<u>Chapter three</u>

<u>Regal Bank financed the acquisition of Regal Holding shares by related parties against security of the shares</u>

17

17.1 As at date of curatorship, the records of Regal Bank reflected that the bank had lent money to related parties to buy Regal Holdings shares (<u>DT(2)553-4</u>):

	Entity	**Number of shares (in millions)**	**% holding**	**Total amount in millions of Rands lent (including interest) by Regal Bank to buy shares**
1	Shareholders Trust	7,222	7,05	32,5
2	Incentive Trust	14,147	13,82	77,3
3	Phekani Investments	15,455	15,09	64,9
4	Mettle portfolio	11,502	11,23	-
5	JL Associates	3,087	3,02	1,3
6	Levenstein Data	0,101	,10	8,9
7	Forfin Finance	0,618	,60	5,6
		52,132	**50,91**	**190,5**

17.2 The sole security for the loans or advances was the pledge of the Regal Holdings shares to Regal Bank.

17.3 As at 31 August 2000 the amount advanced to the Incentive Trust was R51.4m against security of R33 m (± 9.5 m shares at R3,50 a share), a potential shortfall of R18.1 m (<u>DT(1)32</u>).

17.4 As at date of curatorship, a nil value was ascribed to the shares and the curator treated the sum of R190.5m (DT(2)553) as irrecoverable.

17.5 Shareholders Trust bought the Regal Holdings shares, according to what management told DT during curatorship, in order to transfer the shares to "strong hands" in due course.

17.6 The Incentive Trust bought Regal Holdings shares with the ostensible purpose of transferring them to employees. R35 m of the sum of R77.3 m was lent by the trust to employees to finance the acquisition of shares. At the date of the DT s7 report, about 3.8m shares had been allocated to employees at an allocation price lower than the average acquisition cost. If the share price of the remaining holding did not increase a "provision of R18m or more may have to be considered" (DT(1)32. The 2001 financial statements reflected that the Incentive Trust owned 12.5m Regal Holdings shares, of which 6.5m had been "taken up" by employees, leaving 6m shares as surplus to requirements (130119) .

17.7 The amounts of R32.5m and R77.3m were recorded as "advances".

17.8 There was no documentation on file as proof of authorisation or containing the terms of the various loans.

17.9 Although the sum of R64.9 m was recorded as an overnight loan by Regal Bank to “Phekani Investments”, the curator was told by Diesel that the true nature of the transaction was that Regal Bank had bought R60m worth of Regal Holdings shares from Pekane on 29 December 2000 (which represented the Worldwide shareholding in Regal Holdings).

17.10 The amount of R1.3 m due by JL Associates represents a loan of R13m made in about 1998 plus accrued interest less proceeds of deposits but shown as an overnight loan. DT was told that JL stands for Jack Lurie.

17.11 The sum of R8.9m, which includes accrued interest, was advanced to Levenstein Data in about 1998, but shown as an “overnight” loan.

17.12 The sum of R5.6 m was reflected as an overnight loan to Forfin Finance, which DT regards as a related party. When the sum was actually advanced we do not know. It is not shown as part of the R96m in the schedule drawn up as at 30 August 2000 (DT(1)37).

17.13 The table contained in paragraph 17.1 was presented to the directors of the bank or Holdings on 27 July and to Levenstein on 28 July, without eliciting any denial of the material facts.

17.14 Levenstein’s evidence was that Lubner suggested that about 3m Regal Holdings shares be transferred to nominee entities for the purposes of selling the shares to Rothschilds Bank and Nexus (1775). Shares were transferred to Forfin Finance, an incorporated company, having 16 shareholders, JL Associates and Levenstein Data, which were Lurie's "treasury vehicles". The acquisition of the shares was financed by Regal Bank and in a sense the bank owned the shares (1776-8). The bank paid Regal Holdings for the shares (1780) as a loan (1780-1).

The structured finance or "Mettle" structures

A The impact on the balance sheet

18

18.1 The apparent contribution of the Mettle transactions was to increase the assets and liabilities on the balance sheet from ± R1bn to ± R1.6bn.

18.2 The increase in assets and liabilities would have been important for Regal Bank as a sign of healthy growth and possible gain in market share (Store 231) and might have had a positive impact on the share price.

18.3 Unaudited entries in the general ledger disclosed that as at 26 June 2001 (DT(2)544) the contribution of the various transactions was as follows:-

Date of transactions	**Transactions: number and name**	**Resulting assets Rm**	**Resulting liabilities Rm**
February/March 1999	(2) Tradequick & RVM	211	212
30 August 2000	(1) Regal Securities	106	98
July/August 2000	(1) RMI	25	2
11 October 2000	(1) Kgoro	164	150
17 November 2000	(2) 93 Grayston &	Not implemented	Not implemented
30 August 2000	Stone Manor		
27 Oct 2000 / 14 March and 6 April 2001	(3) Metshelf	145	85
	10	**651**	**547**

18.4 The evidence of Prinsloo of Mettle was that most of the structures "should have been treated from an accounting point of view with set-off. In other words, I have got my asset – my preferent share and I have my corresponding liability that secures that asset. So it should not grow your asset in your liability book, it should not … You cannot show it as gross assets and gross liabilities." (2995).

18.5 The curator reported on 17 October 2001 that he had offered the Mettle structures to the six major banks. They all turned the structures down. Two of the banks did so on the ground that the tax risk attached to the structures was unacceptable. He consequently decided to unwind the structures by agreement with Mettle at an estimated cost of about R3m. The Stone Manor and

93 Grayston structures have already been wound down in order to facilitate the sale of the immovable properties (Store 3406-7).

B Corporate Governance

19

19.1 These transactions should have been discussed at, and agreed to by, the board of directors for these reasons:

- the transactions reflected a change in strategic shift;
- the large total size of the transactions in relation to the total assets and liabilities;
- the exposure to one counter-party, Mettle Ltd, or its SPV's.

19.2 The minutes of the board meetings show that the transactions were never discussed by the directors.

19.3 Levenstein said that he would have discussed the "broad architecture" of the Mettle deals with Exco, because the deals were difficult to understand, and very complex (1613). His evidence on whether the Mettle deals were ever discussed with the boards of Regal Holdings and the bank was confusing. While contending that there was no requirement for him to discuss the deals with the boards, as these were "operational issues" (1615), he said that it was in any event impossible to explain the deals:

"you needed a mathematical background, you needed an understanding of derivatives, arbitrage activities, etc." (1617-8). He did obtain resolutions of the board, which were signed by Lurie (1621-2).

19.4 Lurie said that the Mettle deals were discussed "at length at boardroom level". He believed that the deals "were so intricate and so involved that a lot of them did not really understand what this was about". The directors had faith in Levenstein "to run with the ball" (2375). Levenstein's door was "always open" to a director who wished to be better informed on the deals (2376).

Lurie did not know the extent of the Mettle transactions. The deals were "highly complex" and not in his "field of expertise". These questions and answers give insight into what he understood:

"Q: What did you understand to be the commercial benefits of the Mettle deals to the bank?

A: That it will bring significant income to the bank.

Q: How?

A: The deals were too complex to understand that.

Q: What income would be brought into the bank?

A: I can't answer that.

Q: You do not know that either?

A: No." (2414)

19.5 Diesel's evidence was that the Mettle deals were all created by Levenstein. There was no prior discussion of any of these transactions. The first time Diesel would become aware of a "structured deal was when in all instances I was given handwritten instructions outlining the transaction." The handwritten instructions were kept by Diesel in two files labelled Mettle 1 and Mettle 2. Both files disappeared from his desk within a few days after curatorship (2625). Diesel said he had an understanding of the Mettle deals' "in generic terms". The transaction he knew best was the one involving 93 Grayston and he did not know that Mettle had an option to put the property to Regal Bank for R1.2bn (2675).

19.6 Buch said that he was not too involved with the Mettle deals. He had an understanding of the RMI and 93 Grayston structures. He "certainly had relied on the auditors Ernst & Young who were mandated by South African Reserve Bank specifically to deal with all the Mettle structures… I certainly as a non-executive director relied on Ernst & Young's involvement… I remember Mr Strydom I think had told us at an audit committee or at possibly a board meeting even that he would not be able to issue an unqualified report or would not be able to issue his report at all until he had satisfied himself with all the section 7 issues" (2810).

19.7 Oosthuizen was a non-executive director of the bank and Holdings from 31 January 2001. He became chairman of the corporate governance committee. His evidence was that on his return from overseas in early June 2001, he became aware that the Mettle transactions were not quite as he had understood them to be. At a board meeting in June: "I directly enquired from Mr Levenstein whether the [93 Grayston] transaction in terms of which Mettle had to pre-sell the property 10 years hence, whether that was unconditional or not. And Mr Levenstein informed me unequivocally, yes, it had been". Oosthuizen said that his initial impression was that the Regal Group had no exposure to the transaction. What he did not know was that at the expiry of the 10 year period "the property could revert to Regal". Levenstein categorically denied that the property could revert to Regal. "There was a blatant lie conveyed to me" (3003-4).

19.8 Radus said he never saw the Mettle agreements. He had a vague idea about some of the transactions. In regard to one transaction, Levenstein told Radus "I would not understand the intricacies of the financials". Radus thought the deal would be a "good deal for the bank" on the basis of what Levenstein told him (3134-5).

19.9 Prinsloo, an executive director of Mettle and head of the structured products division, testified that the first two transactions (Tradequick and RVM) were negotiated by him directly with Levenstein with input from Brian Levenstein and

Krowitz. Thereafter Mettle was represented by Collins, who has emigrated to Canada. Collins dealt directly with Levenstein. Levenstein was the "front man" (2950). Mettle obtained resolutions authorising Regal Bank or its subsidiaries to conclude the transactions from the chairman and CEO (2951).

19.10 Martin testified that it was clear that during the last year Regal Bank "deviated significantly from its stated business objective of being a niche based private bank when it began entering into many structured transactions which do not fall into the realm of private banking." (3288).

C Tradequick and RVM

20

20.1 On 10 February 1999 Regal Bank concluded a preference share agreement in terms of which it subscribed for preference shares in Tradequick 171 (Pty) Ltd ("Tradequick") at a price of R100 m. The price was payable on 1 March 1999 against issue of the shares. The shares were redeemable 5 years from 1 March 1999.

20.2 About that time a loan agreement was concluded in terms of which Ritzshelf 57 (Pty) Ltd ("Ritzshelf") agreed to lend and advance the sum of R93.3 m ("the capital") to Regal Bank on 1 April 1999. In order to facilitate the advance of the capital, Ritzshelf undertook to procure that an unidentified bank would deliver a negotiable certificate of deposit ("NCD") issued by NBS, a division of BOE, on 1 March 1999. On 1 April 1999 Regal Bank could present the NCD to NBS for payment. On payment, Ritzshelf would be deemed to have advanced the capital to Regal Bank.

20.3 Mettle Ltd stood surety for Ritzshelf's obligations.

20.4 On 18 March 1999 Regal Bank and Tradequick concluded an option agreement in terms of which Tradequick agreed that if it failed to redeem the preference shares, breached the preference share agreement or if it or Ritzshelf were placed in liquidation, Regal Bank could require Ritzshelf to purchase the preference shares at the put purchase price. The put purchase price was the aggregate of all amounts owing to the holder of the preference shares in terms of the preference share agreement.

20.5 On 10 February 1999 Regal Bank ceded and pledged its rights to the preference shares to Ritzshelf.

20.6 Tradequick and Ritzshelf were special purpose vehicles ("SPV's") created by Mettle.

20.7 The assumption is that the difference between the price of the preference shares of R100 m and the loan of R93.3 m would accrue to Mettle.

20.8 The price of the preferent shares was to increase at a rate of 16% p.a. while the interest rate on the loan was 19.25% p.a. At the end of the five-year period the loan and accrued interest would equal the value of the preference shares and the accrued dividends.

20.9 The RVM structure, created on 18 March 1999, was in similar terms. The price of the preference shares was R50m and the amount lent was R46,6m.

20.10 The essence of the two structures is what is described as "back-to-back" preference share structures. The bank invested in preference shares (in Tradequick and RVM) and an SPV deposited a similar or a lesser amount with Regal Bank. (<u>Kruse 558, Store 277</u>).

20.11 The benefit to the bank was that its assets grew by R211 m and its liabilities by R212 m. The assets would continue to grow as preference shares produced income over the five-year period while the liabilities grew as interest accrued on the loan. No cash flows took place until the end of the five-year period.

20.12 The potential tax benefit was that the accrued preference share income was not taxable and the accrued interest on the loan was tax deductible.

20.13 The SARS might not have allowed the tax deductions if the sole purpose of the structures was the avoidance of tax.

D Regal Securities

21

21.1 On 30 August 2000 seven contracts were concluded.

21.2 Leaving aside addendums to the agreements and agreements which dealt with the provision of security, the outcome of the transactions was that in terms of the subscription agreement Mettle Finance Trading (Pty) Ltd ("MFT") undertook to subscribe for 238 ordinary shares in Regal Treasury Securities Ltd ("Regal Securities") for an amount of R95 m when called upon to do so by Regal Bank. The amount increased on prescribed dates. A subscription price was payable on the subscription date of the shares in Regal Securities.

21.3 The sale of shares agreement provided that MFT would sell the 238 shares to Regal Bank for R95 m, payable on 31 August 2005.

21.4 Mettle Finance (Pty) Ltd ("Mettle Finance") placed an amount of R88.5 m with Regal Bank on 31 August 2000 in terms of the deposit agreement. The deposit could not be withdrawn until 31 August 2005.

21.5 The deposit plus accrued interest would equal the subscription price plus accrued interest at 31 August 2005.

21.6 According to DT, one purpose of the structure might have been to capitalise Regal Securities in a tax effective way.

21.7 Another purpose might have been to increase the balance sheet of Regal Bank by increasing the assets by R106 m and increasing the liabilities by R98 m.

21.8 To avoid Regal Securities being placed in default by the Johannesburg Stock Exchange ("JSE"), the curator sold the business of Regal Securities to Sasfin.

E <u>RMI</u>

22

22.1 On 5 November 1999, in terms of a trademark and license agreement, Regal Bank granted RMI the right to use certain trademarks for a period of 20 years. RMI undertook to pay the bank R23 m by the issue of 25% of the shareholding in RMI.

22.2 On ± 1 July 2000 a sale of shares agreement was concluded in terms of which Regal Bank sold its shares in RMI to Jacobson and Levenstein as nominees for a company to be formed. DT's understanding is that a company was later formed called RMI Investment Consortium (Pty) Ltd ("RMI Consortium"). The price was R26 m, payable by way of a deposit of R5 m and R21 m to be paid into a loan account on the declaration of dividends.

22.3 On 17 July 2000 a sale of rights and trademark agreement was concluded in terms of which RMI sold its rights and trademark to the "RMI model for Australia & Britain" for R25 m to Elul Investments Ltd ("Elul").

22.4 On 18 July 2000 Elul sold to Regal Bank a call option in terms of which Regal Bank could acquire the intellectual property rights to the Australian and British markets for a "strike price" of R30 m.

22.5 On 30 August 2000 a number of agreements were concluded. In the first, Regal Bank ceded to Mettle Ltd its rights to the call option. In the second, Mettle exercised the option and acquired from Elul the intellectual property as defined for R22.5 m. In the third, Mettle granted Regal Bank the exclusive right to use the intellectual property within Australia and Great Britain for 10 years. Regal Bank undertook to pay royalties twice a year. In the fourth, Regal Bank subscribed for 100 preference shares in Dreamwise Props 21 (Pty) Ltd ("Dreamwise") for R22.6 m redeemable on 31 August 2010. Dividends could be declared twice a year. In the fifth, on the incurrence of certain events, Regal Bank could put all the preference shares to Mettle Finance at an amount equal to the redemption price in the preference share agreement. In the sixth, Mettle finance agreed to place deposits with Regal Bank on the dates Regal Bank was obliged to pay the royalties. The deposit was repayable on 31 August 2010. The deposits initially varied between R1.3 m and R2 m. In the seventh, Regal Bank ceded and pledged to Mettle finance its right and title to the preference shares. In the eighth, it was recorded that Mettle had discounted the royalty payments to Mettle Finance and therefore Mettle Finance had acquired all Mettle's rights to the royalties.

22.6 The ostensible purpose of the RMI structure, according to what Levenstein told DT during curatorship, was to acquire the intellectual property rights to the business model in the UK and Australia. If operations were not established in those countries, however, royalties would have been paid for and no value received.

22.7 The bank's assets were shown as at 26 June 2001 as having increased: the preference shares, which were originally purchased for R22.6 m, increased in value to R25 m due to the accrued dividends. The liabilities were R2 m, being the Mettle finance deposits which increased with accrued interest.

22.8 The dividends were "roll-up" dividends in that they accrued every six months but were not paid until the preference shares were redeemed at the end of the period.

22.9 Regal Bank's recourse for dividends was against Dreamwise, an SPV. It had no recourse against Mettle.

22.10 A possible tax benefit was that the interest on the deposits paid to Mettle Finance and the royalties paid to Mettle were tax deductible and the dividends on the preference shares would not be taxable. But if the intellectual property rights were never used, SARS might not allow the tax deductions.

22.11 The one amount that was actually paid was the amount of R22.6m which was paid to Dreamwise for the preference shares.

22.12 According to DT, Elul is a company in which Levenstein has an interest as shareholder and director. Levenstein testified that Elul made a R2m profit, which was paid to Regal Bank (1788).

22.13 There is a suggestion in the evidence (Rathbone 494) that Regal Bank might have advanced the money to Elul to pay the R21 m. See, too, I3 (9.2, 9.3). There is a dispute between Regal Bank and Jacobson as to whether Elul paid RMI.

F Kgoro

23

23.1 All eight Kgoro structure agreements were concluded on 11 October 2000.

23.2 In terms of an agreement of sale Regal Bank sold its 25% shareholding in Kgoro to Really Useful Investments 10 (Pty) Ltd (“Really Useful”) for R150 m. The price was payable on delivery of the shares.

23.3 In terms of a preference share agreement Regal Bank subscribed for preference shares in New Heights 85 (Pty) Ltd (“New Heights”) at a subscription price of R153 m. The shares were redeemable five years after 11 October 2000.

23.4 A call option agreement provided that Really Useful granted Regal Bank a call option to acquire the 25% shareholding in Kgoro. The option was exercisable on or after 10 October 2005. The consideration was R1 m payable by Regal Bank to Really Useful on 11 October 2000.

23.5 A second call option agreement was concluded in terms of which Mettle granted Regal Bank an option to purchase the entire share capital of Really Useful. The price was R1 m. The option was exercisable on or about 11 September 2005 or an earlier redemption date.

23.6 Regal Bank granted Mettle a put option to sell the entire share capital in Really Useful for R1 m. The option was exercisable on or before 10 November 2005.

23.7 Really Useful ceded and pledged its 25% shareholding in Kgoro to Regal Bank as security for the performance of its obligations in terms of the first call option agreement.

23.8 In the event that an option event occurred (such as a failure by New Heights to redeem the preference shares) Regal Bank could require Really Useful to purchase all its preference shares in New Heights.

23.9 An umbrella agreement was concluded in terms of which Regal Bank, Mettle, New Heights and Really Useful recorded that the agreements were to be concluded simultaneously to ensure that Really Useful had sufficient funds to pay for the shares in terms of the sale of shares agreement.

23.10 The impact on the balance sheet was to increase the assets by R164 m and to increase the liabilities by R150 m.

23.11 According to DT, as at 26 June 2001 (and at the end of the financial year, 28 February 2001) Regal Bank did not reflect the

Kgoro structure in its financial records. The records showed an investment of 25% in Kgoro shares at nil value (Kruse 502).

23.12 Mettle informed DT that New Heights, a Mettle SPV, had a "zero balance sheet". New Heights apparently did not trade and had no source of income to pay the preference share dividends – other than an injection of funds by Mettle.

23.13 DT's understanding of the financial records is that Really Useful, another Mettle SPV, paid Regal Bank R150 m for the shares in Kgoro and Regal Bank paid New Heights R153 m for the preference shares. The source of funds for the Really Useful payment is not known, unless it was the R153 m paid to New Heights, which somehow made its way to Really Useful.

23.14 The possible tax benefit to Regal Bank was that the dividends on the preference shares would not bear tax.

G Metshelf Structures

Metshelf 1

24

24.1 Five agreements were concluded on 27 October 2000.

24.2 In terms of a preference share agreement Regal Bank subscribed for 100 preference shares in Hollowprops 1 (Pty) Ltd, which later changed its name to Metshelf 106 (Pty) Ltd ("Metshelf 106") for R125 m on 27 October 2000.

24.3 In terms of a subordinated loan agreement Metshelf Trading 1 (Pty) Ltd ("Metshelf Trading") borrowed R124 m from Mettle Finance on 27 October 2000.

24.4 Metshelf Trading appointed Mettle Securities (Pty) Ltd ("Mettle Securities") to manage a portfolio of shares in its discretion with an initial market value of R124 m from 27 October 2000 to 28 October 2003.

24.5 Metshelf Trading granted Regal Bank a put option entitling Regal Bank to sell to it all the preference shares Regal Bank had subscribed for in Metshelf 106.

24.6 Mettle granted the Shareholders Trust a call option in terms of which the trust could call on Mettle until 28 October 2000 to buy the entire share capital of Metshelf Trading for R100 000. Shareholders Trust paid R300 000 for the option.

Metshelf 2

25

25.1 Four agreements were concluded on 14 March 2001.

25.2 The agreements were similar to those described in paragraphs 28.2 to 28.5 save that the price of the preference shares was R10 m; the amount of the loan was R9 850 000; the contract date was 14 March 2001 and the “maturity” date was 5 years from 14 March 2001.

25.3 There was no fifth leg to the structure as in the Metshelf 1 structure set out in paragraph 24.6.

Metshelf 3

26

26.1 Four agreements were concluded on 6 April 2001.

26.2 The agreements were similar to the Metshelf 2 agreements, the only differences being the date of the agreements, 6 April 2001, and the maturity date, 5 years from 6 April 2001.

27

27.1 The first advantage to Regal Bank of the Metshelf structures was that the assets increased by R145 m and the liabilities increased by R85 m.

27.2 The purpose of the structures might have been to make an investment indirectly in the Mettle portfolio. The return on the investment in preferent shares was directly linked to the performance of the portfolio.

27.3 A wide discretion was notionally vested in Mettle Securities to manage the portfolio "so as to achieve the best possible investment results at generally accepted risk levels" ((I1)238). The management fee was R20 000 p.a. ((I1)239). Yet the curator found that 80% of the portfolio consisted of Regal Holdings shares. The balance of the shares consisted of Absa and Stanbic shares (Kruse 518).

27.4 The majority of the merchant banks to whom the Metshelf structures were shown by the curator regarded the structures as unusual. One of the unusual features was that as the performance of the preference shares was directly linked to the portfolio all the risk of the investment was ultimately borne by Regal Bank.

27.5 Prinsloo testified that although Mettle "from a legal perspective" had full control over the portfolio, in practice Levenstein "gave guidance" to Mettle to buy 8m Regal Holdings shares in 2000 and 3m Regal Holdings shares in May 2001 (2985-6, 2996-7). The purchase of the 8m shares was negotiated prior to the conclusion of the Metshelf One agreement on 27 October 2001 and the shares were delivered on that date. (KD77)

27.6 Mettle did not invest in Regal Holdings shares for any of its clients for whom it administered share portfolios (2988).

27.7 The total portfolio amount was R145m, made up of R125m plus R10m plus R10m, of which about 40% consisted of Regal Holdings shares, which made up about 90% of the equity portfolio (2991).

H 93 Grayston and Stone Manor

93 Grayston

28

28.1 Four agreements were concluded on 17 November 2000.

28.2 In terms of an agreement of sale, Regal Treasury Property Investments (Pty) Ltd ("Regal Properties"), a subsidiary of Regal Holdings, sold the immovable property known as 93 Grayston ("the property") to Mettle Properties International (Pty) Ltd ("Mettle International"). The effective date was 1 January 2012. The price of R600m was payable against registration.

28.3 The preference share agreement provided that Regal Bank subscribed for 100 preference shares at a subscription price of R605m on the subscription date, being the date the property was to be registered in the name of Mettle International. The shares were redeemable 5 years after 1 January 2012.

28.4 Regal Properties granted Mettle International a put option to sell the property to Regal Properties on or after 2 January 2017 for R1.2bn.

28.5 Mettle Properties (Pty) Ltd ("Mettle Properties") granted Regal Properties a call option to buy all the issued shares of Mettle International for R1m. The option could be exercised at any time after 2 January 2012. Regal Properties undertook to pay Mettle Properties R300 000 on 17 November 2000 for the grant of the option.

28.6 Levenstein told DT (Kruse 528-) that the property was developed to enhance his business model. The building would be turned into a financial instrument. It did not matter whether the building was ever occupied. Regal Holdings would be entitled to value the property periodically. The value would be reflected in the balance sheet. The value was based on the R600m payable in 2012. In an undated letter addressed to Store and Kruse (DT(2)546.9) Levenstein stated: "93 Grayston was used as the platform for creating

> banking paper. … The property was used simply as a legal and accepted conduit for the creation of banking paper. … Rental income is not needed to generate yield income for Regal shareholders. … The value of 93 Grayston in year 10 (the maturity value) is based conservatively on the capitalisation of rental flows. Negotiations with Mettle were persuasively intense. The conclusion of negotiations and the forward sale was a significant financial victory for Regal. Generally accepted banking practise in this regard, must however be appreciated and understood".

28.7 A valuation was obtained by Regal Bank from De Vos. He based his valuation of R144m on the capitalisation of income flows as if the property were fully let. EY accepted the valuation (160328).

28.8 DT tried to sell 93 Grayston as a "financial structure" but there was no interest from potential buyers: no financial institution was interested in stepping into the shoes of Regal bank. Mettle has agreed to unwind the deal and DT is attempting to sell 93 Grayston as immovable property (Kruse 542).

28.9 Prinsloo of Mettle testified that Levenstein had a fixation with creating a yield curve investment. Levenstein wanted to smooth his income to create a yield to maturity income stream. So, if the 93 Grayston property cost R1m to construct and was sold for R600m in 12 years time, Levenstein "was going to accrue income from growing from [100] to [600] million over a period of time." (2954-6).

28.10 From Mettle's perspective it was willing to participate in creating the structure if Regal Bank financed the purchase price of R600m, Mettle had no risk, and Mettle had an option to put the property to the bank 5 years later. The sale agreement should have been conditional on the bank providing the funding, instead it was the preference share agreement which contained the condition, presumably for selective disclosure to the auditors (2958-68).

28.11 The price of R600m was arrived at by looking at rental yields in the Sandton area and arriving at a discounted cash flow (2963).

Stone Manor

29

29.1 Four agreements were concluded on 30 August 2000.

29.2 Regal Properties sold the immovable property known as Stone Manor 1 to 5 ("the properties") to Mettle International for R435m with effect from 31 August 2020.

29.3 Regal Bank subscribed for 100 preference shares in Mettle International for a subscription price of R435m. The price was payable to Mettle International on the date of registration of the properties into the name of Mettle International.

29.4 Regal Bank granted Mettle International a put option to sell the properties to it. The price for the option was R100 000, payable on 31 August 2000. Mettle International had the right to sell the properties to Regal Bank by exercising the option any time after 31 August 2025. The purchase price of the properties was R756.9m.

29.5 Mettle Properties granted Regal Properties a call option to purchase all the issued shares in Mettle International for R1m¸the option to be exercised any time after 2020.

30 The Sempres Transaction

30.1 The nature of the Sempres transaction was not described by any witness but the contracts were handed in (vdW128).

30.2 At an investment committee meeting held on 31 January 2001 Levenstein requested the committee to consider an investment in Sempres Ltd. The potential exposure to Regal Bank was R76m. The committee decided that an independent opinion should be obtained from PWC; a presentation made by the management of Sempres, and then final approval by the board be given to the transaction. On 16 March Cohen read in a newspaper that “Regal had invested in Sempres and vice versa”. Cohen was outraged because the decision of the investment committee had been completely ignored. When he confronted Levenstein, Levenstein "got extremely aggressive". Levenstein's response was that the transaction was cash neutral and did not need board approval. The board subsequently approved the transaction on the assumption that it was cash neutral and that there was no capital impairment. In May or June Cohen and Van der Walt discovered that Regal Bank had lent Sempres about R13–14m to buy Regal Holdings shares. The transactions were therefore not cash neutral nor had the loans been approved "through the proper channels" (<u>Cohen 1838-1844</u>).

30.3 Van der Walt's testimony was that when Levenstein put a "share swop" proposal involving Sempres to Exco it was decided that the proposal would be put to the investment committee. On 7 March 2001, Van der Walt, then chief operating officer, was instructed by Levenstein to sign two contracts with Sempres, a user status agreement and a sale of shares agreement. After curatorship, Van der Walt was shown three additional contracts, signed by Levenstein, the substance of which was that Regal bank had undertaken to lend Sempres R5m - a loan which had never been discussed, let alone authorised, by the investment committee or the board (<u>R2575-6</u>).

30.4 Oosthuizen testified that when Levenstein initially introduced the Sempres transaction, he, Oosthuizen, expressed concern about the transaction. The decision was that the matter should be referred to the investment committee to investigate. On his return from overseas in early June, he found that the deal had been done without the matter having "gone through the proper channels in the sense that I became aware that the investment committee had referred the transaction back and had requested a complete viability study in search in additional information to be presented to it". When Oosthuizen queried the matter at a board meeting, Levenstein and Van der Walt were quite aggressive, and asked whether the executive committee was subservient to the board. Oosthuizen said that he confirmed that it was, "absolutely". (3005-3007).