



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

**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: Gregory James Richard Burner**

Reconvened: November 30, 2010, Winnipeg, Manitoba  
Panel Decision: December 8, 2010

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Robert Hucal  
Elaine Bradley  
Kathleen Jost

Chair  
Industry Representative  
Industry Representative

Appearances:

H. Clement Wai

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For the Mutual Fund Dealers Association of  
Canada

Gregory Burner

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Attended Personally

1. The Hearing Panel, having rendered its decision on August 3, 2010 on the merits and unanimously concluded that the allegations of misconduct had been proven against the Respondent, reconvened to hear submissions from MFDA counsel and the Respondent as to penalty.

2. Misconduct was found in that the Respondent:

- (a) failed to comply with the By-laws and Rules of the MFDA as they related to him;
- (b) breached the policy and procedures manual of his employer, Peak Investment Services Inc. (“Peak”); and
- (c) failed to deal fairly and honestly and in good faith with his clients, as required by MFDA Rule 2.1.1(a)

3. In particular, the Respondent failed to comply with his Member’s procedures in that in numerous instances he:

- (a) processed redemptions in clients’ accounts which resulted in DSC fees being incurred by the clients;
- (b) used proceeds of these redemptions to purchase similar DSC mutual funds sold by other mutual fund companies, resulting in the Respondent earning a sales commission on the purchase of the new DSC mutual funds and the client commencing a new DSC schedule in respect of the reinvested redemption proceeds;
- (c) failed to rebate to the clients the DSC fees incurred by the clients on the redemptions; and
- (d) processed many of the redemptions and re-purchase transactions directly with the mutual fund companies instead of through Peak’s electronic order entry system.

4. Submissions were heard from MFDA Counsel and from Gregory Burner.

5. In its deliberations as to penalty, the Panel recognizes that the following should be taken into account:

- protection of the investing public, the MFDA membership and its enforcement process;
- integrity of the securities market and reaffirmation of the regulatory system; and<sup>1</sup>
- specific and general deterrence.<sup>2</sup>

6. Hearing panels have considered additional factors in determining the appropriate penalty:

- the seriousness of the allegations proved against the respondent;
- the respondent's past conduct, including prior sanctions;
- the respondent's experience in the capital markets;
- the level of the respondent's activity in the capital markets;
- whether the respondent recognizes the seriousness of the improper activity;
- the harm suffered by investors as a result of the respondent's activities;
- the benefits received by the respondent as a result of the improper activity;
- the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- previous decisions made in similar circumstances.

7. The MFDA penalty guidelines also provided a source of direction in our determining the appropriate penalties. The penalties expressed are guidelines only and not mandatory. The fines levied are minimums and it is clear that larger fines are appropriate in the right situation.

8. In reaching our July 2010 decision, we clearly found misconduct on the part of the Respondent. The Respondent disregarded regulatory requirements, ignored the internal rules and practices developed by his employer, made no offer of restitution when challenged as to his activities, showed no remorse and did not recognize the misconduct either before our finding or subsequent thereto. Even at the penalty hearing, the Respondent insisted that he be entitled to make presentation reopening the misconduct phase of the hearing, suggesting a "sloppy" MFDA investigation which failed to recognize the propriety of his actions in the face of our misconduct

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<sup>1</sup> Re: Robert Roy Parkinson, 2005, MFDA File No. 200501  
 Re: Arnold Tonnie, 2005, MFDA File No. 200503  
 Re: Raymond Brown-John, MFDA File #200502

<sup>2</sup> Cartaway Resources Cor. 2004 1SCR 672

finding, continued to insist his investment advice was correct, that his employer's rules were unacceptable to him and therefore he was not prepared to acknowledge those rules, blamed his employer for all the "failures" and suggested a vendetta by his employer. The Respondent also insisted that he always acted in the best interests of his clients and with their general authority.

9. We believe that the Respondent had and still has no conception that what he did, as we found in our earlier decision, was misconduct. His position that he acted with his clients' general authority and in their best interests, we consider to be an irrelevancy. That attitude and position of continual denial and non-recognition of the misconduct found, makes it difficult for us to take a position other than proposed by MFDA counsel.

10. Without question, the actions of the Respondent failed to observe high standards of ethics and conduct in the transaction of business as required by Rule 2.1.1, were improper and damaged the reputation of the securities markets and his clients.

11. In considering the appropriate penalty, we considered previous decisions regarding the protection of the investor<sup>3</sup> and decisions dealing with sanctions intended to be preventative and protective<sup>4</sup> and those made in similar circumstances.<sup>5</sup>

12. It is hereby ordered that:

(a) In order to protect the privacy of the clients named and affected by the Respondent's conduct and in accordance with the MFDA Rules of Procedure, those portions of all exhibits to the Hearing which make reference to former clients of the Respondent shall be redacted so that only initials of such clients are reflected on the public record and any reference to the names of clients of the Respondent that were made during oral submissions at the Hearing shall be recorded on the transcript of the Hearing only with initials of the clients;

(b) The Respondent, Gregory Burner, is permanently prohibited from conducting securities-related business pursuant to MFDA By-law No. 1, section 24.1.1(e);

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<sup>3</sup> Re: Robert Roy Parkinson, 2005, MFDA File No. 200501

<sup>4</sup> Re: Arnold Tonnie, 2005, MFDA File No. 200503

<sup>5</sup> Re: O'Brien and Snow, 2008, MFDA File No. 200809

(c) The Respondent, Gregory Burner, shall pay a fine of \$120,000 pursuant to MFDA By-law No. 1, section 24.1.1(b); and

(d) The Respondent, Gregory Burner, shall pay costs in the amount of \$10,000 pursuant to MFDA By-law No. 1, section 24.2.

**DATED** this 8<sup>th</sup> day of December, 2010.

“Robert Hucal”

Robert Hucal,  
Chair

“Elaine Bradley”

Elaine Bradley,  
Industry Representative

“Kathleen Jost”

Kathleen Jost,  
Industry Representative

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