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Family of wealthy Montreal shoe merchant says it may be biggest victim of ABCP crisis

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Byline: Sean Silcoff

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MONTREAL - One year ago, the family of Montreal shoe merchant Ernie Avrith was one of Canada's wealthiest. Today, its lawyers will appear in a Toronto court to argue it could be one of the biggest victims of the non-bank asset-backed commercial paper (ABCP) crisis --and should qualify as having suffered "hardship" as a result.

Five months after the 82-year-old Mr. Avrith died, widow Marilyn has suffered "a precipitous decline in her health" due to the "risk of loss of [her] life savings," daughter Heather Avrith said in an affidavit filed with the court in the ABCP restructuring process.

The affidavit states two personal shell companies controlled by Mr. and Mrs. Avrith bought close to \$20-million worth of ABCP last spring and summer -- representing the vast majority of the assets in the holdings -- "upon the advice" of National Bank of Canada after being told the instruments "were rated higher" than low-risk "bankers acceptances" backed by the bank.

The Avriths and a handful of other wealthy individuals have fallen through the cracks during the tortuous process to restructure the ABCP market, which has been frozen since last August.

The court directed those running the restructuring to consider a "hardship consideration process," adopting criteria used in the receivership of Portus Alternative Asset Management.

To qualify for "hardship" status, investors must have an immediate need for cash for the basics of life and have limited access to other funds.

National, Canaccord Capital and Credential Securities agreed to make whole clients who held ABCP, but to a point: In National's case, it bought out retail and "qualified corporate clients" holding less than \$2-million in ABCP. In her affidavit, Heather Avrith said National never offered to buy back her parents' ABCP. National also offered credit facilities to 100 unqualifying corporate clients, including the Avriths.

Lisa Munro, a lawyer acting for the family, will argue for a broader test of what constitutes hardship, saying the family should qualify. "We think there are fairness and hardship issues that are not reflected in the criteria [that] have put forward," she said. The

family argues it should be considered a retail, not corporate, client and believes the bank "has not followed through with what it stated was its intention to do and pay out retail investors," she said.

National CEO Louis Vachon refused to discuss the specifics of the family's case during a press briefing yesterday.

ssilcoff@nationalpost.com

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