Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

File No. 200705

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 and 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RE: Robert Brick

DISCIPLINARY HEARING

Heard: June 28, 2007
Toronto, Ontario

DECISION and REASONS

Hearing Panel of the Ontario Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Paul Griffin	Panel Member
Linda Anderson	Panel Member

Appearances:

Maria Abate	)	for Mutual Fund Dealers Association
	)	of Canada
Robert Brick	)	not in attendance personally
	)	or by counsel

1. THE ALLEGATIONS

By Notice of Hearing, dated the 28th day of March, 2007, the following allegations were made against Robert Brick ("Respondent"):

Allegation #1: Between August 2004 and August 2005, the Respondent solicited and accepted approximately $219,000 from clients to be invested on their behalf and did not invest, return or otherwise account for the funds, thereby failing to deal with the clients fairly, honestly and in good faith, contrary to MFDA Rule 2.1.1(a).

Allegation #2: Commencing April 12, 2006, the Respondent failed to submit a report in writing as required by the MFDA in the course of an investigation, contrary to Section 22.1(a) of MFDA By-law No. 1.

2. SERVICE

The Notice of Hearing provided for a First Appearance by teleconference before the Hearing Panel at 121 King Street West, Suite 1000, Toronto, Ontario, on Tuesday, May 15, 2007, at 10:30 a.m. At that time, the Respondent did not appear. Further, no one appeared on his behalf.

At the First Appearance, Enforcement Counsel described the attempts that had been made to that date by Staff to serve the Notice of Hearing on the Respondent. The attempts were described in a series of Affidavits contained in a Service Brief, which was marked as Exhibit 2.

After considering Exhibit 2 and hearing the submissions of Enforcement Counsel, the Hearing Panel concluded that the Respondent had been properly served with the Notice of Hearing under Rule 4.2(1)(b) of the MFDA Rules of Procedure and that he was aware of the proceedings against him.

We ordered that the Hearing on the merits in this matter would take place before the Hearing Panel at 121 King Street West, Suite 1000, Toronto, Ontario, on Thursday, June 28, 2007, commencing at 10:00 a.m. We further ordered that Staff was to attempt to serve notice of the date of the Hearing on the merits on the Respondent by a series of defined methods and at a series of defined locations.

The Respondent did not appear on June 28, 2007. No one appeared on his behalf.

At the commencement of the Hearing on June 28, 2007, Enforcement Counsel filed, as Exhibit 3, an Affidavit of Service of Jim Fraser, who swore that he personally served the Respondent on June 21, 2007, with the following documents:

1. a true copy of the Notice of Hearing;
2 a true copy of the Order of the Hearing Panel, dated June 4, 2007;
3. a letter, dated June 7, 2007, from Enforcement Counsel to the Respondent advising him, *inter alia*, of the date, time and place of the Hearing on the merits and providing a contact number; and
4. a copy of a News Release from the MFDA, dated May 15, 2007, which, *inter alia*, advised of the date, time and place of the Hearing on the merits.

Enforcement Counsel further advised that on Tuesday, June 26, 2007, she personally spoke with the Respondent who indicated that he intended to participate in the Hearing on the merits by way of teleconference. The Respondent was provided with contact information for the corporate secretary's office which distributes the login numbers for the teleconferencing system.

The Respondent did not contact the corporate secretary's office on either Tuesday, June 26, 2007 or Wednesday, June 27, 2007. However, at 5:30 a.m. on June 28, 2007, the date set for the Hearing on the merits, the Respondent left messages in the voice-mailbox of the hearings co-ordinator, the MFDA reception as well as the MFDA general mailbox, advising that he would not be attending the Hearing in person but would like to do so by teleconference. He left no contact information. Staff discovered that there was no longer a voice mail service on the telephone number which they had for the Respondent.

Arrangements had been made by Staff that, if the Respondent telephoned the MFDA during the course of the Hearing, the call would be forwarded to the Hearing room so that the Respondent could participate by way of teleconference.

Enforcement Counsel advised the Hearing Panel that she was ready to proceed and had her witnesses available to testify if so required. She submitted that Staff had fully complied with our service Order of June 4, 2007, that the Respondent was aware of the date, time and place of the Hearing on the merits but had made no genuine effort to participate. Finally, she pointed out that the Respondent had not served and filed a Reply as required by Rule 8.1(1) of the MFDA Rules of Procedure.

The Hearing Panel retired to consider the matter. We then reconvened the Hearing and advised that we were going to proceed. We provided brief oral reasons for our decision, indicating that fuller written reasons would be forthcoming.

We ruled that, if the Respondent contacted the MFDA prior to the completion of the evidence and submissions on June 28, 2007, he would be entitled to make whatever representations he deemed appropriate. The Respondent did not contact the MFDA prior to the completion of the Hearing at 11:42 a.m.

3. THE RULING In our view, Rules 7.3(1)(a), 8.1(1), 8.4(1)(a) and 13.5(1) of the Rules of Procedure are apposite. They provide as follows:

7.3 Failure to Attend Hearing

(1) Where a Respondent fails to attend the hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:

(a) proceed with the hearing without further notice to and in the absence of the Respondent;

8.1 Requirement to Reply

(1) A Respondent shall serve on every other party and file a Reply within 20 days of the effective date of service of the Notice of Hearing.

8.4 Effect of Failure to Deliver a Proper Reply

(1) Where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may do any one or more of the following:

(a) proceed with the hearing without further notice to and in the absence of the Respondent;

13.5 ***Where a Respondent Fails to Attend a Disciplinary Hearing***

(1) Where a Respondent, having been served with a Notice of Hearing, fails to attend the hearing of the proceeding on its merits, the Hearing Panel may proceed in accordance Rule 7.3.

At the First Appearance on May 15, 2007, we concluded that the Respondent had been properly served with the Notice of Hearing and was aware of the proceedings against him. Rule 8.1 required the Respondent to serve and file a Reply within 20 days of the effective date of service of the Notice of Hearing.

Exhibit 2 details a large number of service attempts on the Respondent during the month of April 2007. Regardless of what day in April is taken as the date of effective service, it is clear that by the Hearing date of June 28, 2007, more than 20 days had passed with no Reply being served or filed by the Respondent. Consequently, Rule 8.4(1)(a) provides ample jurisdiction for the Hearing Panel to proceed with the hearing in the absence of the Respondent.

In our view, Rules 7.3(1)(a) and 13.5(1) provide additional justification for the Hearing Panel to proceed as we did on June 28, 2007, in the absence of the Respondent.

In our view, it was in the public interest that we proceed in the manner which we did. Elaborate steps were taken to ensure that the Respondent was made aware of his rights and obligations. Leaving a telephone message at 5:30 a.m. on the morning of the Hearing saying that he would not be attending but wished to participate by way of teleconference and then making no known attempt to do so does not, in our view, constitute a valid reason not to proceed with the Hearing on the scheduled date.

4. MANNER OF PROCEEDING

Although Rule 7.3(1)(b) of the Rules of Procedure does authorize the Hearing Panel to accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven where the Respondent fails to attend the Hearing on the date, time and location specified in the Notice of Hearing, Enforcement Counsel sought to prove the Allegations by means of admissible evidence. We agreed with that approach.

5. PRESENTATION OF EVIDENCE

The evidence before the Hearing Panel with respect to this matter consisted of the following Affidavits and the Exhibits referred to therein:

(a) An Affidavit of Joe Yalkezian, the President of Audentium Financial Corp. ("Audentium"), sworn June 5, 2007, along with 6 Exhibits. This was marked as Exhibit 4.

(b) An Affidavit of Cheryl Hamilton, the Vice-President and Chief Compliance Officer of HUB Capital Inc., sworn June 19, 2007, along with 2 Exhibits. This was marked as Exhibit 5.

(c) An Affidavit of Ian R. Smith ("Smith"), a Senor Investigator with the MFDA, sworn June 27, 2007. This was marked as Exhibit 6.

(d) A further Affidavit of Mr. Smith, sworn May 11, 2007, along with 6 Exhibits. This was marked as Exhibit 7.

Rule 1.6(1) of the MFDA Rules of Procedure provides, in part, that:

> "(1) a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence."

Accordingly, we ruled that Exhibits 4, 5, 6 and 7 formed admissible evidence before us.

Enforcement Counsel advised the Hearing Panel that in Exhibits 4, 5 and 6, there was sensitive client information, including the names of the clients. She requested that these 3 Affidavits be marked as "Confidential" pursuant to the provisions of Rules 1.8(2) and (5) of the MFDA Rules of Procedure. These Rules provide as follows:

1.8 Hearings Open to the Public

(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

(5) Exhibits, documents and transcripts relating to that part of a hearing that is held in the absence of the public shall be marked "Confidential" and shall be kept separate from the public record, and access to this material shall only be by order of the Panel.

After considering the submissions of counsel and reviewing the Affidavits, we agreed to mark Exhibits 4, 5 and 6 as "Confidential". We did this to protect client confidentiality.

6. THE EVIDENCE

The Admissible evidence before us established the following:

The Respondent was registered in Ontario as a mutual fund salesperson from December 22, 2002, to April 4, 2006. At the time of the Hearing, he was not registered in the securities industry in any capacity.

From December 22, 2002, to February 7, 2005, the Respondent was a mutual fund salesperson with Roche Capital Planners Inc. ("Roche"). On February 7, 2005, Roche changed its name to Audentium. On February 7, 2005, the Respondent resigned from Audentium, along with most of the Roche agents, and transferred to HUB Financial Inc. ("HUB"). On November 9, 2005, the Respondent was terminated by HUB for matters unrelated to this proceeding.

From November 21, 2005, to April 4, 2006, the Respondent was registered with Sterling Mutuals Inc. ("Sterling"). On April 4, 2006, the Respondent was terminated by Sterling as a result of the conduct which was the subject matter of this proceeding.

Allegation No. 1

(a) Misappropriation of $127,000 from J.S.

The Respondent was the mutual fund salesperson at Audentium responsible for J.S.'s account. In the summer of 2004, J.S. sought advice from the Respondent with respect to the investment of proceeds from the sale of his family cottage.

Between August 24, 2004, and September 10, 2004, J.S. provided to the Respondent a total of $127,000 for the purchase of investments for his account at Audentium.

On September 10, 2004, the Respondent opened an account at Mackenzie Financial Corporation in the name of a person related to him. He deposited the $127,000 received from J.S. into that account.

The Respondent did not purchase any investments for J.S. The Respondent has failed to return or otherwise account for the funds received from J.S.

(b) Misappropriation of $92,000 from M.C.

M.C. was a client of HUB. The Respondent was the mutual fund salesperson at HUB responsible for M.C.'s account.

In August of 2005, the Respondent recommended that M.C. open an investment account at the Bank of Montreal ("BMO"). On August 29, 2005, M.C., acting on the advice of the Respondent, redeemed mutual funds in her account at HUB. On or about September 1, 2005, M.C. provided the Respondent with a certified cheque in the amount of $92,000. The cheque was made payable to "Wise Time Financial" and was intended to be used to purchase investments for her benefit to be held in her BMO investment account.

Wise Time Financial was not a registered trade name with HUB, but rather was a company incorporated by and under the control of the Respondent.

The Respondent did not purchase any investments for M.C. The Respondent has failed to return or otherwise account for the funds received from M.C.

On the evidence, we have no hesitation in concluding that the Respondent misappropriated the sum of $127,000 from J.S. We are also unanimously of the opinion that the Respondent misappropriated the sum of $92,000 from M.C.

Allegation No. 2

On April 4, 2006, Sterling terminated the Respondent and filed a copy of the Notice of Termination with the MFDA.

By letter, dated April 12, 2006, sent to the Respondent by both registered and regular mail, the MFDA requested that the Respondent provide information

pertaining to his termination, including his alleged failure to disclose pending or potential client related litigation regarding J.S. when applying for registration with Sterling. The MFDA did not receive a response to this letter.

By letter, dated April 18, 2006, sent to the Respondent by both registered and regular mail, the MFDA advised the Respondent that it was in receipt of a Statement of Claim, dated March 9, 2006, in which it was alleged that the Respondent had "misappropriated, stole and converted" to his own use investment funds totaling $127,000 provided to him by J.S. The misappropriation was alleged to have taken place during his employment at Roche. A written response to this allegation was requested by May 2, 2006. The MFDA did not receive a response to this letter.

By letter, dated May 9, 2006, sent by both registered and regular mail to the last known address of the Respondent, as recorded in the records of the Ontario Securities Commission, the MFDA requested the Respondent to respond to the allegations set out in the Statement of Claim arising out of his transactions with J.S. during the course of his employment with Roche. A written response was requested by no later than May 23, 2006. Canada Post returned the registered letter to the MFDA as being "undeliverable". The letter sent by regular mail was not returned. The MFDA did not receive a response to this letter.

By letter, dated June 5, 2006, sent to the Respondent by registered mail, the MFDA made a fourth request for information pertaining to his termination from Sterling and to the allegations in the Statement of Claim arising out of his transactions with J.S. The registered mail was returned to the MFDA.

By letter, dated October 10, 2006, sent to the Respondent by registered and regular mail, the MFDA made a fifth request for information pertaining to his termination from Sterling and to the allegations in the Statement of Claim arising out of his transactions with J.S. The letter reminded the Respondent of his

obligations to respond as set out in sections 22.1 and 24.1.4 of MFDA By-law No. 1. The Respondent was advised that if he failed to respond in writing by October 24, 2006, authorization might be sought to commence enforcement proceedings against him for breach of section 22.1 of By-law No. 1. Canada Post returned the registered mail to the MFDA. The letter sent by regular mail was not returned. The MFDA did not receive a response to this letter.

On January 30, 2007, the MFDA sent letters to the Respondent at two addresses by both registered and regular mail. The letter advised him of his failure to respond to the MFDA letters of April 18, 2006, May 9, 2006, June 5, 2006 and October 10, 2006, relating to the allegations in the Statement of Claim arising out of his transactions with J.S. The letter also referred to the allegation that the Respondent had received $92,000 from M.C. for investment purposes and that there was no evidence that he had invested this amount on her behalf. One of the registered letters was accepted and signed for by the Respondent on February 9, 2007. The regular mail was not returned. The MFDA did not receive a response to this letter.

We are, unanimously, of the opinion that the Respondent has failed to submit a report in writing as required by the MFDA in the course of an investigation, contrary to Section 22.1(a) of MFDA By-law No. 1.

7. APPLICABLE RULES

Allegation No. 1, in the Notice of Hearing, alleges a breach of MFDA Rule 2.1.1(a). This Rule states:

> "2.1.1 **Standard of Conduct**. Each Member and each Approved Person of a Member shall:
> (a) deal fairly, honestly and in good faith with its clients;"

Allegation No. 2, in the Notice of Hearing, alleges a breach of section 22.1(a) of MFDA By-law No. 1. This Section states:

"22. INVESTIGATORY POWERS

22.1 For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

(a) to submit a report in writing with regard to any matter involved in any such investigation;

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath."

8. FINDINGS AND THE LAW

Enforcement Counsel presented the Hearing Panel with written Submissions, as well as a very extensive Casebook, for which we are indebted.

Allegation No. 1

We have found, as a fact, that between August 2004 and September 1, 2005, the Respondent misappropriated a total of $219,000 obtained from his clients J.S. and M.C.

The Respondent, at all material times, was an Approved Person as that term is defined in Section 1 of By-law No. 1 of the MFDA. There, an Approved Person is defined as follows:

> ""**Approved Person**" means, in respect of a Member, an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who conducts or participates in the dealer business of the Member and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the securities commission having jurisdiction, and (ii) is designated and qualified as such in accordance with the Rules, or (iii) is otherwise subject to the jurisdiction of the Corporation;"

In our view, misappropriation of client's funds by an Approved Person is dishonest conduct which is inconsistent with the standard of conduct set out in MFDA Rule 2.1.1.

> *In the Matter of Robert Roy Parkinson* [2005], MFDA File No. 200501, decision dated April 29, 2005 (*"Parkinson"*).
>
> *In the Matter of Raymond Brown-John*, [2005], MFDA File No. 200502, decision dated June 27, 2005 (*"Brown-John"*).
>
> *In the Matter of Earl Crackower*, [2005], MFDA File No. 200506, decision dated August 22, 2005 (*"Crackower"*).
>
> *In the Matter of Stephan Headley* [2006], MFDA File No. 200509, decision dated February 21, 2006 (*"Headley"*).
>
> *In the Matter of Dale Michael Graveline* [2006], MFDA File No. 200606, decision dated December 20, 2006 (*"Graveline"*).

The evidence clearly establishes that, on 3 separate occasions, the Respondent obtained funds from his clients, which they thought were going to be invested in legitimate investment products for their respective accounts.

Instead, the Respondent misappropriated these funds. There was no evidence that the Respondent, at any time, invested these funds as instructed. Despite numerous requests, he has never accounted for these funds.

In *Brown-John*, a Hearing Panel of the MFDA found that an Approved Person's solicitation and receipt of monies from a client for the purpose of investments that were never made, where those monies were instead "pocketed" or misappropriated by an Approved Person, constituted a breach of MFDA Rule 2.1.1. We agree.

> Re: *Brown-John*, supra at pp 3-4.

In our view, it is clear that the Respondent did not deal fairly, honestly and in good faith with his clients, J.S. and M.C., as alleged in the first Allegation. We, unanimously, find that MFDA Rule 2.1.1(a) has been breached by the Respondent and that Allegation No. 1 has been established.

Allegation No. 2

The evidence clearly establishes that on at least 5 separate occasions, namely by letters dated April 18, 2006, May 9, 2006, June 5, 2006, October 10, 2006 and January 30, 2007, the MFDA sought to obtain a report in writing from the Respondent relating to its investigation, *inter alia*, of the allegations of misappropriation of client funds. No response has ever been made in writing to the MFDA by the Respondent up to and including the date of the Hearing in June of 2007.

We agree with the submissions of Staff that the MFDA has a duty to conduct such examinations and investigations of a Member, an Approved Person or any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member's or person's compliance with, *inter alia*, the By-laws, Rules and Policies of the MFDA.

We, further, agree with Staff that in carrying out this duty, the MFDA is authorized to require an Approved Person, such as the Respondent, to submit a written report concerning any matter being investigated by the MFDA.

In our view, the failure of an Approved Person to comply with repeated requests by the MFDA for a written report, made pursuant to Section 22.1(a) of the By-law, is serious misconduct.

The actions of the Respondent subverted the ability of the MFDA to perform its regulatory functions by fully investigating these alleged misappropriations and determining, in an expeditious manner, all of the relevant facts. The repeated failure by the Respondent to provide the written report requested, in our view, undermined the integrity of the self-regulatory system and the effectiveness of its operations.

Other MFDA Panels have come to the same conclusion. See:

Re: *Parkinson*, supra p.25.
Re: *Brown-John*, supra p. 4.
Re: *Crackower*, supra pp. 9-10.
Re: *Headley*, supra pp. 22-23.
Re: *Graveline*, supra pp. 6-7.

We are, unanimously, of the view that Allegation No. 2 has been established.

9. PENALTY REQUESTED

Enforcement Counsel sought the following sanctions:

(a) A permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;

(b) A fine in the amount of $219,000 for misappropriation of client funds contrary to MFDA Rule 2.1.1;

(c) A fine in the amount of $50,000 for failure to co-operate contrary to section 22.1 of MFDA By-law No. 1; and

(d) Costs attributable to conducting the investigation and prosecution of this matter in the amount of $7,500.00.

10. FACTORS TO BE CONSIDERED

The primary goal of securities regulation is the protection of the investor.

> *Pezim v. British Columbia* (Superintendent of Brokers) [1994] 2 S.C.R. 557 at paragraph 59.
>
> *Parkinson*, supra, at pages 20-21.
>
> *In the Matter of Arnold Tonnies* [2005] MFDA File No. 200503, decision dated June 27, 2005, at page 21.

Sanctions should be preventative, protective and prospective in nature.

> *Tonnies*, supra, at page 22.
>
> *Headley*, supra, at page 24.

In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

(a) the protection of the investing public;
(b) the integrity of the securities markets;
(c) specific and general deterrence;
(d) the protection of the MFDA's membership; and
(e) the protection of the integrity of the MFDA's enforcement processes.

> *Parkinson, supra*, at page 21.
>
> *Tonnies, supra*, at page 22.
>
> *Headley*, supra, at page 24.

Previous Hearing Panels have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

(a) The seriousness of the allegations proved against the respondent;

(b) The respondent's experience in the capital markets;
(c) The level of the respondent's activity in the capital markets;
(d) The harm suffered by investors as a result of the respondent's activities;
(e) The benefits received by the respondent as a result of the improper activity;
(f) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
(g) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
(h) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
(i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
(j) Previous decisions made in similar circumstances.

Parkinson, supra, at page 22.

Tonnies, supra, at page 23.

Headley, supra, at pages 25 and 26.

We considered the following aggravating factors:

1. The actions of the Respondent in misappropriating funds from both J.S. and M.C. were planned and deliberate.
2. His status as an Approved Person permitted the Respondent to gain the trust of his clients.
3. The Respondent abused this trust in the most fundamental fashion.
4. The above continued over more than a 12 month period.
5. The Respondent has not demonstrated any remorse.

6. The Respondent has made no attempt at restitution of the misappropriated funds.
7. The Respondent failed to co-operate with the investigation of the MFDA into these matters.
8. The Respondent personally benefited from his misconduct in the amount of $219,000.

On the mitigating side, we considered that the Respondent has no discipline history.

11. PENALTIES IMPOSED

(a) Allegation No. 1

In our view, it is incumbent upon the Hearing Panel to communicate to the Respondent, to the public and to the mutual fund industry as a whole that serious consequences will befall those who are engaged in activities similar to those of the Respondent. In our view, there should be a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA member.

We are also firmly of the view that the fine which should be imposed in cases of this nature, pursuant to the provisions of section 24.1.1(b) of MFDA By-law No. 1, should, at a minimum, be approximately equal to the amount misappropriated by the Approved Person where that amount has not been repaid by the time of the Hearing.

Accordingly, we are unanimously of the view that a fine in the amount of $219,000 should be imposed with respect to Allegation No. 1.

(b) Allegation No. 2

Enforcement Counsel provided us with a series of Decisions outlining the views of various Hearing Panels as to the appropriate fine to be imposed in the case of an individual who breaches Section 22.1 of MFDA By-law No. 1. These cases included:

Parkinson, supra, page 25.

Crackower, supra, pages 9-10.

Tonnies, supra, pages 26-27.

Headley, supra, page 30.

In each case, the fine imposed was $50,000.

In our view, the appropriate penalty for failure to co-operate must be such as to communicate to both the public and the mutual fund industry that serious consequences will befall those who seek to frustrate the MFDA in performing its regulatory mandate.

Accordingly, with respect to Allegation No. 2, we believe it is appropriate to follow the consistent lead of previous Hearing Panels and impose a fine in the amount of $50,000.

(c) Costs

Section 24.2 of By-Law No. 1 provides that:

> "A Hearing Panel may in any case in its discretion require that the . . . Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel and any investigations relating thereto."

Staff of the MFDA requested that an Order for Costs be made against the Respondent in the amount of $7,500 as that amount will permit the MFDA to recover from the Respondent a portion of the costs attributed to conducting the investigation and prosecution of this matter.

We believe that the imposition of costs in the circumstances of this case is appropriate and order same to be fixed in the amount of $7,500.

Dated at Toronto, this 29th day of October 2007.

"Thomas J. Lockwood"
Thomas J. Lockwood, Q.C.
Chair

"Paul Griffin"
Paul Griffin
Panel Member

"Linda Anderson"
Linda Anderson
Panel Member

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