



**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: Lodovico Angelo Cavan**

Heard: November 21, 2013 in Toronto, Ontario  
Decision and Reasons: February 26, 2014

**DECISION AND REASONS**

Hearing Panel of the Central Regional Council:

The Hon. Stanley R. Kurisko, Q.C.	Chair
Susan L. Schulze	Industry Representative
Robert J. Guilday	Industry Representative

Appearances:

H.C. Clement Wai	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada
	)	
Caroline Ursulak	)	Counsel for the Respondent
	)	
	)	

## **BACKGROUND**

1. Lodovico Angelo Cavan (the “Respondent”) was registered in Ontario as a mutual fund salesperson with Royal Mutual Funds Inc. (“RMFI”), a Member of the Mutual Fund Dealers Association of Canada (“MFDA”) from January 29, 1989 to October 23, 1994 and from January 4, 1995 to June 30, 2011. During these periods the Respondent was an “Approved Person” under the provisions of By-Law No. 1 of MFDA.

2. The Respondent resided in Caledon, Ontario and worked at various RMFI branches, the most recent being an RMFI branch in Brampton, Ontario. On June 30, 2011, the Respondent was terminated by RMFI as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

3. RMFI became a Member of the MFDA October 25, 2001, at which time the Respondent became subject to the jurisdiction of the MFDA.

4. At all material times, RMFI's policies and procedures, consistent with MFDA requirements, required all approved persons to disclose and report new outside business activities and/or changes, including terminations to existing outside business activities. Approved persons were required to sign an annual acknowledgement and consent form confirming they understood and agreed to comply fully with all securities laws, rules, regulations and all of RMFI's policies and procedures.

5. The Respondent executed RMFI's annual acknowledgement and consent forms confirming that he had disclosed all outside activities to RMFI without advising RMFI of his involvement in three businesses hereinafter detailed.

6. The Respondent admits that from October 25, 2001 to March 2006 and from January 2008 to May 2010, he had and continued in other gainful occupations that were not disclosed to and approved by RMFI, by setting up three businesses in respect of which he subsequently received, directly or indirectly, payments and benefits totaling at least approximately

\$117,973.03, contrary to MFDA Rules 1.2.1(d)<sup>1</sup> and 2.1.1<sup>2</sup>.

7. Staff of the MFDA (“Staff”) and the Respondent jointly request that the Hearing Panel determine, on the basis of an Agreed Statement of Facts set out below, the appropriate penalty (if any), to impose on the Respondent, pursuant to s. 24.1.1 of MFDA By-law No. 1, and the appropriate amount of costs (if any) of the investigation and hearing to be awarded against the Respondent, pursuant to s. 24.2 of MFDA By-law No. 1.

## **DECISION OF THE HEARING PANEL**

8. The Respondent shall pay a fine of \$5,000.00. Time to pay is extended to January 31, 2015. An order for permanent or partial prohibition to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA member is denied. No order as to costs. As a condition of returning to the investment field the Respondent shall complete a Conduct and Practices Course and such additional course(s) or training as may be prescribed by the MFDA.

9. The following reasons for the decision are discussed under these headings:

- Agreed Statement of Facts <sup>3</sup>
- The Respondent’s Position <sup>4</sup>
- Testimony of the Respondent <sup>5</sup>
- Discussion re penalty:
  - Legal considerations <sup>6</sup>
  - Relevant factors and considerations in this case re penalty <sup>7</sup>

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<sup>1</sup> MFDA Rule 1.2.1(d) articulates the rights and restrictions on an Approved Person to hold dual occupations or conduct business activities outside the Member. The Rule seeks to ensure that only authorized dual occupations are carried on by an Approved Person and that they are done so with the knowledge and approval of the Member.

<sup>2</sup> MFDA Rule 2.1.1 articulates the standard of conduct to be followed by all Members and Approved Persons. The Rule encompasses the most fundamental obligations of all registrants in the securities industry.

<sup>3</sup> Paragraphs [10]–[29].

<sup>4</sup> Paragraph [30].

<sup>5</sup> Paragraphs [31]–[35].

<sup>6</sup> Paragraphs [36]–[37].

<sup>7</sup> Paragraph [38].

- Additional considerations relevant to penalty<sup>8</sup>
- Credibility of the Respondent<sup>9</sup>
- Decision<sup>10</sup>

## AGREED STATEMENT OF FACTS

10. The parties signed an Agreed Statement of Facts<sup>11</sup>. The relevant text is set out in the following paragraphs [11] – [29].

11. DB was an acquaintance of the Respondent. DB was employed as the Director of Information Technology & Communication Services at JBMH. JBMH is a full-service community health care facility located in Burlington, Ontario. While employed at JBMH, DB was authorized to approve payment of invoices received from vendors who supplied services and/or products and equipment to the IT Department at JBMH.

12. During the material time, the Respondent registered the following three business names, in each instance identifying himself as the sole proprietor of the business and listing the Respondent's residential address as the address for the businesses:

- a) Apple-Gate Computers ("Apple-Gate"), registered May 11, 2000;
- b) Custom Computer Solutions ("Custom Computer"), registered January 15, 2002;  
and
- c) Clarkson Group (the "Clarkson Group"), registered January 18, 2008

13. The Respondent did not seek or obtain approval from RMFI with respect to his involvement in any of the businesses. RMFI was not aware of and did not approve any of the Respondent's outside business activities.

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<sup>8</sup> Paragraphs [39] – [41].

<sup>9</sup> Paragraphs [42] – [47].

<sup>10</sup> Paragraphs [48] – [55].

<sup>11</sup> Filed as Exhibit 3.

14. The Respondent set up bank accounts for each of Apple-Gate, Custom Computer and the Clarkson Group with himself as the sole signing officer for the accounts.

15. The Respondent also set up separate postal boxes for the delivery of mail to Apple-Gate and Custom Computer.

16. From April 2000 to May 2010, the three businesses invoiced JBMH approximately \$1,790,177, which DB approved for payment.

17. On March 7, 2011, JBMH commenced a legal proceeding in the Ontario Superior Court of Justice (“Statement of Claim”) against the Respondent, his spouse, DB and others, alleging, among other things, fraud, fraudulent misrepresentation, breach of trust, breach of fiduciary duty, misappropriation of property, unjust enrichment and conspiracy. The Statement of Claim made the following specific allegations:

- a) Between April 14, 2000 and approximately January 3, 2002, JBMH received and paid 67 invoices in the total amount of \$310,813.22 which were rendered to JBMH by Apple-Gate;
- b) Between January 3, 2002 and approximately March 3, 2006, JBMH received and paid 241 invoices in the total amount of \$1,112,217.97 which were rendered to JBMH by Custom Computer;
- c) Between January 14, 2008 and approximately May 21, 2010, JBMH received and paid 75 invoices in the total amount of \$367,145.81 which were rendered to JBMH by the Clarkson Group;
- d) All of the payments were authorized by DB; and
- e) Apple-Gate, Custom Computer and the Clarkson Group provided no services, products or equipment to JBMH.

18. As a result of the proceedings commenced against the Respondent by JBMH, MFDA Staff commenced an investigation of the Respondent’s activities.

19. On February 14, 2012, the Respondent attended an interview requested by MFDA Staff. At the interview, the Respondent admitted, among other things, that he had registered the business names identifying himself as the sole proprietor of the three businesses and listing his residential address as the address of each business, opened the bank accounts in the name of the businesses with himself as the sole signing officer for the accounts and set up the postal boxes for the businesses. The Respondent stated that after carrying out the foregoing steps, he provided DB with the bank card for the bank accounts, blank signed cheques for the bank accounts, and access to the postal boxes. The Respondent stated that he undertook all of the foregoing steps at the request of DB, who was a childhood friend. According to the Respondent, he had no further involvement with Apple-Gate, Custom Computer and the Clarkson Group, apart from receiving the payments and benefits described in greater detail below.

20. The Respondent stated he was not responsible for determining or directing the affairs of the three companies and stated that at all material times he was operating under the direction, or at the request, of DB. The Respondent stated he was not aware of the amounts that the businesses had invoiced JBMH.

21. The Respondent admitted that he received at least \$5,000 from DB during the time Apple-Gate was in operation.

22. The Respondent also admitted that while Custom Computer was in operation, he received, directly or indirectly, payments or benefits from DB or Custom Computer in the following manner:

- a) DB deposited monies in the Respondent's credit card account;
- b) DB deposited monies in the Respondent's Sears account;
- c) DB paid the Respondent's water account for his residence;
- d) DB paid the Respondent's gas account for his residence;
- e) DB paid the Respondent's hydro account for his residence;
- f) the Respondent wrote cheques to himself from Custom Computer's bank account;
- g) the Respondent wrote cheques to his spouse from Custom Computer's bank account;

h) the Respondent wrote cheques to “cash” from Custom Computer’s bank account

23. From March 22, 2004 to April 29, 2006, the Respondent received payments and benefits, directly or indirectly, from DB or Custom Computer totaling at least \$54,930.58.

24. The Respondent admits that while the Clarkson Group was in operation, he received payments and benefits from DB in the following manner:

- a) DB deposited monies in the Respondent’s credit card account;
- b) DB deposited monies in the Respondent’s Sears account;
- c) DB deposited monies in the Respondent’s Ford account; and
- d) DB deposited monies in the Respondent’s 407 ETR account.

25. From April 17, 2008 to June 25, 2010, the Respondent received payments and benefits, directly or indirectly, from DB or the Clarkson Group totaling at least \$58,042.45.

26. In summary, during the material time, the Respondent received payments and benefits, directly or indirectly, totaling at least \$117,973.03 from DB, Apple-Gate, Custom Computers, and the Clarkson Group. The Respondent admitted he used the monies he received directly to pay personal expenses and the monies he received indirectly, DB paid to third parties for the Respondent’s benefit or on his account.

27. The Respondent has cooperated with the investigation of the MFDA and has settled the claim issued by JBMH as against him. To date he has repaid \$45,000.00, taken from his RRSP savings and has agreed to make another \$45,000.00 payment on January 2, 2014 from his RRSP savings.

28. At all material times, RMFI’s policies and procedures, consistent with MFDA requirements, required all Approved Persons to disclose and report new outside business activities, and/or changes, including terminations, to existing outside business activities. Approved Persons were required to sign an annual Acknowledgement and Consent form

confirming they understood and agreed to comply fully with all securities laws, rules, regulations and all of RMFI's policies and procedures.

29. The Respondent executed RMFI's annual Acknowledgment and Consent forms confirming that he had disclosed all outside activities to RMFI, without advising RMFI of his involvement in Apple-Gate, Custom Computer or the Clarkson Group.

### **THE RESPONDENT'S POSITION**

30. The Agreed Statement of Facts includes the following paragraph:

32. The Respondent makes the following representations. Apart from the Respondent's own assertions, the Respondent has not furnished any evidence to support the representations, such that they do not constitute agreed facts as between Staff and the Respondent:

(a) The Respondent states he has consistently maintained that he was completely unaware of any fraudulent activity associated with any of the businesses registered under his name and that he had no intent to defraud JBMH or any other party. The Respondent states that he believed DB when, according to the Respondent, DB told him that the purpose of the businesses was to allow him to provide computer products and services to JBMH in a more efficient and cost effective way thereby providing a benefit to JBMH.

(b) The Respondent has consistently maintained that, since he had no involvement in the businesses, he was unaware of any obligation to report this as business activity.

(c) According to the Respondent, throughout the relevant time period, he had a drinking problem, from which he has now recovered. The Respondent also stated that he was manipulated by DB, in part due to his problem with alcohol,

and part of which related to his allegation DB had bullied him from the time he was a child.

(d) The Respondent believed that his involvement in the activities of DB did not in any way affect or jeopardize the interests of the Member [RMFI] or the Respondent's clients.

(e) In her interview with Staff, the Respondent's former wife, Mollie Cavan stated that she commenced divorce proceedings against the Respondent as a result of these incidents, but also that she did not believe that the Respondent knew what DB was doing with the businesses.

(f) Prior to these events, the Respondent states that, in his 30 years with RMFI, he was devoted to serving his clients and community. According to the Respondent, during his tenure he won several top sales awards and volunteered with several community organizations including Meals on Wheels, Junior Achievement and support programs for Canadian Olympians.

## **TESTIMONY OF THE RESPONDENT**

31. The Respondent affirmed the substance of his Position and added additional information.

32. With respect to his relationship with DB who he has known for 44 years, he said:

Q. Now you've said that you felt -- we've made it in our position that you felt bullied by him. Can you talk very briefly about that, and that dynamic in your relationship?

A. He was the type of person -- he handcuffed me once. He did all kinds of things to me once, twice or three times. But he also would say that he would be fighting all the time. He would punch people at the McDonalds and then they'd go across the desk. He would tell me -- we played hockey together. He would roughhouse me playing hockey together. So I think the -- there were many instances where he bullied me, but he also

bullied me emotionally. I just came back from surgery for a total hip replacement, one year ago today, actually, October, and I was in constant pain, and I think that also affected the way he could sort of manipulate me.

33. With respect to his drinking problem the Respondent said:

Q. You also have admitted that you had a drinking problem at that time. Do you still have an issue with alcohol?

A. No, I don't. I stopped drinking, it's April 1st of last year -- no, of this year, April 1st of this year. I picked April Fools because that's the day I would remember. ....

34. The Respondent testified that he first learned about this matter when he was served with the Statement of Claim on June 7, 2011: "I was shocked. I was aghast".

35. This is what the Respondent said about his failure to question DB or make any inquiries concerning the payments and benefits he received:

Q. It seems obvious now, after the fact, that there should have been red flags.

A. Yes.

Q. Can you explain why you didn't question him?

A. You know, when I read this, and I've gone through two years of this, you know, should I have, you know -- I guess it's difficult because if I read this, I should have asked. But knowing that here is a man who carried my father's coffin, I don't know, I don't know. Here's a man who doesn't drink, didn't smoke, had four children, I had four children, he worked at the hospital, he had procedures done at the hospital, he planned parties for the hospital, his boss, the CFO, was his best friend, that I knew as well, I don't understand how -- and I worked in a bank and I thought if there was anything inappropriate going on, would it take ten years for it to come out, and the answer is yes.

Q. What were you thinking when you received payments on your credit card or payments on your house bills; what were your thoughts when you received these payments?

A. You know, I mean the reality is, he told me not to worry about it, he told me, you know, not to, not to -- to trust him. So when a payment came in, you know.

THE CHAIR: He told you not to trust him?

MS. URSULAK: He told him to trust him.

THE RESPONDENT: Sorry, to trust him. Not to worry about anything. He said that the efficiency rating within his hospital was the highest in Canada. I don't know. I didn't -- I looked at it more as -- you know, now, obviously, it's horrific, but I looked at it more as I was, sort of, doing good, you know. I don't know. But not really, I don't really even thinking about it, though. I can't even think that I was thinking about something. I wasn't really even thinking. He told me not to think about anything. And my life was very complicated. I used to work 17-hour days. I used to, you know, sleep on the floor of my office for a very long period of time. You know, I don't know. It never -- it didn't touch my job, so I don't know that I gave it much thought, unfortunately. It didn't touch my job at all. It didn't affect my job. It didn't impede my job. I didn't -- you know, I guess, if anything, I am guilty of totally neglecting it, and this is what happens.

## **Discussion re penalty**

### **Legal considerations**

36. The primary goal of securities regulation is the protection of the investor.<sup>12</sup>

37. The considerations relevant to the appropriateness of the penalty are well established. *In the Matter of Arnold Tonnies*<sup>13</sup> it was stated that a Hearing Panel should consider:

- a) the protection of the investing public;
- b) the integrity of the securities market;
- c) specific and general deterrence;
- d) the protection of MFDA's membership; and

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<sup>12</sup> *Pezim v. British Columbia (Superintendent of Brokers)* [1994] S.C.J. 58, Iacobucci, J. at paragraphs 59 and 68.

<sup>13</sup> *In The Matter of Arnold Tonnies*, Hearing of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005 at page 22.

e) the protection of the integrity of the MFDA's enforcement process.

### **Relevant factors and considerations re penalty in this case**

38. The factors that Hearing Panels frequently consider when determining whether a penalty is appropriate are set out *In the Matter of Arnold Tonnies*.<sup>14</sup> The factors relevant to this case are set out below (*in italics*) followed by the applicable considerations.

*(a) The seriousness of the allegations proved against the Respondent*

Failure to disclose and obtain approval regarding other gainful occupations is serious. However, the degree of seriousness depends on the facts and circumstances which are considered in detail below.

*(b) The Respondent's past conduct, including prior sanctions*

The Respondent has no past disciplinary history with the MFDA.

*(c) The Respondent's experience and level of activity in the capital markets*

The un-contradicted evidence of the Respondent is that throughout his 30 years with RMFI, the Respondent was devoted to serving his clients and community. During this tenure he won several top sales awards and volunteered with several community organizations including Meals on Wheels, Junior Achievement and support programs for Canadian Olympians. For the past twelve years the Respondent held the position of financial planner with RMFI.

*(d) The harm suffered by investors as a result of the Respondent's activities*

The impugned conduct did not involve securities or the security industry. At no time was any client or investor funds at risk. No client suffered any loss.

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<sup>14</sup> *Supra*.

*(e) The benefits received by the Respondent as a result of the improper activity*

The improper activity was failure to disclose and obtain approval regarding other gainful occupations. Staff has made an issue of the benefit received by the Respondent (\$117,973.03 directly or indirectly over a period of ten years).

The Respondent has paid \$90,000.00 in full and final settlement of the JBMH claim as against him. This was paid from his personal Registered Savings Plan and therefore constitutes income subject to income tax.

*(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*

The activity of the Respondent did not involve capital markets directly or indirectly. At no time was any client or any investor funds in jeopardy. No client suffered any loss. There is no evidence that service to his every day clients was adversely affected.

Conclusion: there would be no risk to investors and the capital markets if the Respondent continues to operate in capital markets.

*(g) Previous decisions made in similar circumstances*

MFDA Staff seeks the following penalties against the Respondent:

- a) A permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) A fine of \$125,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- c) Costs attributable to conducting the investigation and hearing of this matter in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1.

In support of this submission MFDA Staff refers to three cases.

**Case # 1:** *In The Matter of Tadeusz (“Ted”) Bytnar*<sup>15</sup> the Respondent engaged in securities related business,\* interfered with the Member’s ability to conduct a reasonable supervisory investigation and \*failed to cooperate with the MFDA. The Respondent was found to have sold, referred or \*facilitated the sale of an investment product to 4 individuals, 2 of whom were clients of the Member. The Hearing Panel ordered the following penalties: (1) permanent prohibition; (2) \$90,000 fine for engaging in securities related business; (3) \$10,000 fine for interfering with the Member; (4) \$50,000 fine for failing to cooperate; (5) \$7,500 costs.

None of the facts marked with an asterisk and underlined exist in the present case. Indeed, the facts in this case are diametrically contrary. The Respondent: cooperated with Staff, facilitated the investigation and the money he received was unrelated to the investment industry.

**Case # 2:** *In The Matter of Bayant S. Dhindsa*<sup>16</sup> the Respondent became\* actively involved in three outside businesses \*despite a warning from his Member firm. The Hearing Panel ordered the following penalties: (1) permanent prohibition; (2) \$15,000 fine; (3) \$5,000 costs.

Again, the facts are dissimilar. The Respondent played no role in the operation of the three companies and honestly but mistakenly failed to realize he was required to obtain approval from RMFI with respect to his limited involvement in the three companies.

**Case # 3:** *In The Matter of Peiqing (Anna) He*<sup>17</sup> the Respondent \*engaged in securities related business by referring the sale of an investment product to four individuals outside the Member. The investment product was not approved for sale by the Member and was subsequently found to be a fraud. The Respondent stated that she received \$2,000 as commissions for the sales. The \*Panel accepted a settlement agreement which included the

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<sup>15</sup> Hearing of the Prairie Regional Council, MFDA File No. 201015.

<sup>16</sup> Hearing of the Pacific Regional Council, MFDA File No. 201119.

<sup>17</sup> Hearing of the Central Regional Council, MFDA File No. 201211.

following penalties: 1) permanent prohibition; and 2) \$5,000 in costs.

In the present case the three companies had nothing to do with the investment industry and there is no settlement agreement.

### **Additional considerations relevant to penalty**

39. The Respondent has complied with the MFDA's investigation, during which he has made admissions against his interest. He has cooperated in proceeding by way of the Agreed Statement of Facts. MFDA Staff acknowledges that in doing this the Respondent has saved both Staff and hearing time. He has also cooperated in resolving the action brought by the hospital, thereby saving further costs to JBMH and has made substantial restitution to JBMH.

40. Counsel for Staff acknowledges that the conduct of the Respondent indicates recognition by the Respondent of the seriousness of his misconduct.

41. The consequences of the Respondent's ineptitude have been devastating. He has lost life-long relationships with friends and most sadly, his family. This is how the Respondent described his situation:<sup>18</sup>

Q. What impact did that have on your personal life?

A. Well, my spouse, she's filed for divorce. My child doesn't talk to me, my 18- year-old child doesn't talk to me. All my other kids are, you know, because I live in a separate residence now, I have lost my family basically. But, you know, he [meaning DB] doesn't seem to have been affected at all.

Q. Okay. You've said that you're not living in the family home anymore.

A. Yes.

Q. Where are you living?

A. My mother's, my mother and father's house. The house that I have been living in for 49 years.

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<sup>18</sup> Transcript page 6, lines 22- 25; page 76 lines 1- 25 , and page 78 lines 1- 6.

Q. And what have you been doing to earn income over the last couple of years?

A. I drove an ice cream truck for a period of time. I went to some -- I pedaled some merchandise at some fairs. And lately I have tried to deliver Chinese food.

Q. Approximately how much have you earned over the last two years?

A. Less than \$20,000.

Q. So how are you surviving?

A. My sister is helping me with some funds. I don't pay anything there at the house. And my savings that were all due to -- they were all employer savings. So none of the monies that are in the accounts have anything to do with any of the monies that are discussed here.

### **Credibility of the Respondent**

42. In this case there are extremely unusual facts and circumstances verging on the bizarre:

- The dominating influence of DB (bullying, in the words of the Respondent).
- The Respondent's utopian trust in BD.
- The Respondent's egregious ineptitude regarding the operation of the three companies and the payments and benefits received.

43. The preliminary reaction to these facts and circumstances is disbelief. Thus, credibility of the Respondent is critical.

44. In making admissions against his interest in the course of the investigation the Respondent has manifested honesty. He has cooperated in proceeding by way of the Agreed Statement of Facts. He has also cooperated in resolving the action brought by the hospital.

45. Divorced persons do not usually speak favourably of each other. Thus, it is corroborative of the honesty of the Respondent that in her interview with Staff the Respondent's former wife stated she did not believe the Respondent knew what DB was doing with the businesses.

46. The Hearing Panel has evaluated the credibility of the Respondent testifying under oath.

47. The Panel concludes it is more likely than not, that the Respondent:

- unsuspectingly set up the three companies in the belief this would assist DB in his employment with JBMH;
- abdicated operation of the three companies to DB;
- accepted the payments and benefits without suspicion or inquiry;
- did not have any knowledge or suspicion of the illicit actions of DB;
- did not think the three companies constituted gainful business occupation;
- honestly but mistakenly failed to realize he was required to obtain approval from RMFI with respect to his limited involvement in the three companies;
- did not wilfully intend to deceive RMFI.

## **Decision**

48. Comparison of the facts in this case with the dissimilar facts in the three cases cited by Staff unequivocally supports the conclusion there is no basis for a permanent prohibition.

49. The Respondent has been excluded from the investment industry since he was discharged by RMFI on June 30, 2011 and has suffered woeful financial consequences. A partial prohibition extending this exclusion would be unduly punitive. It would prolong the ignominious low income employment circumstances he is experiencing and hinder the return to his previous earning capability. There will be no order for partial prohibition.

50. The seriousness of the failure to disclose the three businesses cannot be disregarded. A monetary penalty must be imposed despite the finding the Respondent did not wilfully intend to deceive RMFI and honestly but mistakenly failed to realize he was required to obtain approval from RMFI with respect to his limited involvement in the three companies.

51. Having regard to the dire financial circumstances of the Respondent a fine of \$5,000.00 is

imposed. Time to pay the fine is extended to January 31, 2015.

52. The foregoing Discussion Re Penalty supports the conclusion that the incompetence of the Respondent regarding the three companies does not extend to his long standing ability and accomplishments in the investment field. There would be no risk to investors and the capital markets, should he return to the investment field.

53. As a condition of returning to the investment industry the Respondent shall complete the Conduct and Practices Course and such additional course or courses as may be prescribed by the MFDA.

54. The Respondent has complied with the MFDA's investigation, during which he has made admissions against his interest. He has cooperated in proceeding by way of the Agreed Statement of Facts. MFDA Staff has acknowledged that in doing this the Respondent has saved both Staff and hearing time.

55. In recognition of this there shall be no order as to costs.

**DATED** this 26<sup>th</sup> day of February, 2014.

“Stanley R. Kurisko”

The Hon. Stanley R. Kurisko, Q.C.,  
Chair

“Susan L. Schulze”

Susan L. Schulze,  
Industry Representative

“Robert J. Guilday”

Robert J. Guilday,  
Industry Representative