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: Jack Louis Comeau

Heard: November 14, 2013 in Saskatoon, Saskatchewan by teleconference
Decision and Reasons: December 11, 2013

DECISION AND REASONS
(Penalty)

Hearing Panel of the Prairie Regional Council:

Daniel Ish, Q.C.	Chair
Elaine Bradley	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

Maria L. Abate	)	For the Mutual Fund Dealers Association of Canada
	)	
Shaunt Parthev, Q.C.	)	For Jack Louis Comeau
	)	

INTRODUCTION AND OVERVIEW

1. In a decision issued on July 30, 2013 this Panel found that all four allegations contained in a Notice of Hearing issued by the MFDA on August 13, 2012 were proven to the required standard.

2. In a teleconference hearing on November 14, 2013 the parties made submissions concerning the appropriate penalty to be levied upon the Respondent as a result of the Panel's findings. No additional evidence was called by the parties beyond what was before the Panel at the initial hearing on the merits on April 5, 2013 and May 16, 2013.

SUMMARY OF FINDINGS RE MISCONDUCT

3. A summary of the Panel's findings with respect to the four allegations is set out at paragraph 97 of the July 30, 2013 decision:

> (1) The Respondent breached MFDA Rule 1.1.1(a) by engaging in securities related business that was not carried on for the account and through the facilities of the Member.
>
> (2) The Respondent breached MFDA Rule 1.1.2 by engaging in off-book transactions and thereby interfering with the Member's ability to supervise the Respondent.
>
> (3) The Respondent breached MFDA Rule 2.1.1(c) in that he engaged in conduct unbecoming of an Approved Person by selling off-book products.
>
> (4) The Respondent breached MFDA Rule 2.1.1 in that he interfered with a reasonable supervisory investigation and made misleading and inaccurate statements thus he failed to observe high standards of ethics and conduct in the transaction of business.

4. The details surrounding the breaches by the Respondent are set out in detail in the decision of July 30, 2013. In summary, this Panel found that the Respondent engaged in off-book trading in an investment product offered by Edgeworth Properties. Over a period of several months the Respondent sold $1,167,000 of the Edgeworth product to 24 clients. The Respondent, an Approved Person, was fully aware that the Member (Sentinel Financial Management Corporation) had not approved the product.

5. Sentinel became aware of the off-book sales and when the Respondent was confronted he readily admitted that he knowingly sold the unapproved investment. After conducting an investigation, on September 14, 2010 Sentinel imposed a fine of $16,100 and costs of $5,000, for a total of $21,100.

6. The Panel concluded that at the time the Sentinel penalty was imposed the Respondent had not fully disclosed the extent of his dealings in the Edgeworth products. Initially he disclosed that he had sold the products to eight clients, he later revised that to 16 clients and later to 24 clients. Full disclosure occurred only after an investigation by MFDA, which was in addition to the initial investigation done by Sentinel. Sentinel reopened its investigation in August 2011. With the full facts before it, Sentinel imposed an additional penalty. The Respondent was suspended for a three month period effective September 1, 2011 and required him to complete an ethics and practice course. On November 9, 2011, prior to the expiration of the three month suspension, the Respondent resigned from Sentinel. He has not worked as an MFDA Approved Person since that time.

7. After a full review and assessment of the evidence, this Panel concluded that the Respondent, in addition to knowingly breaching Rule 1.1.1 (a) by trading off-book, did not cooperate either with the investigation of the Member or with the investigation of the MFDA. It was found that he was in breach of MFDA Rule 2.1.1 by his failure to cooperate with the investigation conducted by the Member. He interfered with the investigation and, in our view, was misleading by omission in some of his responses to direct inquiries. It was found that MFDA Rule 2.1.1 was breached because the Respondent did not observe high standards of ethics and conduct in the transaction of his business, his conduct was unbecoming and it was detrimental to the public interest.

8. The Panel found that the MFDA staff had proved all four allegations against the Respondent. However, it was our finding that Allegations #2 and #3 added little or no substantive weight with respect to our finding concerning Allegation #1. Thus, we were left with essentially two findings. First, that the Respondent had engaged in securities related business that

was not carried on for the account or through the facilities of the Member ("off-book trading"). And second, the Respondent interfered with a reasonable supervisory investigation and made misleading and inaccurate statements thereby failing to observe high standards of ethics and conduct in the transaction of business. These findings amounted to a breach of MFDA Rule 1.1.1 (a) and 2.1.1 respectively.

THE PARTIES' SUBMISSIONS ON PENALTY

9. The MFDA staff and the Respondent each provided the Panel with written submissions in support of their respective positions concerning appropriate penalty. In addition, oral submissions were provided to the Panel in a teleconference hearing on November 14, 2013. Both parties made reference to the MFDA penalty guidelines and to numerous previous decisions of tribunals which impose penalties for the breach of MFDA's rules and bylaws.

10. In summary, the MFDA staff submitted that the Respondent's penalty 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.
- A fine in the $125,000 to $175,000 range.
- An order for costs of $7,500 to $10,000.

11. MFDA staff made reference to a number of general considerations that it asked the Panel to take into account in determining appropriate penalty. It relied on the Supreme Court of Canada decision in *Pezim v. British Columbia (Superintendent of Brokers)* [1994], S.C.J. 58 which confirmed that the primary goal of securities regulation is the protection of the investor. The MFDA also relied on decisions of other MFDA panels which have found that sanctions imposed in the securities regulatory context should be protective and preventative, intended to prevent likely future harm to the capital markets. Also, it was submitted that general deterrence is an appropriate consideration in making orders that are both protective and preventative. A penalty must reaffirm public confidence in the regulatory system and ensure that the misconduct is not

repeated by others in the industry (see *Re Tonnies*, MFDA File No. 200503 (June 27, 2005)). The MFDA also outlined numerous other factors that panels have taken into account in determining penalty.

12. MFDA staff also made reference to the specific considerations in the present case. Some of the factors relied upon in the submissions included:

- The Respondent earned approximately $80,000 in commissions for the sale of Edgeworth Products.
- The Respondent minimized the sale of off-book products and suggested that his motives were always to act in the best interests of his clients because he believed the Edgeworth products were superior to the comparable products listed by Sentinel at the time.
- The Respondent was not forthright with the Member and proceeded to frustrate the Members' investigation and mislead it about the degree of his involvement in the sale of Edgeworth products.
- The failure to fully disclose the pertinent information over a period of approximately 14 months (between June 23, 2010 and August 10, 2012) interfered with the investigation of both the Member and MFDA.

13. The Respondent replied that an appropriate penalty should be:

- No further penalty beyond the fine and costs of $21,100 and the three month suspension imposed by the Member in September 2010 and August 2011 respectively.
- No costs or, alternatively, modest costs.
- No prohibition and the Respondent be allowed to reapply to be an Approved Person immediately subject to completing what other further courses are recommended.

14. Mr. Parthev on behalf of the Respondent made a number of general points and a number of specific points in his submissions. He submitted that the Respondent has already paid a

significant cost for one mistake that he made over a lengthy career. In addition to the penalties imposed by Sentinel, the Respondent resigned from Sentinel during the three month suspension period and, because of the current proceedings, has not been able to work as an Approved Person. Thus he has served a *de facto* suspension of over two years. In addition, it was submitted that he suffered a significant reputational cost exacerbated by the fact that the community in which he works and lives is a small one. Also, he has lost clients, lost commissions of approximately $270,000, incurred costs of $23,000 to have another Approved Person take over his business and incurred significant legal expenses. It was submitted that the estimate of the total cost of the formal and informal sanctions experienced by the Respondent were approximately $600,000.

15. The Respondent acknowledged that the purpose of the MFDA rules is protection of the public but, it was submitted, that the MFDA fully knew the facts surrounding the Respondent's sale of Edgeworth products in August 2011 and was prepared to allow him to continue as an Approved Person and that continued status would still be in place today pending the current penalty decision. Thus, it was argued that the MFDA by its own actions did not see the Respondent's continued work as an Approved Person as a significant risk to the public.

16. The Respondent also submitted that the hearing with respect to misconduct conducted by this Panel was largely unnecessary because one of the most significant allegations against the Respondent was that he had destroyed records and the Panel found that allegation to be unfounded. Because of the Respondent's vehement denial that he did not destroy records, the Panel Hearing had to proceed only to conclude that the Respondent's position was correct. Thus, any costs for the hearing should not be attributable to the Respondent and there should be no inferences drawn about the Respondent's attitude because the hearing proceeded.

17. In his submissions the Respondent made reference to the July 30, 2013 decision of this Panel on the merits of the misconduct and referred to three matters in particular. The first was that the penalties imposed by the Member on the Respondent will be a relevant factor in determining the current penalty (see paragraph 73). The second was that this Panel determined that Allegation #2 and Allegation #3 were essentially extensions of Allegation #1 and should not

be seen as exacerbating the misconduct (see paragraph 78-82). And the third was that while this Panel found that the Respondent did not observe high standards of ethics and conduct and was unbecoming and detrimental to the public interests, it did not find explicitly that the Respondent was in breach of Bylaw 22.1, which imposes a positive obligation on an Approved Member to cooperate with an investigation. The Respondent also made reference to the MFDA Penalty Guidelines and numerous previous tribunal decisions.

ANALYSIS AND DECISION ON PENALTY ISSUE

18. The MFDA Penalty Guidelines have been developed to assist hearing panels in determining appropriate penalties. The publication of sanction or penalty guidelines is an approach that has been adopted by other regulatory bodies as well. The goal is that hearing panels treat such guidelines as indicative of industry expectations and as relevant to a penalty determination, although they are neither exhaustive nor determinative. The Guidelines do not prescribe specific results but set out factors that panels should take into account in determining penalties. The Guidelines are careful to preserve the individualization of sanctions and not suggest a blanket approach. MFDA panels often refer to the Penalty Guidelines and to other MFDA panel decisions, decisions of other investment industry tribunals and regulatory bodies and decisions of the courts. The following list represents a fair summary of the factors that these various bodies and tribunals have taken into account:

- 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;
- Client confidence or non-confidence toward the respondent as a result of the infraction;
- The benefits received by the respondent as a result of the improper activity;
- 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 damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- 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;

- The need to alert others who are permitted to participate in the capital markets of the consequences of inappropriate trading activity.
- Previous decisions made in similar circumstances.

(See *Re Tonnies*, MFDA File No. 200503 (June 27, 2005); *Belteco Holdings Inc.* (1988), 21 O.S.C.B. 7743; *M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133; *Lamoureux (Re)*, [2002] A.S.C.D. No. 125 and *Re Piett,* MFDA File No. 201206 (September 25, 2012)

We will now turn to an assessment of the most pertinent factors that we feel should be taken into account in determining penalty in this matter.

Seriousness of the Misconduct

19. The conduct of the Respondent in this matter is a serious regulatory violation in two significant respects. The MFDA rules and regulations are put in place for the protection of clients and are relied upon generally by the public to feel assured that there is oversight of the industry. It is necessary that there is confidence that the regulatory rules are followed, which include confidence that recommended trades by an Approved Person have received the scrutiny and approval of the Member firm. We agree with the Panel in *Re Breckenridge,* MFDA File No. 200718 (November 14, 2007) where it outlined the public interest rationale underlying Rule 1.1.1 (a). At page 17 and 18 of the *Breckinridge* decision, the Panel said:

> We agree with the submission of Enforcement Counsel that MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. This Rule creates a regime where an Approved Person is only permitted to sell investment products that have been first approved for sale by the member with which the Approved Person is registered and which are sold through the facilities of that Member.
>
> Rule 1.1.1(a) is designed to protect both the Member and its clients. When a transaction is done off the books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor.
>
> Previous MFDA Hearing Panels have held that an Approved Person who facilitates investments by clients of the Member in products or companies unknown to and unapproved by the Member, or who acts as an intermediary between clients and the perpetrators of an investment scheme, is engaged in

securities related business outside of the Member and has, therefore, breached Rule 1.1.1.

> In the Matter of Joseph Van Der Velden and Andrew Stokman, MFDA Hearing Panel, Reasons for Decision dated October 14, 2005, pp. 2-3.
>
> In the Matter of Ernest Ming Chung Lo, MFDA Hearing Panel, Reasons for Decision dated April 3, 2006, p. 12.

The conduct of the Respondent in this case by recommending and facilitating the trade of Edgeworth products denied his clients the benefit of the system of checks and balances put in place to protect them. His conduct undermined the rationale for MFDA Rule 1.1.1 (a) which requires that all securities related business is carried on for the account of the Member and through the facilities of the Member. Moreover, the Respondent's conduct was not an isolated instance; it occurred over a period of several months and it involved 24 clients investing a total in excess of $1.1 million.

20. The seriousness of the Respondent's misconduct did not stop there. If it had, and because of his ready admission to trading off- book, one suspects that there may have been a settlement agreement between the parties. The Respondent did acknowledge to the Member his wrongdoing but as our findings in the primary decision demonstrate he prolonged full disclosure of the extent of his off-book trades of Edgeworth products. It was a case of progressive disclosure, first involving disclosure of eight clients, then 16 and then ultimately 24 clients. Moreover, when the Member imposed a fine of $16,100 costs of $5,000, it was under the belief that only eight clients were involved and that only $16,100 in commissions was involved. Over the months following September 2010 the full extent of the off-book trades were ultimately revealed disclosing that 24 clients were involved with commissions of approximately $80,000. It is true that a breach of section 22.1 of By-law No. 1 was not alleged, and therefore not considered by this Panel, nevertheless this we did find that the Respondent "interfered with the investigation and was misleading in some of his responses to direct inquiries". This conduct significantly exacerbates the seriousness of the initial wrongdoing. He knowingly traded off book and culpably impeded the investigation. The cumulative effect is very serious misconduct in our view.

Client Harm

21. There is no evidence that any of the Respondent's clients suffered financial loss as a result of investing in the Edgeworth products. In its submissions, the MFDA suggested that Edgeworth Mortgage Investment Corporation may be undergoing a restructuring or be in receivership which may increase the likelihood that investors will not be able to recoup their investments. While a submission, there was no evidence before us of a restructuring other than a statement made by the Respondent himself in this testimony of his understanding that such may be the case. Further, without evidence of actual loss or actual likelihood of loss it would be speculation on our part to place any weight on this submission. In addition to no financial harm being incurred by any of the Respondent's clients as a result of his off-book trading, there is no evidence that any of his clients had lost confidence in him. Indeed, there was a letter tendered in testimony in the primary hearing that one of the investors had written to Sentinel expressing full confidence in the Respondent.

Respondent's Recognition of the Seriousness of the Off-Book Trading

22. There was no issue whatever that the Respondent knew from the outset that he was breaching MFDA rules by selling Edgeworth products. In his testimony, and in submissions, he took the position that notwithstanding the fact that Edgeworth products were not approved, his motives were honourable since he was always acting in the best interest of his clients because he believed Edgeworth was a product superior to the comparable one that had been approved by Sentinel. It is the Panel's view that the Respondent never fully recognized, and perhaps does not to this day fully recognize, the seriousness of his infraction. His activity of selling non-approved investments, and thus avoiding the oversight and compliance/control mechanisms of the Member, were anything but acting in the best interests of his clients. The regulatory regime exists for the protection of the investing public, including the 24 people to whom the Respondent recommended the purchase of Edgeworth products.

Benefits Received by the Respondent

23. As previously outlined, the Respondent earned approximately $80,000 in commissions through the sale of Edgeworth products. These were standard commissions and were not

enhanced in any way to make it more profitable for the Respondent to sell these products. In the penalty submissions the Respondent, through his counsel, advised that the Respondent had begun repaying commissions to the Edgeworth clients. The Panel was asked to take this into consideration and to make an order to assist the further repayment of the commissions through the cooperation of the MFDA.

Deterrence

24. The deterrent goal of any penalty is significant both with respect to the specific deterrent effect on the particular respondent and general deterrence. The deterrent effect of penalties in the regulation of the investment industry generally has been recognized by the Supreme Court of Canada. Thus, a penalty imposed by this Panel must be mindful that it should serve to deter others in the capital markets from engaging in similar activity. Toward this end, this Panel is of the view that any financial gain made through commissions of non-approved products as a general matter should not exceed the penalties imposed on a respondent for the improper conduct (although it is recognized that the particular facts of any specific case may alter this view). In our view, to do otherwise would remove a very important mechanism to deter others from engaging in similar improper activity.

Risk to Investors and Integrity of the Capital Markets

25. The Panel is of the view that the risk to investors if the Respondent is allowed to continue to participate in the capital markets is not significant. The Respondent has had a 17 year career in the investment industry without any previous record of discipline. Nevertheless, his actions and the knowledge of them by investors generally do have an impact on the integrity of the capital markets. While investors recognize that there are no guarantees on returns or safety of investments, they are entitled to expect that the regulatory regimes put in place to minimize risk be honored by those in the industry with whom they are dealing. The Respondent did not honor those regulations although he committed to do so by virtue of being an MFDA Approved Person.

Respondent's Past Conduct

26. This Panel considered the fact that the Respondent was an experienced registrant in the securities industry and has never been the subject of any disciplinary proceedings, which must be considered to his credit. However, he cannot claim leniency because of inexperience or being a newcomer to the industry.

Previous Decisions

27. The MFDA and the Respondent both referred us to numerous decisions as a guide to determine an appropriate penalty range for the two major infractions of MFDA rules by the Respondent. We will briefly review them in the context of the facts before us.

28. In *Re Van Der Velden*, MFDA File No. 200507 (October 14, 2005), the Respondents had engaged in securities related business not carried on for the account of the Member. The Panel indicated that it would not be inaccurate to describe what the two Respondents had done as a "Ponzi scheme". It was also found that they had placed themselves in a conflict of interest position which they had not reported to the Member. The amounts of money involved were $2.15 million for one Respondent and approximately $1 million for the other. Both Respondents were permanently prohibited from conducting securities related business and received significant fines. In the case of one of the Respondents, *Van Der Velden*, the fine was $500,000 because he was a branch manager who had responsibility for the supervision of a number of people engaged in the industry and the Panel took into account this leadership role, which attracted a greater fine. The other Respondent was less involved in the scheme but went along with it and, in addition to the permanent prohibition, received a fine of $75,000. In the present case, the Respondent was not engaged in a Ponzi scheme and did not occupy the position of the branch manager or any other supervisory role.

29. In *Re Breckenridge*, MFDA File No. 200718 (November 14, 2007), the Respondent had breached Rule 1.1.1 by engaging in securities related business outside the Member and selling securities not approved amounting to a total of $1.9 million. In addition he was found to have breached Rule 2.1.1 by failing to observe high standards of ethics and conduct when he deliberately concealed from the Member the sales in question. The Panel imposed a permanent

prohibition, a fine of $350,000 and costs of $7,500. The facts of the *Breckenridge* decision are strikingly similar those before us because they involved off-book trading and failing to fully disclose the extent of the trading to the Member.

30. In *Re Larson*, MFDA File No. 200826 (October 14, 2009), the Respondent facilitated investments in the amount of approximately $1.76 million for seven clients. The investments were not carried on for the account of the Member or through the facilities of the Member, contrary to both Rule 1.1.1 and 2.1.1. The Respondent also directed proceeds from clients' accounts to his personal bank account, thereby engaging in personal financial dealings with clients, contrary to MFDA Rules 2.1.4 and 2.1.1. The Respondent also failed to attend an interview of the offices of the MFDA. The Panel imposed as a penalty a permanent prohibition and fines totaling $205,000, as well as costs of $7,500. Clearly there are significant distinctions being the situation in *Larson* and the one before us. The present Respondent was not involved in any redirection of clients' money to his personal bank account. Also, while we have found that he was not as forthcoming as he should have been to inquiries from the Member and MFDA, he did attend all the meetings of the MFDA and the Member to which he was invited.

31. The last case relied upon by the MFDA staff was *Re Piett,* MFDA File No. 201206 (September 25, 2012). The Respondent was found to have engaged in misconduct for engaging in securities related business that was not carried on for the account of and through the facilities of the Member. He was also found to have engaged in undisclosed outside business activity and conduct unbecoming contrary to MFDA Rules 1.2.1 (d) and 2.1.1. The total amounts in question were approximately $1.2 million and he earned approximately $157,000 in commissions. Mr. Piett was a 25 year veteran of the mutual fund industry. To facilitate the purchase of the off-book investments, the clients sold mutual funds that they had held and incurred significant fees as a result. Also, his responses to the inquiries of the Member with respect to the transactions were seriously misleading, for instance, he said that the clients in question were seeking other financial solutions but he did not disclose that he was involved in assisting the clients in other investments. It appears that the actions of the Respondent Piett were actually more misleading than those of the present Respondent, Mr. Comeau. While we do not want to understate Mr. Comeau's lack of cooperation, his improper actions were mainly lack of disclosure as opposed to

active misrepresentation. In his submissions, the Respondent distinguished the Piett decision on the grounds that Piett was not authorized to sell exempt securities whereas Mr. Comeau was qualified to sell Edgeworth products if Sentinel had authorized it. We do not put any weight on this latter point. The penalty imposed in the *Piett* decision was a permanent prohibition, a fine in the amount of $175,000 and costs in the amount of $7,500.

32. The first case relied upon by the Respondent was the decision of an MFDA Panel accepting and approving a settlement agreement. In *Re Mazzota*, MFDA File No. 200924 (March 14, 2011) the Panel approved a settlement agreement which imposed a three month suspension on the Respondent, $2,500 costs and repayment to clients "the total amount of compensation that the Respondent" retained in respect of the purchase of the investments in question by the clients. The improper conduct of the Respondent in the *Mazzota* case was off-book trading of approximately $3.46 million in investment products to approximately 31 clients. The Respondent also admitted to carry on a dual occupation, which was not disclosed to and approved by the Member.

33. In *Mazzota* the Panel acknowledged a number of mitigating factors including the following:

- The Respondent's conduct occurred in the early days of the MFDA's regulatory mandate and prior to the issuance of many Member regulation notices, disciplinary decisions and other sources of guidance.
- The Respondent did not have a previous disciplinary record over an approximate 30 year career in the financial services industry.
- The Respondent co-operated with staff throughout its investigation of his conduct.
- The Respondent accepted responsibility for his misconduct and demonstrated remorse.
- By entering into a settlement agreement, the Respondent avoided the need for a potentially lengthy hearing that would have entailed additional effort, time and expense for the MFDA.

34. The present Respondent placed considerable weight on the *Mazzota* decision submitting that the misconduct in question was every bit as serious as that involved in the present case yet it attracted only a three month suspension and a disgorgement of commissions. Counsel for MFDA distinguished the *Mazzota* case on the basis that it was a settlement agreement, which was a factor the Panel seemed to take into account to some significant extent, and that it was within the context of a greater and rather pervasive financial fraud that was occurring at the time.

35. It is difficult for this Panel to "square" the *Mazzota* decision with the preponderance of decisions by other MFDA panels and panels from other regulatory bodies. The conduct in issue in *Mazzota* appears equally as serious as that in the numerous cases cited above and other cases. The off-book trading in *Mazzota* involved a very significant amount of money. It must be remembered that in *Mazzota* the Respondent immediately acknowledged his transgression and fully cooperated. We have found that Mr. Comeau while acknowledging his transgressions breached another MFDA Rule by not fully cooperating. Thus we have two significant transgressions whereas in *Mazzota* there was only one major transgression. Nevertheless, the *Mazzota* penalties seem to be out of line with most of the previous decisions and, in our view, cannot be fully explained by the Respondent's cooperative conduct or the fact that it was a settlement agreement.

36. The Respondent made reference to *Re Irwin*, MFDA File No. 200915 (April 28, 2010). In that decision the Respondent engaged in off-book trading of approximately $805,000 US of investment products to 24 clients. The Respondent received compensation of $161,000 US and it appears that he was also engaging in a dual occupation. The penalty imposed was a five year prohibition and a fine of $40,000. A similar case cited by the Respondent was *Re Johns*, MFDA File No. 200905 (June 11, 2010) which involved off-book trading of approximately $1,070,500 US to 25 clients resulting in nearly $240,000 US commissions. The Respondent in *Johns* was suspended for six years and received a fine of $50,000. Mr. Parthev, on behalf of the present Respondent, pointed out that there was no reference in the settlement agreements in either the *Irwin* or *Johns* cases to mitigating factors whereas there are mitigating factors in support of Mr. Comeau. Also, it was argued that a lengthy penalty imposed on Mr. Comeau, who is 56 years of age, would have a disproportionate negative effect on him whereas in the *Johns* case the

Respondent was only 34 years old.

37. The Respondent also relied upon *Re Kricievsky,* MFDA File No. 200920 (December 15, 2009). In this case the Respondent was involved in the sale of $1.8 million of investment products to approximately 44 clients. All sales were off-book. He received commissions of $72,000 but had rebated all but $36,000 at the time the settlement agreement was approved by the Panel. The conduct of Mr. Kricievsky, which Mr. Parthev characterized as egregious, included ignoring an express written direction and oral direction that he refrained from selling the particular product and making untrue and misleading statements about the product to clients. Further, there were three complaints from clients that were received by the Member concerning purchasing the product. Under the terms of the settlement agreement, Kricievsky was suspended for five years, was fined $5,000 and paid no costs. In approving the settlement agreement the Panel noted that the Respondent had fully cooperated with the investigation, had limited sources of income, was unemployed, was 60 years of age and was in ill health.

38. It was argued by the Respondent that the egregious conduct of Mr. Kricievsky clearly distinguishes that case from the present one. The five year suspension approved in the Kricievsky case, it was submitted, suggests that a much shorter period of suspension is warranted for Mr. Comeau.

39. In *Re Franco*, MFDA File No. 201016 (May 6, 2011) the Respondent had engaged in an undisclosed gainful occupation not approved by the Member. He facilitated participation of 26 clients in investing a total of $428,279 in four charitable donation programs which were not disclosed to or approved by the Member. He received approximately $80,000 in commissions. In *Franco* the Respondent and the MFDA staff jointly agreed on an appropriate penalty of a five year suspension, a $40,000 fine and costs in the amount of $5,000. The Panel agreed with the proposed penalties noting that the Respondent's misconduct was aggravated because he continued to sell the charitable programs even after the Canada Revenue Agency had given notification that there may be income tax reassessments as a result of the charitable donations. The Panel also commented that a mitigating factor was no previous disciplinary record. The Panel noted a concern about the proposed fine being less than the commissions received by the Respondent, but took the view that the five year suspension off-set the concern. Mr. Parthev

argued that the *Franco* case is the type of case that would warrant a full rebate of profits and involved more egregious conduct than that engaged in by Mr. Comeau. He argued that any period of suspension imposed in this case should be significantly shorter.

40. The last decision relied upon by the Respondent was *Re Smilestone*, MFDA File No. 201129 (August 8, 2013). In this case the Respondent falsified signatures, engaged in discretionary trading, misled investigators by giving false answers to many of the investigators' questions and failed to comply with the Member's policies. The Panel approved a settlement agreement between the MFDA and the Respondent providing for a two year prohibition, a fine of $10,000, completion of an ethics course, close supervision and costs of $5,000. The Panel approved the settlement agreement, including the penalties, notwithstanding the serious violations involved. Numerous mitigating circumstances were outlined in the decision. With respect to the forgery, the Panel said the forgery did not result in any harm to the person whose signature was forged and that the Respondent did not benefit from the misconduct. He also cooperated fully with the investigation regarding the forgery allegation although he appears to have initially denied the allegations when confronted. The Panel concluded that the proposed penalties were keeping with the purpose of the MFDA Rules which are intended to enhance investor protection and promote public confidence in the Canadian mutual fund industry. The Panel also concluded that the penalties would have a sufficient deterrent effect. The present Respondent argued that the *Smilestone* case involved much more serious conduct than what the present Panel found with respect to Mr. Comeau. By comparison, it was submitted that Mr. Comeau's penalty should certainly be less than the two years' prohibition in *Smilestone*.

CONCLUSION RE PENALTY

41. The Panel has carefully considered the evidence, the submissions of Counsel MFDA staff, the submissions of the Respondent and previous authorities with respect to penalty, including the numerous factors that should be taken into account. It can be seen from the summary of the previous decisions that the penalties for conduct similar to that engaged in by Mr. Comeau cover a considerable range. While the preponderance of them impose significant penalties, often including permanent prohibition or prohibition for several years, the *Mazzota*

decision involved only a three month prohibition for serious misconduct. It is our view that the *Mazzota* decision is difficult to reconcile with other decisions.

42. The conduct of Mr. Comeau is deserving of a serious response by way of penalty. He engaged in off-book trading and was far less than forthcoming with the Member and the MFDA thereby impeding their respective investigations. In the Respondent's favor, he has had a lengthy and successful career in the investment industry without incurring any previous discipline. Also, his misconduct has not caused harm to any of his clients and does not seem to have impaired his clients' confidence in him. Nevertheless, he breached fundamental rules of the MFDA which are put in place to protect the public.

43. Mr. Comeau's misconduct was not the most egregious when compared to past cases but it was still very serious, leading us to conclude that a lengthy prohibition is in order and that a fine in the mid-range is appropriate. As a result, we order that Mr. Comeau be prohibited from conducting any securities related business in any capacity for a period of 18 months. Also, it is our view that a fine in the amount of $125,000 is appropriate given that the commissions he earned were approximately $80,000. It is also our view that costs in the amount of $7,500 are appropriate. However, two factors should discount the fine and the costs. First, this Panel previously indicated that it would take into account the fine and costs paid to Sentinel. This we will do. Also, we have an indication from Mr. Comeau, through his Legal Counsel, that he has partly repaid the commissions and intends to repay the balance in the future. As a result, of these two factors, we find that a reduced penalty of $100,000 is appropriate with costs in the amount of $5,000.

SUMMARY AND CONCLUSION

44. In summary, we order that the appropriate penalties to be imposed upon the Respondent for breach of the four allegations set out in the Notice of Hearing, as found by us in our decision of July 30, 2013, are:

(1) The Respondent is prohibited from conducting securities related business in any

capacity while in the employ of or associated with any MFDA Member for a period of 18 months.

(2) A fine in the amount of $100,000.

(3) Costs in the amount of $5,000.

(4) The completion of the Conduct and Practices Handbook Course before reinstatement as an Approved Person.

DATED this 11th day of December, 2013.

"Daniel Ish"
Daniel Ish, Q.C.,
Chair

"Elaine Bradley"
Elaine Bradley,
Industry Representative

"Greg Wiebe"
Greg Wiebe,
Industry Representative

DM 363059 v2