This compensation plan also included the Karatbars World Pool, which some affiliates hold shares by buying certain packages or by meeting certain targets. We shall return later to the issue of these shares, to distinguish them from the affiliate contracts.

[226] The Tribunal considers that these remuneration plans are not straightforward, but that they are not so complex as to be incomprehensible. But it is certainly necessary to read the explanations on this subject that can be found on the website of the company, and to follow the training videos that the evidence showed in audience. This proceeding was thus able to view the case filed by the affiliate. This aspect is important if one considers it through the efforts that an affiliate must commit to succeed in making money, starting by understanding the system. This raises questions about the efforts they have to make, which must then be measured and analyzed to determine the presence of an investment contract.

[227] It should be added that the Karatbars compensation plan also includes certain commission ceilings, when they reach certain percentages or amounts; On the evidence, these caps are in fact mechanisms that impose limits on commissions. According to uncontradicted evidence, it is realized that in the various remuneration plans, it is people who are at the top of the pyramid who see their income thus limited. It will be recalled that in the video on the networking industry filed by the consultant, it was said that some people believed it was a pyramid, imagining that those on top made all the money and that Those who were down doing all the work.

[228] The Prosecutor of the Authority did not say anything else by referring to exactly the same thing. This, he said, adds to the notion of the risk to the investor who, at the lowest level, does not make a profit. But in fact, commission ceilings prevent this from happening; They seem to make sure that it is upwards that compensation can be limited, letting people down touch the full fruits of their work. In this regard, the uncontradicted evidence presented in the hearing strongly shades the version of the Authority and tends to reassure the Tribunal on this aspect of income sharing, removing us from the remuneration model evoked by certain jurisprudence From top to bottom and nothing!

[229] As evidence, Karatbars stated that there was no pressure placed on the persons concerned, that it adopted rules ensuring the ethical character of the promotion of its products. These rules are transmitted by means of press releases published in the

Karatbars back office; The affiliates of this company have a duty to remain informed of the material that it distributes to them and to transmit it to the members of their team. Added to this are the compliance assurance mechanisms set up by the company. As the prosecutor of Karatbars has argued, the Karatbars prosecutor is a German-based company whose financial statements are officially published. It has not been the subject of complaints from affiliates, although it has a few thousand in Quebec.

### **Commitment by means of a contribution**

[230] Having come to the definition of an investment contract, this proceeding now revises the various components, bearing in mind that the whole must be interpreted broadly in order to achieve this objective of protecting As the jurisprudence has determined. Turning first to the concept of contribution, which is undoubtedly a vital component of such a contract, it should first be recalled that the public prosecutor of the Authority stated that he had retained, for the purposes of his argument, only The packages for which the affiliates had to disburse amounts of money. Free affiliate contracts are not considered for the purposes of this study. However, only one witness brought by the Authority actually bought such a Karatbars package. The prosecutor of Karatbars argued that without a contribution, there is no investment.

[231] In the British Columbia Court of Appeal's Bestline Products decision [205], the court examined the company's pyramid sales to determine whether they were investment contracts. This was a result of a decision of the British Columbia Securities Commission, which had banned Bestline Products Ltd. ("Bestline") the distribution rights, as being investment contracts, a security within the meaning of the law of that province. The Supreme Court of British Columbia had quashed that decision, hence the appeal to the Court of Appeal. Bestline sold soap and other cleaning products, sales being accomplished by three categories of sellers. The first category, the local vendor, earned 30% of the profits in the form of rebates or discounts on products purchased from Bestline. [206]

[232] The second category, the direct seller, provided management and supplies to local vendors and maintained an organization for the sale of local vendors; He received 52% of the profits through discounts or discounts on his own sales and 22% of the profits on the sales of the local sellers of his organization. The third category, the general seller, engaged, trained, supervised and motivated direct sellers. The general seller received 8% of sales from their local vendors and received \$ 1,000 for each of their direct sellers who became a general seller. For its decision, the Court of Appeal retained for its analysis only the last two categories, namely direct sellers and general sellers. [207] Reviewing the jurisprudence, the court then came to the conclusion that it had not been proved that the amounts remitted to Bestline by the direct sellers were anything other than payment for maintenance products and other marketing expenses [208] and that "The situation would be entirely different if it had been obtained from the sum of \$ 2,068."

[233] Already in its decision, [210] the Supreme Court of the same province found that all money disbursed for the purchase of maintenance products, transportation costs, purchase of a sales kit And a membership in the sales organization did not leave additional sums that could be invested in Bestline. [211] It therefore appeared that the sellers made money derived only from their sales efforts and not an investment in the company. [212] In making its determination, the British Columbia Court of Appeal quoted a decision of the Supreme Court of Hawaii [213] in which it stated:

"The salient feature of securities is the public's solicitation of venture capital to be used in a business enterprise. Securities Act "means the Securities Act, as enacted by the Securities Act. "[214]

[234] In Bestline, the court came to the conclusion that it dismissed the appeal of the decision of the Supreme Court of this province in the following terms:

"In my opinion, the crown failed to prove that the facts here came within the criteria set out above. While I have no doubt that the material, generally adumbrated many of the characteristics of the " get rich quick " schemes with which the superintendent of brokers has to contend, nevertheless I can not say, An investment within the meaning of the act. "[215]

[235] In a decision of the Supreme Court of Alberta, [216] a business operated a retail store; It had recruited 3,000 distributors who in turn recruited customers. These distributors paid \$ 450 to the company and could become a supervisor for an additional \$ 1,910. These people were paid commission. As was demonstrated, distributors paid to Great Way Merchandising Ltd. ("Great Way") amounts above the value of the property they received, it was determined that they were investing in that company. In the British Columbia Supreme Court decision in Bestline, [217] the latter used the example given in Great Way to distinguish the latter from the one before it:

"34. In my respectful view, the Great Way must be distinguished on its facts. A person who has been a member of the United States for a long time. The Great Way Company provided its representatives with 50. The representative's job was to place the cards with purchasers. The representative was given a commission on the purchases made by persons to whom he distributed purchase cards. A Great Way is a great place to visit for business or pleasure. It is the last feature which makes the transaction in the Great Way a sale of a security. "[218]

[236] Bestline and Great Way are comparable with the Lantech decision of the Securities Commission in 1998. [219] In this case, it was the commercialization of a software in pre-commercial version, for running-in; A distributor had to pay \$ 500, a large portion of which was to be paid to Lantech. The Commission concludes that a substantial part of the payment is attributable to a contribution; The amount was unrelated to the purchase price of the software. Not being a consideration received, this was an investment in Lantech.

[237] However, pleaded the Karatbars prosecutor, the situation of his client is similar to that studied in Bestline. He submitted that membership in the Karatbars affiliate program is free; Affiliates can benefit from commissions without necessarily having to pay a penny, not even entrance fees, which has even been admitted by the investigator of the Authority. And the attorney for the latter also indicated that her client's request related only to the lump sums that were obtained by disbursing an amount of money. But as regards the latter, the Karatbars prosecutor initially submitted that the purchase was optional. These packages give buyers the right to get higher commissions, but also to be paid within shorter deadlines. He added that the value of these packages is equal to or greater than the amount paid by the affiliates.

[238] This point is in line with what is stated in the jurisprudence cited above. The Karatbars prosecutor made a lengthy demonstration of the value of the items submitted in connection with the purchase of a package by the affiliates, without subtracting anything from it, all based on the testimony of the consultant of that company. society. Whether it is the discount cards or the promotional material distributed, he does not hesitate to consider that these are purchases that have nothing to do with investment, case law to support it. And these purchases are only one more proof of the involvement of affiliates in the sale of the company's products. On the contrary, the Authority's prosecutor split an elaborate demonstration that the products given to affiliates who bought a package were worth a lot less than the price they paid.

[239] Thus, he stated that the Authority did not value any promotional items other than gold grams and discount cards, adding that even the latter were unlikely to be used and At best a limited value. Relying on the calculation carried out by the Applicant's Investigator, he attempted to show that the value of the products obtained by the purchase of the packages was only a part of the sum disbursed, the difference constituting the investment. In fact, it did not retain the value of promotional products given to affiliates in its calculation. But Karatbars argued that this value was equal to that of the products bought, if not superior. For

the prosecutor of this company, the case law confirms that promotional material was not a "contribution" to an enterprise, as defined in the definition of an investment contract. [220]

[240] This is the version that the Tribunal retains. First, 75% of Karatbars' affiliates have paid nothing to become a member, while receiving commissions for their sales and their team. As for those who have bought packages, they have received in exchange products whose value is equal to Karatbars and even higher than what they paid, if all the products that are sold for sale Without removing anything from it, contrary to what the investigator of the Authority did in his testimony. Thus, it did not include the value of Karatbars' "bonus cards" of one hundred euros (€) because they were only worthless promotional material, whereas Karatbars' evidence proved that these cards allowed Obtaining on all kinds of products sold by Karatbars, including cards containing gold [221].

[241] Even the promotional material was recognized as having no value by the investigator, while in Bestline, cited above, the court had classified this material as a counterpart expenditure, not as a contribution. In addition, the interviewer submitted that the 3% discounts included in the packages are also only promotional material because they do not allow for the purchase of gold. However, she had to be cross-examined on this point and had to admit that it was, on the contrary, possible. As for the presentation DVDs or the Karatbars brochures, it is difficult for the Tribunal not to believe that the latter still had to disburse funds to produce them. Moreover, the brochures are sold by this company at a price of 2 €. After that, it is difficult for the Tribunal to believe that the products disposed of by the interviewer are absolutely worthless.

[242] He then had to agree with the Karatbars prosecutor and consider that according to the evidence presented by the latter, the value of the products contained in the packages was at least equal to the value of what the affiliates had paid To procure them. The principles outlined in Bestline are clear on this point. This proceeding considers that the degreasing work carried out by the Authority to eliminate certain expenses and to consider that the excess then paid by the affiliates is an investment in Karatbars is too arbitrary. In addition, the Authority has not demonstrated, by preponderant evidence, the presence of an investment in Karatbars in amounts received as a result of the purchase of the packages. As noted above, in Bestline, [222] the court had attributed value to the promotional material, which it added to that of cleaning products sold to members, the total of which no longer allowed room for Investment. It was rather a counterpart expenditure. This is also the case in the present case.

[243] Counsel for the parties strongly urged the Tribunal to address the economic reality of the situation under consideration. As noted above, this proceeding is sensitive to the arguments that Karatbars operates as a multi-level marketing enterprise. The economic reality of this industry has been largely mentioned above; No salaried employees but agents, no media advertising but people who buy promotional material at their own expense to advance their sales but also to buy the products sold by the company at a better price. The company also does not have branches, its agents working rather at home, often on their own computer.

[244] This is the economic reality on which the Tribunal has a duty to consider, an economic reality of which Karatbars presented a preponderant evidence during the hearing, a proof which was not contradicted by the Authority. And jurisprudence, but also a certain logic, point in this direction; As pointed out by the Karatbars prosecutor; It is difficult to believe that a person who contributes to invest in a business then procures promotional material in the same company. Its status as an investor gives it a rather passive status; It relies instead on the efforts of others to derive income from it, as the jurisprudence says. The purchase of this material makes sense for the person who intends to use it.

[245] He is not an investor, he is a salesman. This is the economic reality of Karatbars, the economic reality of network marketing. The evidence heard from the respondent's witnesses, who are actively experiencing this reality, is clear on this point. And if you really want to say there is an investment, affiliates who buy a Karatbars package then invest in their own sales business. This is

what the affiliate had testified to, comparing affiliates with entrepreneurs. And their remuneration is related to their own performance. The Tribunal concludes that there is no contribution required to form an investment contract.

Direct participation in the running of the case

[246] Another very important aspect to the solution of this case is whether the success of affiliates depends on their own efforts or whether they rely primarily on the efforts of others other than themselves. Indeed, the definition of investment contract refers, inter alia, to a person who does not obtain the right to participate directly in decisions concerning the conduct of the business. However, the Karatbars prosecutor submitted that this criterion was also not satisfied in the case of his client's activities. The success of Karatbars would have had to depend on the work of its promoter or other third parties and not of the affiliates. This test is reflected in the Supreme Court of Canada's Pacific Coast Coin Exchange [223], which, referring to US decisions in this regard, cited that "state courts have consistently applied this definition to Many situations where individuals had been encouraged to invest money in a joint venture in the hope of making a profit through the sole work of the developer or the third party." [224]

[247] Glenn W. Turner [225] was widely cited by all prosecutors. In that decision of a United States Court of Appeal, a company called Dare To Be Great, Inc. ("Dare"), a subsidiary of Glenn W. Turner Enterprises Inc., and the other respondents, had engaged in fraudulent transactions Fairly large. Dare offered five courses of motivation, the court having to determine whether these were securities within the meaning of US law. [226] These five plans, called Adventure I to V, were motivation classes purchased by people who could then attend classes and receive recordings, records and other materials to enhance their self-motivation and sales skills. Another aspect of three of these purchase plans that the court felt was the most important, was the opportunity to help sell these courses to other people; This allowed those who were successful to receive a portion of the purchase price as a commission:

"There is no doubt that this last aspect of the purchase is in all the respects the significant one." [227]

[248] The court concluded from this sales venture that what was being sold was not so much motivational courses in business but the possibility of making money through the sale of plans by Dare to individuals who Buyer of this plan brought to the company. The main aim of the plans, films and recordings was to attract other people to join the plans, the rest being of a minimum value. [228] When an individual had bought a plan, all his efforts had to involve bringing potential buyers into the organization, for which he received a portion of his income. The gatherings held for these potential buyers were as follows:

"These meetings are like an old time revival meeting, but directed towards the joys of making easy money rather than salvation. Their purpose is to convince prospective purchasers, or "prospects," which Dare is a sure road to great riches. At the meetings are employees, officers, and speakers from Dare, as well as salesmen and their prospects. The Dare People, not the purchaser-"salesmen", run the meetings and do the selling. They exude great enthusiasm, cheering and chanting; There is exuberant handshaking, standing on chairs, shouting, and "money-humming". The Dare people dress in expensive, modern clothes; They display large sums of cash, flaunting it to those present, and even at times throwing it about; They drive a lot of cars, which are conspicuously parked in large numbers outside the meeting place. Dare speakers describe, usually in a frenzied manner, the wealth that awaits the prospects if they will purchase one of the plans. Films are shown, usually involving the "rags-to-riches" story of Dare founder Glenn W. Turner. The goal of all of this is to persuade the prospect to buy a plan, especially Adventure IV, so that it becomes a salesman, and thus grow wealthy as part of the Dare organization. Glenn W. Turner Enterprises, Inc. is a leading global provider of investment banking solutions. After the meeting, pressure is applied to the prospect by Dare people, in an effort to induce him to purchase one of the Adventures or the plan. Dare salesmen, specialists in the "hard sell." [229]

249] It is even apparent that some of the people invited to the meeting were encouraged to borrow money from the bank and even to go to several banks at a time, without informing them that they were doing more than one Borrowing at a time [230]. These meetings were carefully choreographed, including convincing a person invited to sign his contract and paying for membership. Even if there was no guarantee of success and the participant was expected to work, at the same time it was possible to plan that it was almost inevitable to succeed for a person who procured a plan and Followed Dare's instructions [231]. Although it would have been obvious that this market would quickly become saturated, the promoters continued to sell their various plans. And, again, according to the court, very few plan buyers achieved the success that had been promised to them during the meetings.

[250] The US Court of Appeal detailed the role played by buyers-sellers:

"Once he has bought a plan that empowers him to help, the task of the purchaser is to find prospects and induce them to expect Adventure Meetings. Dare To Be Great, Inc. is involved. Rather, he catches their interest by intimating that the result of expectation will be significant for the prospect. It is at the meetings that the sales effort takes place. The "salesman" is also said to maximize his chances of success he should have an affluence, if spurious or not - to pretend that through his association with Dare he has obtained wealth of no small proportions. The training that he has received at Dare is aimed at educating him on this point. He is told to "fake it 'til you make it," or to give the impression of wealth even if it has not been attained. He is urged to go into debt and necessary to purchase a new and expensive automobile and flashy clothes, and to carry with him broad sums of money, borrowing if necessary, so that it can be ostentatiously displayed. The purpose of all this is to put the prospect in a more receptive state of mind with respect to the inducements that he will be subject to at meetings. "[232]

[251] In this case, the lower courts had determined that Adventure III, IV and V (the \$ 1,000 Plan) sold by Dare were a security within the meaning of the US Securities Act [233] , Namely an investment contract [234]. In revising the American jurisprudence accumulated at the date of the judgment, the court held that the definition of that instrument, as determined in *Howey* of the United States Supreme Court, [235] considered "that the profits Were to come " solely " from the efforts of others "[236]. Turning to the use of the word "solely", the court considered that all the elements of the investment contract were there, namely an "an investment of money" And an expectation of profits deriving from the efforts of others ("the expectation of profits to come from the efforts of others").

[252] But the Court of Appeal determined that, depending on the corrective nature of the statute, a statutory policy providing the public with extended protection and the American Supreme Court warning that the definition of a value Must be flexible, the use of the word "solely" could be subject to criticism. [238] She feared that sticking to this definition could be too restrictive to determine what an investment contract might be. She wondered when investors might be required to make some effort to earn income; In his view, this did not necessarily preclude the conclusion that Dare's Plan was not an investment contract. She came to conclude otherwise:

"Rather we adopt a more realistic test, if the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise. "[239]

[253] After reviewing the facts of the case before it, the Court determined that Dare 's sources of income were derived from the sale of the Adventure Plans. It was sold to the buyer that he would receive a portion of the sales profits. To get that share, he had to invest his money, make efforts to find interested parties and make disbursements to give the illusion of his own abundance. He had therefore to make certain efforts producing the income to which he was entitled. But the product that was sold to him was none the less an investment contract decided the court. Referring to the facts of *Howey*, [240] as an example, it considered that "the fact of the fact that the purchaser must act as a purchaser, Are those of Dare, not his own. "[241]



[254] The Prosecutor of the Authority drew the Court's attention to the principles set out in that decision, drawing a parallel with the meetings held with investors in this case and those held by Karatbars in the present case, all in The prospect of convincing the interested parties of the possibility of making a lot of money, quickly and easily. And for this prosecutor, the involvement of the affiliates is in his eyes insufficient to prevent the application of the concept of the investment contract in the present case. For the Karatbars prosecutor, the criteria of Glenn W. Turner mean that the investment contract can only be applied if the required efforts of the participant are only of a symbolic and limited nature and can have only a limited direct effect on The receipt of the gains promised to him.

[255] He also cited in this regard another decision of the US Court of Appeal in the Lino case, [242] a franchisor and franchisee case. It appears that the buyer of a sales agreement for a sales franchise had filed a complaint for contravention of securities legislation. It appears that this person had purchased "Franchise Sales Center Licensing Agreements" from Franchise International ("FI"), with cash and promissory notes for payment. A US District Court determined that the promissory notes were securities. On appeal to the United States Court of Appeals (Third Circuit), the system under consideration was first explained:

"The factual landscape of this is relatively uncluttered. FI's "better mousetrap" apparently is a system of finding franchisees for franchisees seeking to market their products. FI and the franchisor contract with each other; Franchise Sales Center Licensee "; The licensee must find an "area distributor" to represent each particular franchisor; The "area distributor" then finds various sub-franchises that actually sell the products of the franchisor.

A franchise franchise programs within certain areas. To become a licensee, a person must pay a certain fee to FI. To become an area distributor, one must also pay a certain fee to FI. To become a sub-franchisee, a person must pay a certain fee. "[243

256] Considering previous jurisprudence, the court attempted to determine whether the franchise agreements under consideration were investment contracts. She acknowledged that this concept had to be interpreted broadly, in order to deal with all sorts of plans put in place by those who tried to make money by using the money of others, while promising to withdraw Of profits. It retained the reasoning in the Glenn W. Turner case that the sponsor's efforts must be undeniably significant to the success of the undertaking. [244] It also retained the Court's reasoning in Hawaii Market Center [245] that there is an investment contract where the investor does not have to make significant efforts to operate a franchise. It concludes that:

"[1] We find these authorities persuasive. The Ninth Circuit, the SEC, and the Supreme Court of Hawaii, are " Little direct effect upon receipt by the promised by the promoters. " "[246]

[257] The US court, after analyzing the economic reality of the situation under consideration by the lower court, according to the evidence before it, expressed its agreement with this analysis and The conclusion it reached, namely that the franchise arrangements sold were not investment contracts:

"Lino is required to make significant efforts. He has to open a sales center, staff it, and devote full time and best efforts to his business. He must recruit area distributors for FI programs and train them. The agreements are not nominal or insignificant. He must recruit area distributors to earn money and to remain as a FI representative.

There are, in his complaint, affirmative allegations that Lino spent "substantial other monies in the establishment and promotion of a Sales Center" to market franchises. The proofs before the district shortly demonstrated very real work and efforts by Mr.

Lino and expenditures by him of some \$ 60,000 for such items, stationary, salaries, meetings, advertising, entertainment, travel and other indicia of the operation of a going Business. "[247]

[258] This decision was followed by additional deductibles. In Hoby's International, Inc., [248] the United States Court of Appeals (Ninth Circuit) found that agreements For a franchise of a roast beef restaurant were not investment contracts, considering the efforts that the franchise buyers had to devote to it:

"Applying such standard, the focus here must be on the extent of participation in the franchisee under the franchise agreement. In Turner, the successful bidder of the Turner employees and distributors, and not on the slight efforts of the investors. By contrast, the required efforts of the Hoby's franchisee were qualitatively more substantial, involving the production and sale of roast beef sandwiches and related products, purchase of materials, merchandise and supplies from sources selected at his sole discretion, Monthly operating statements, and employment of personnel to accomplish the foregoing.

The contractual restrictions on the discretion of the franchisee were designed to carry out the purported benefits of standardization derived from participation in a restaurant chain. They did not render the franchise's nominal efforts. In spite of regulation, each franchisee's active management was essential to the success of its retail restaurant. "[249]

[259] The United States Court of Appeals (Third Circuit) in Rossi [250] determined in 2015 that the fact that a person may be dissatisfied with the degree of participation granted to him in one Joint venture did not transform it into an investment contract. Rather, it was argued, in the court's view, whether the profits earned were primarily the result of the efforts of others and had little direct effect on them. [251] It was of little consequence to know whether certain persons truly exercised the rights conferred upon him in that enterprise; It was more important to know what his real rights and powers were. The court concluded that the plaintiff's control "was essential to the success of the Principia" and that "his contribution was not an investment in a commercial venture "[252], the whole being governed by the notion of the economic reality of the situation under study.

[260] If we come back to the economic reality of Karatbars, we have had ample opportunity to revise its characteristics. As already mentioned, Karatbars has no employees except those in Stuttgart. It does not have branches or advertisements. How does she sell her gold? Through its affiliates. The latter are not its employees. The company does not offer them holidays, sick days or retirement plans. And yet, these are the people who sell Karatbars gold. The latter does network marketing; According to a preponderant proof which has not been contradicted by the Authority, it has a workforce of 260,000 members worldwide who have not bought packages and 80,000 members who have bought a package , For a total of 340,000 affiliates.

[261] 5,300 of the affiliates who purchased packages are resident in Quebec. The Karatbars consultant who was questioned at the hearing had about 14,000 affiliates under him in his organization. The affiliate has 40,000. According to the evidence, this is the labor force that Karatbars uses to sell its gold. It will be recalled here that the Public Prosecutor of the Authority retained for his analysis only the packages of the members who paid an amount to obtain them. It is that according to the economic model in which Karatbars evolves, this company does not advertise. This is provided by affiliates who purchase packages and who, among other things, receive promotional material. It is up to them to insure the costs but in return, they receive discount cards and promotional material and also they can receive a higher commission on their sales and those made by the teams they have trained and be Paid at shorter intervals.

[262] It is indeed Karatbars affiliates who sell the gold of this company and who can also form teams that will be like themselves and whose sales and those of the agents they have recruited in turn will enable them To make commission income. This is the work force of Karatbars. This is how this company can sell gold. According to preponderant evidence, without these vendors, the company could not make any income. This means that these affiliates are invited to row so that what they do will bring them

money but most of all, they relate to Karatbars. As the attorney of this company said, some affiliates may see this as a full-time job. This is clearly the case with the Karatbars affiliate who testified in evidence. She has proved in a preponderant manner by her testimony and the evidence she has put forward in support of her remarks that this activity can serve as the only livelihood and that we can live on it.

[263] For others, this represents a second or third supplementary income. But it is clear in the present proceedings that in the economic model in which Karatbars operates the efforts of such people are essential and that without them the company would simply not function. Whether you call it network marketing, multilevel marketing, relational marketing, multi-level marketing, network marketing, referencing or multilevel marketing, all these names overlap with a unique reality to which Karatbars participates fully, according to a preponderant evidence which is clear and convincing. Some details may vary from one company to another, as the prosecutor of this company pointed out, but the truth is that Karatbars fits into this economic reality where its affiliates are its workforce.

[264] Their involvement is vital. They have to work hard if they want to succeed. In this respect, testimony abounds on all sides; They stress the need for affiliates to get involved to make money. We have nothing without anything or, as they say in English, "no money no candy". The testimonials of the Karatbars consultant and affiliate are full of references to the constant work that affiliates must devote to selling gold, forming teams, training them, following them and encouraging them. The company's affiliate said it spent 12 to 18 hours a day, six to seven days a week. This is a lot of work, although the Tribunal is prepared to acknowledge that, in the case of the latter, it is a more complete example of how far an affiliate can go if he is also fully involved in 'she is doing it.

[265] The presentation of Robert Larivière, respondent in the proceeding [253] was put into evidence. But the latter clearly warns them that their entry into the world of Karatbars will not be easy and that they will have to leave their comfort zones, that they must learn things, which will enable them to earn a living [ 254]. It also advises them to take the time to find two people who are ready to work to earn an income. [255] Let us also recall the testimony of the Karatbars consultant that the amounts of commissions paid to affiliates are based on their productivity: they are expected to carry out the business development of Karatbars [256]. According to the same witness, if an affiliate does not recruit clients and affiliates, it will not make any money. [257] This evidence was not contradicted.

[266] The affiliate, Karatbars' witness, also pointed out the same fact in her testimony; Since this company does not advertise, it has given individuals the opportunity to do so and be compensated for it. For her, it is an affair in which these people are independent contractors whose incomes stem solely from their efforts, as well as those they devote to creating a team. And that, she emphasized, is a lot of work. [258] And the Tribunal found that this person knew what she was talking about. Add to this that the only affiliate who bought a package that the Authority had testified ("buyer") [259] also testified that in an SEO program, success depended on the individual efforts of each Participating. For him, it was necessary to devote himself to 100%; It was the key to success, adding that if a person wanted to earn a living with it, she had to devote herself entirely to it. [260] After all, we do not make money watching football on television, he said!

[267] Another witness of the Authority, the second party, [261] also testified that affiliates must devote efforts, work to obtain referrals, some even hiring consultants To help them improve their work. He stated :

"Q. [304] So, those people who do SEO in a multi-level program, not only will they have to make efforts and work to get referrals, but they will even go for services and Pay for these services to know how to get better referrals?

A. Yes. Or very often I'll find them appointments then I'll show them how to do it. "[262]

[268] Let us also not forget what the evidence revealed about the statements or writings of certain other affiliates such as Michels Desroches, respondent in this case, Daniel Girolmo, Affiliate, Joe Norman, Robert Larivière, all of whom referred to daily work, constant calls to hundreds of interested people, concentration of efforts and difficulties encountered. Finally, let us recall the case of the only witness of the Authority who bought a Karatbars package [263]. He testified that it was not an investment but a business opportunity. According to him, he recruited 15 to 18 people and received commissions, including gold. He had 30 to 35 people under him in the organization, directly or indirectly.

[269] He then lost his Master Card Karatbars credit card on which this company pays their commission income to the affiliates, which they can then cash in. He also lost the password to access the Karatbars website, the back office and his affiliate account. He expressed in his testimony a certain disappointment as to the results he hoped to have obtained, believing he had even made losses. Little by little he had ceased his activities in this respect, no longer believing in them much. Then, during the hearing, his password was found and he was able to access his account on the site of Karatbars.

[270] He then found that he had in the meantime earned commissions for an amount of € 1,408 which represented six months of commissions due to him, not to mention the accumulated gold grams he had accumulated. That dispelled his doubts. This witness has proved, almost to the point of absurdity, that the Karatbars system can work and that the efforts that the affiliates make are reporting what they are promised. This is consistent with what has been described by the company's witnesses, the Karatbars consultant and affiliate. Even the investigator of the Authority brought water to the mill, recognizing that the affiliates must put time and work to get there. The AMF's prosecutor has said that investors who lend money may risk losing it. In fact, the only real risk they face is rather not enough work. But the Tribunal can not blame Karatbars for that.

[271] Having reviewed these various evidence, which have not been contradicted, in light of the right which has been developed above in this text, the Tribunal finds that, in law, one of the components of the contract d Investment is measured by the degree of participation of a person in the conduct of the business. If this participation is only of facade, one of the elements of the above mentioned contract may be present. But if the person plays a fundamental role in managing the business to the extent that his or her presence is crucial to earnings and to ensure the economic success of the business, it appears that in this The investment is a stool that is missing a big paw. The proof of the economic reality of the present case leads the Court to consider that the economic success of Karatbars depends to a large extent on the work of the affiliates.

[272] Their efforts are significant within this undertaking and not merely of a symbolic nature. Their income is related to their sales, not with the company's income. They provide substantial work. In fact, without them, Karatbars does not sell gold and makes no profits. Obviously, not all affiliates devote all of their time to these activities, as do the consultant and Karatbars affiliate. As the prosecutor of this company has argued, for some, this represents a supplementary income, a second or third salary. They are not full-time workers. But, as the United States Court of Appeal in Rossi stated [264], it is not so important to know whether they truly exercise all the rights conferred on them in that undertaking, To ascertain what those real rights and powers are. If the control they exercise is essential to the success of Karatbars and is not limited to the money they devote to it, then it becomes very difficult to say that we are dealing with an investment contract.

[273] The role of Karatbars in all this is not insignificant. The company has set up this organization and is in charge of everything related to purchasing gold from producers, managing affiliate contracts, warehousing, delivering gold, Website, sending press releases, etc. It also provides logistical support to affiliates. It is no small matter. But at the same time, the activities they carry out do not detract from the determining and fundamental role played by its affiliates in this undertaking nor do they merely make their role symbolic in the company. And they do not confer the status of investment contracts on affiliates.

[274] Finally, let us add a word on the 12-week Plan of Karatbars ("12 Week Plan"). It was widely discussed and commented throughout the hearing. It was used by the people of Karatbars to encourage participants to take an interest in the activities of this company. The Tribunal first finds that, on the evidence, this plan was not initiated by the respondent company but by some of its affiliates, although for some time it may have seemed to endorse it. But it has since rejected it, asking its affiliates to no longer use it. Karatbars' witnesses presented the 12-week plan as a mathematical formula designed to inform the interested parties, by means of a perfect situation, but which does not reproduce themselves in reality, to train them and to demonstrate to them what is minimally required to generate revenue. According to the testimony heard, this plan helps to make affiliates understand how, through their work and their purchases of gold, they can pay for this gold through their commissions.

[275] The Tribunal notes that this plan has now been rejected by Karatbars. But this instance notes at the same time that a 12 week plan seems to be fairly common use within the network marketing industry. But the Tribunal's main conclusion is that the presence of a 12-week Plan does not in any way alter its reasoning with regard to the notion of the participation of affiliates in the running of the case. The latter, through their activities within Karatbars, assume an undisputed part of the success of Karatbars, as demonstrated above in this decision. The 12-week Plan is only one of the elements to which the affiliates are exposed, without its presence being able to transform what they buy into investment contracts.

#### Knowledge required for the running of the business

[276] The definition of investment contract also provides that in order to have one, the person does not possess the knowledge required for the conduct of the case. However, Karatbars' witnesses testified that it was not really necessary to have special qualifications to work in an SEO or network marketing company. Most of all, they ask that the persons concerned possess the qualities of a seller. It is even better if they also have some experience in sales, but also some degree of motivation. Thus, the affiliate of Karatbars testified that:

"A. Qualifications, well, you do not need any specific type of schooling. It's open for everybody. However, most definitely, if you are somebody who is motivated, if you have goals, if you are ... if you like people, you know, that would be an advantage. If you have sales experience, it could be an advantage, but sometimes it could work the other way with sales, because we do not sell, we build, we build people. So, you know, those could be advantages. If you are a coach, if you are a coach, if you are willing to learn, Typically the characteristics in people who will keep people going forward and not quitting. "[265]

[277] A witness from the AMF, the second applicant, who presented himself as a business coach, declared: "In the work I am doing now, companies of this type often come to see me Because I am skilled in canvassing. So, what does it take, it takes a little audacity to contact people and talk to them about something. "[266] In all respects, Karatbars' plan is undoubtedly of some complexity, but the Tribunal agrees with the prosecutor of this company to say that it is not beyond the reach of ordinary mortals , On condition obviously to put effort there. Moreover, most of the Authority's witnesses seem to have understood the operation of the whole, even if they could find that the system was complex. For those who did not understand, it was obvious that they had not given themselves a little trouble to do so, as was revealed by the evidence.

[278] Added to this is the fact that affiliates who have just joined the organization can benefit from a fairly comprehensive training. According to Karatbars affiliate's testimony, when an affiliate joins a team, the person in charge must train and work with the affiliate; He must develop that person. The witness even sponsored a gold training video, coaches the leaders of her team and constantly coaches her team with a lot of support. She makes a weekly conference call, she meets her affiliates in person, and provides training webinars on her website. She also prepared a video training guide. Very familiar with the network marketing industry, where she has been working for a long time, she has also been able to testify that the methods described are quite common in this industry. So this is actually for affiliates to fully understand what they have to do to then teach to repeat what you do.

[279] As for Karatbars' consultant, he testified that any new member of the company's plan must formally adhere to an agreement with Karatbars by clicking on it in the back office of the company's website to indicate that he Read and accept the conditions. It should be noted that this agreement includes compliance rules and the Karatbars Marketing Plan. This witness added that the company regularly issues news releases to its affiliates, which are also available at all times on its website. Affiliates are required to be well aware of the products offered by Karatbars. The same witness also referred to the various means available to affiliates to be in easy contact with the company, if necessary. [267]

[280] The Tribunal heard testimony from the two Karatbars witnesses. These two people have proven to be reliable and knowledgeable witnesses of the network marketing industry in which they have evolved for quite a long time. For those witnesses, people who engage in sales activities in this industry do not need to have advanced knowledge in this area, but rather to be predisposed to doing so by possessing some sales talent, Prior sales experience is obviously not to be overlooked. At the same time, the evidence shows that Karatbars, affiliates and team leaders are fairly close to the new members. As explained above, these people are closely supervised upstream and downstream.

[281] The Tribunal is satisfied that these persons possess the knowledge required to carry out their activities, as required by Karatbars in this industry. This proceeding does not intend to be more demanding in this respect than the company itself, which is certainly in a better position to know what it needs to sell its gold. The overwhelming evidence convinced the Tribunal that Karatbars is a company that sells gold, like other gold-selling companies, using a referencing method, as it is generally practiced within this company Industry, and that its general functioning is well-functioning, such as its operation, storage of gold, delivery to customers, charged selling or buying prices For this precious metal.

[282] In the circumstances of this undertaking, the Tribunal is satisfied that the persons who engage in it have the requisite knowledge to do so, as required by Karatbars. The latter then ensures that they are trained and supervised on a permanent basis to ensure that they are productive, that they comply with the rules imposed on them, that they are well informed, that people are expected Operating in the network marketing industry.

## Comments

[283] Finally, the Karatbars prosecutor referred to the Tribunal's decision in the case of Tremblay [268]. The latter had indicated that, following an ex parte hearing, the Authority had the burden of proving, by presenting evidence of de novo, that the original order was justified. But in order to do so, the Authority could introduce evidence relating both to the old facts and to the new facts which might have arisen after the decision of the Tribunal had been pronounced:

[20] Section 323.6 enshrines the general principle of the audi alteram partem rule and the right to an adversarial hearing. Section 323.7 provides an exception to this principle where a compelling reason requires a decision to be rendered without prior hearing. The consequences of this exception are tempered by the second paragraph of section 323.7, which enshrines the right of the respondent to be heard within a short period of time following the decision. The Securities Commission was governed by similar provisions. Ruling on the nature of the hearing held under the second paragraph of section 318 (the current section 323.7 of the Securities Act), it states:

"The present proceedings are not merely an appeal based solely on the facts alleged to obtain the original decision, the purpose of which is to determine whether or not the original decision was warranted at the time it was made. It is more a procedure that allows the person affected to have an opportunity to be heard, if he or she so desires, in order to obtain de novo review of both old and new facts Since the original decision, to determine whether the original decision should be upheld, lifted or amended.

There is no reason to doubt the admissibility in evidence of relevant events between the initial and the substantive hearing since the lasting decision will be the one rendered after the affected person has had the opportunity to be heard. "

[21] It is at the de novo hearing stage that the Board will hear all the necessary evidence to draw its conclusions and make the appropriate decision. The Authority will have the burden of proving that the order is justified and the respondents will be free to provide all relevant evidence in support of their position. "[269]

[References omitted]

[284] In this regard, the Karatbars prosecutor did not fail to execute. He presented evidence that did not merely describe the state of affairs in his client at the time of the original decision of the Tribunal but also the effect it had and the changes it has resulted in its functioning since that time. After assessing all of this evidence, the present proceeding is then in a position to make a decision based on full and relevant evidence with respect to the respondent company's activities, which may then not only revert to past acts but draw future.

[285] Throughout this decision, the undersigned Vice-President has attempted to identify the economic reality underlying this case. This is in line with the jurisprudence discussed above, which also invites a broad interpretation of securities legislation to ensure its protective character. [270] In response to an invitation from the public prosecutor of the Authority, the Court of First Instance sought to review the abundant evidence presented by the parties, to examine the whole of the transactions, examining the sales methods used by Karatbars, Of the representations made to the parties concerned, considering the substance of this draft beyond its form, according to its economic reality, all to ascertain whether in the present case the Court of First Instance was or was not in the presence of an investment contract.

[286] In the course of this operation, the present instance has also attempted to remove a certain hype over the operations alleged against Karatbars by the Authority, in order to "break the bone and suck the sustantific marrow." "As François Rabelais wrote in 1534 in his Gargantua! Applying to reviewing the evidence presented in court and the nature of the right at issue, the Tribunal was able to note that, first of all, Karatbars sells gold. It does not speculate on gold, does not use gold futures and does not invite its clients or affiliates to speculate on gold daily. It sells gold, as do many other companies in Canada, as demonstrated by overwhelming evidence satisfying the Tribunal. It is actually far from being the only company to sell it in grams; The Royal Canadian Mint is also working on it, for example.

[287] His methods of supplying gold, warehousing, and cover delivery, for example, differ little from those of these other companies, as the Karatbars consultant testified. This company is fully in line with the economic reality of companies that sell gold. Karatbars is also deeply involved within the network marketing industry; This is another component of the economic reality in which it evolves. As mentioned above, there may be differences in operating methods from one company to another in this area, but in general, Karatbars is fully involved in the SEO industry.

[288] On the basis of this economic reality, the Tribunal, applying itself to determining how the Karatbars packages can be considered as instruments subject to the application of the Securities Act, [271] Above in this decision to ensure that, according to the foregoing, the costs incurred by affiliates in acquiring these packages can not be considered as a contribution, as defined in the definition of a contract Article 1 of the above-mentioned Act. It is clear from the overwhelming evidence that the Authority has not overturned that it appears that the money paid by the Karatbars affiliates can not constitute an investment in that company, but the purchase of a sale kit, including promotional material . As stated above, the Tribunal considers that these affiliates do not pay for this equipment an amount of money exceeding its value and that the difference could be considered an investment. So we are not in the presence of a contribution.

289] The Tribunal has also determined that, as developed by the jurisprudence, the commissions that affiliates obtain are essentially the result of their significant efforts to sell gold and build sales teams, To train and supervise them, following the example of Karatbars' work. They do not rely to a great extent on the work of the proponent or on that of others to do so, rather providing an effort that the Tribunal considers to be substantial in this case. This is distinct from the decision of the Securities Commission ("CVMQ") in the Lantech case [272] in which it dealt with the notion of profits resulting solely from the labor of others. It appears that this proceeding considered that the profits paid to a participant were based on Lantech's success and not essentially on the basis of that participant's efforts; "They are based on the overall success of the company promoted by Lantech in which it (the participant) can only participate by its initial purchase of the software." [273]

[290] In doing so, the CVMQ reiterated the Supreme Court of Canada's reasoning in Pacific Coast Coin Exchange, [274] in which it stated that "We prefer to adopt a more realistic criterion, namely the labor of persons Other than the investor is undoubtedly decisive, is this effective direction of the enterprise that directly influences its failure or success?" [275] Taking up the words to define the investment contract in the law, this proceeding concludes that Karatbars affiliates have been granted the right to participate directly in decisions concerning the Karatbars march. In fact, without these affiliates, this company would simply not sell gold. In these circumstances it is difficult for the Tribunal to determine that the notion of the absence of the right to participate in decisions concerning the conduct of that company is present in this case.

[291] Finally, and as stated earlier in this decision, the Tribunal concludes that the Karatbars affiliates possess the requisite knowledge for the Karatbars march. And Karatbars has chosen a method of training and mentoring affiliates that allows them to lead and supervise them after they join the system; This rigorous follow-up is taken into account in the Tribunal's determination.

[292] For all these reasons, the Tribunal finds that the packages that Affiliates can obtain from Karatbars for cash and cash are not investment contracts within the meaning of section 1 of the Securities Act, That is, That they are not a form of investment as defined by law and jurisprudence. Similar to what it did in Battah, [276] the Tribunal attempted to determine whether the characteristics that define the investment contract were to be found in the facts of the present case, In isolation. The Tribunal applied its approach to the approach taken by the Quebec Court of Appeal in Infotique Tyra, [277] avoiding encapsulation of the various components of the definition of the investment contract but considering them In the light of the Securities Act, by making the essential links between the various elements. [278] He then concludes that, as mentioned above, there are too few legs on this stool so that he can stand upright.

[293] People who buy these packages do not invest money in a company but engage in a business relationship with Karatbars, according to an economic reality that has been widely disseminated over long hearing days Held in this case and which the present case has analyzed throughout in its decision. Obviously, this economic reality does not only make people happy and some reproach those who carry out their activities to have the mouth a little too well split, to show a optimism a little too unbridled to attract the barge and To talk abundantly in profusion. And all this does not transform the packages of Karatbars into investment contracts nor does it justify to end its activities. As the British Columbia Court of Appeal stated in the Bestline decision, [279] it may well be found in a "get rich quick" schema "[280]. Proof that it is an investment contract.

### **The Karatbars pools**

[294] Incidentally, the Attorney General of the Authority alleged that the Karatbars Pool certificates resembled shares in Karatbars and that these shares were comparable to the sharing of profits by shareholders. In the evidence, we talked about "shares"; The prosecutor assimilates them to Karatbars shares, submitting that they are issued in contravention of the provisions of the Securities Act in this regard. But for the consultant Karatbars who was questioned on this subject, the shares of Karatbars



Pool are in no way comparable to certificates of shares of that company which would give giving an economic interest in the company. For him, they are only part of a mechanism that was set up by Karatbars to partly compensate the affiliates for their commissions, when their sales reach a certain peak.

[295] It has sometimes been criticized, as part of network marketing sales, that all the work is done downstairs, while it is up there that all the money would be earned. The witness explained in this proceeding that Karatbars has sought to avoid this by setting up a cap system for commissions paid to affiliates when they reach a certain peak. This is to avoid creating an imbalance in the distribution of income. One of the ways to counter this cap is to qualify for the Karatbars Pool. In this regard, the Tribunal notes in particular that the allegations of the Authority that shares in this pool are shares have not been the subject of concrete evidence that Karatbars actually issued such instruments. For example, he was not presented with a list of the alleged shareholders, resolutions of the company's board of directors for the issuance of shares, nor was it informed of the rights and duties. To those alleged titles, as a right to vote.

[296] In the absence of any evidence in this regard, the Authority's claims remain essentially what they are, namely, the allegations. This is not supported by evidence that would convince the Tribunal; it does not hold them back. The latter retains rather Karatbars' evidence in this respect; it is more coherent and more naturally falls within the logic of the economic reality developed in this Decision. And, in fact, few people really access it because it is only through important personal efforts that one can reach this pool, always without input coming from them.

[297] The Tribunal must, however, introduce a flat here. The Karatbars prosecutor wished to point out that it was necessary to distinguish between Karatbars Pool, which is related to the performance of affiliates, and the Karatbars World Pool, whose share is an interest in pooled funds. This is a distinction not made by the Prosecutor of the Authority. Thus the witness of the Authority who bought a package from the company received a few shares of the Karatbars World Pool reserved for the buyers of the Exclusive VIP package of this company. Let us note in passing that this package is no longer sold. The presence of these shares, which according to the Karatbars prosecutor represents 4% of the value of the above-mentioned package, allows purchasers access to income. According to the evidence, these revenues are composed of what the company generates on its sales of gold throughout the world. [281] We are therefore no longer faced with an income earned from a pool set up by Karatbars as part of a system to compensate for commissions that have declined, as witnessed by the respondent company's witnesses, but rather participation in the sharing of Karatbars' global revenues.

[298] The sums paid to the affiliate are no longer an accurate reflection of the work he has accomplished, but the result of a work that is not his, the result of sales in which he did not participate. In fact, the result of an investment. This brings us back to the definition of the investment contract, as it has been developed throughout this Decision. 4% of the purchase price of the VIP Exclusive package purchased by the AMF witness then represents a contribution from that purchaser; this allowed him to receive profits from the Karatbars World Pool, without actually participating in the management of Karatbars, for the portion of the Karatbars World gain of his world revenues; it does not really participate in its activities.

[299] His income then ceased to be the fruit of his work to become investment income. Moreover, the AMF witness said he understood that by purchasing the Exclusive VIP package, he could get shares of the pool of profits from Karatbars. As the jurisprudence has established, for this portion of its income, its contribution ceases to be determinant and the gain of this income is much more Karatbars than the affiliate. For this portion, but for this portion only, the Tribunal is led to conclude that the shares of the Karatbars World Pool that have been surrendered to the affiliated witness of the Authority can be considered as investment contracts, a form of investment subject to the administration of the Securities Act. However, according to the Authority's evidence, the distribution of the Karatbars World Pool shares was not the subject of a prospectus approved by the applicant or an exemption from such a prospectus. It is also apparent that the three respondents Robert Larivière, Michel Desroches and Antoni Snopek initiated the activities of Karatbars in Quebec and acted on their behalf by organizing meetings which have been referred to throughout this decision.

[300] All three invited the participants to these meetings, among others, to acquire VIP Exclusive packages. Among other things, Antonio Snopek met with one of the Authority's witnesses and spoke to him about the exclusive VIP package that allowed him to participate in and receive shares in the Karatbars World Pool. [282] Robert Larivière [283], Michel Desroches and Antoni Snopek actively participated in the placement of the shares of this pool, carrying out acts, publicity and solicitation on securities transactions, namely the placement of shares in the Karatbars World Pool, All during the various meetings held in Quebec during which they invited participants to acquire, among other things, the VIP Exclusive package. In addition, Robert Larivière made the same solicitation on a video that was presented in evidence and invites interested parties to purchase a business package. [284] And at the Drummondville conference, Michel Desroches promoted VIP Exclusive packages [285].

[301] It appears, therefore, that for this part, but for this part only, the respondent parties contravened the Securities Act and that the Tribunal may partially accommodate the Authority's request for the issuance of prohibitions and penalties Requested. With respect to the latter, sticking to the evidence of the only witness who bought an Exclusive VIP package, that it is no longer sold by Karatbars and that the Karatbars World Pool no longer exists, Intends to impose an administrative penalty limited to the respondents, proportionate to the breaches committed in relation to the Exclusive VIP package.

[302] However, in relation to the Karatbars affiliate packages, in the absence of any other investment contracts in this case, or any other instrument described in the Securities Act, as was As demonstrated above in this case, the Tribunal considers that it can not accept requests from the Authority, lacking the necessary competence to do so. With regard to these flat rates, it is not within its purview to grant applications for prohibition, administrative penalties and measures to ensure compliance with the law introduced by the Authority in its amended application. In these circumstances, the Tribunal can only partially accept the Authority's request and replace its decision of 17 April 2014, [286] as set out below, all for all The reasons mentioned throughout this Decision.

## **DECISION**

[303] In this case, the Administrative Tribunal for Financial Markets issued an ex parte decision on April 17, 2014 [287] against the respondents, namely a cease trade order and one Prohibited from acting as an advisor, all under sections 265 and 266 of the Securities Act, [288] respectively. On May 2, 2014, the Tribunal subsequently received a request for a hearing from the same respondents in accordance with the second paragraph of section 115.9 of the Act respecting the Autorité des marchés financiers [289].

[304] On 25 September 2014, the Tribunal received an amended request from the Authority, in which it added, inter alia, requests for administrative penalties and measures to ensure compliance with the law, Against the respondents. On 6 November 2015, the Authority filed a revised application. The hearing of the Tribunal took place on 9, 10, 11, 12, 13, 16, 17, 18 and 19 November 2015, at which time it was seized of the Authority's de novo evidence, Witnesses of the latter and taking cognizance of the documentary and audio evidence that they have filed in support of their statements.

[305] The present proceedings also heard the testimony of the witnesses brought by Karatbars and took note of the documentary evidence and the video evidence that they submitted in support of their testimony. It should be noted that the respondents Robert La Rivière, Michel Desroches and Antoni Snopek did not adduce evidence in defense. Finally, on 8 and 9 February 2016, the parties' prosecutors presented their respective arguments. The Vice-President, the undersigned, heard their pleas and took cognizance of the doctrine and jurisprudence which they submitted in support of their claims. Robert La Rivière, Michel Desroches and Antoni Snopek did not present any argument.

[306] The Tribunal is now ready to pronounce its decision, replacing Decision No. 2014-020-001, which it issued on April 17, 2014. [290] This is done under sections 265, 266 and 273.1 of the Securities Act and sections 93, 94 and 115.9 of the Act respecting the Autorité des marchés financiers for all the reasons mentioned above Throughout this text.

FOR THESE REASONS, THE ADMINISTRATIVE TRIBUNAL OF THE FINANCIAL MARKETS:

WELCOMES in part the request of the Autorité des marchés financiers, the plaintiff in this case;

LIFTS Decision No. 2014-020-001, which it issued on April 17, 2014; [291]

Securities cease trade order, pursuant to sections 93 and 94 of the Act respecting the Autorité des marchés financiers and section 265 of the Securities Act:

- PROHIBIT the persons whose names appear below from carrying on business in order to carry out, directly or indirectly, a transaction for the distribution of the shares of the Karatbars World Pool, investment contracts governed by the Securities Act Securities and issued by Karatbars and, without limiting the scope of the foregoing, including but not limited to, through websites or otherwise:

- Karatbars International GmbH;

- Robert La Rivière;

- Michel Desroches; and

- Antoni Snopek.

Order under section 93 and 94 of the Act respecting the Autorité des marchés financiers and section 266 of the Securities Act:

- PROHIBIT the persons whose names appear below to carry on the activity of advisor, as defined in section 5 of the Securities Act, for the distribution of the shares of the Karatbars World Pool, Investments, securities, securities and other securities of the Company under the Securities Act issued by Karatbars and, without limiting the foregoing, including but not limited to, through websites or otherwise:

- Karatbars International GmbH;

- Robert La Rivière;

- Michel Desroches; and
- Antoni Snopek.

Administrative Penalties, pursuant to section 273.1 of the Securities Act and section 93 of the Act respecting the Autorité des marchés financiers:

IMPOSES to Karatbars International GmbH, a respondent in this case, an administrative penalty of \$ 3,000 for placing the shares of Karatbars World Pool, investment contracts under the Securities Act, The absence of a prospectus referred to by the Autorité des marchés financiers and without being registered as a dealer or adviser with the aforementioned body;

ORDERS Robert La Rivière, a respondent in this proceeding, to pay an administrative penalty of \$ 500 for placing shares of Karatbars World Pool, investment contracts under the Securities Act, in the absence of A prospectus approved by the Autorité des marchés financiers and not registered as a dealer or adviser with the aforementioned organization;

IMPOSES to Michel Desroches, a respondent in this proceeding, an administrative penalty of \$ 500 for placing shares of Karatbars World Pool, investment contracts under the Securities Act, A prospectus approved by the Autorité des marchés financiers and not registered as a dealer or adviser with the aforementioned body;

REQUIRES Antoni Snopek, a respondent in this proceeding, to pay an administrative penalty of \$ 500 for placing shares of Karatbars World Pool, investment contracts under the Securities Act, A prospectus approved by the Autorité des marchés financiers and not registered as a dealer or adviser with the aforementioned body; and

AUTHORIZES the Autorité des marchés financiers to collect the payment of the above administrative penalties.

**Done at Montreal, this 4th day of November, 2016**