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: Penny Diann Deming

Heard: June 4-5, 2014 in Vancouver, British Columbia
Decision and Reasons: October 20, 2014

DECISION AND REASONS

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Holly A. Millar	Industry Representative
Brian Cheung	Industry Representative

Appearances:

Faye Emmanuel	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada
	)	
Simon Kent	)	Counsel for the Respondent
	)	
	)	

1. On November 26, 2013 the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing in respect of a disciplinary proceeding commenced by the MFDA against Penny Diann Deming (the "Respondent"). At a hearing held on June 4, 2014, the Hearing Panel was advised by the parties that they had reached agreement on an Agreed Statement of Facts (the "ASF"). At the hearing, by agreement, the ASF and pages duly signed by Staff of the MFDA ("Staff"), and by the Respondent, were entered into evidence (Exhibit 4). Counsel for the Respondent advised the Panel that the Respondent accepted the ASF, and did not oppose the penalty proposed by Staff:

The Evidence

2. It is appropriate at this point to set out the Agreed Statement of Facts:

I. INTRODUCTION

1. By Notice of Hearing dated November 26, 2013, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Penny Diann Deming (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegations:

> **Allegation #1**: Between May and August 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling 240 shares in a company she owned to AW and MM at a total price of $100,000, contrary to MFDA Rules 1.1.1(a) and 2.1.1.
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> **Allegation #2**: Between May and August 2010, the Respondent had and continued in another gainful occupation which she did not disclose to the Member by selling 240 shares in a company she owned to AW and MM at a total price of $100,000, contrary to MFDA Rules 1.2.1(d) and 2.1.1.
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> **Allegation #3**: Between August 2010 and November 2011, the Respondent engaged in personal financial dealings with client MM by selling MM 120 shares

in the Respondent's company at a price of $50,000 contemporaneously with MM becoming a client of the Member, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interest of client MM, contrary to MFDA Rules 2.1.4 and 2.1.1.

II. IN PUBLIC / IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-Law No. 1. On agreement of the parties, Allegation #2 and #3 has been withdrawn.

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty is a four (4) year and six (6) month prohibition on the Respondent's capacity to conduct securities related business while in the employ of, or sponsored by, any MFDA Member; a fine in the range of $20,000; and a costs award of $2,500.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the

Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against her.

Registration History

8. The Respondent was registered in British Columbia as a mutual fund salesperson with Worldsource Financial Management Inc. ("WFM"), a Member of the MFDA, from September 24, 2009 to June 5, 2012.

9. At all material times, the Respondent carried on business in White Rock, British Columbia.

10. Prior to WFM, the Respondent was registered in British Columbia:

a) from August 2006 to Sept 2009, at Portfolio Strategies Corporation, also a Member of the MFDA, as a branch manager and mutual fund sales person; and
b) from October 2003 to February 2006, at Royal Mutual Funds Inc., also a Member of the MFDA, as a mutual fund sales person.

11. The Respondent also held a license to sell insurance in British Columbia which was terminated on June 1, 2012.

12. The Respondent is currently not registered or licensed in any capacities in the Canadian securities or insurance industries.

13. The Respondent has not previously been the subject of disciplinary proceedings.

14. With the exception of providing financial records for SHE as requested by Staff, the Respondent has cooperated with the MFDA's investigation of this matter.

SHE and the Respondent's acknowledgements to WFM

15. On April 10, 2006, SHE Financial Group Inc. ("SHE") was incorporated under the BC Business Corporations Act. At that time the Respondent was the sole shareholder and director of SHE.

16. According to the Respondent, the business objective of SHE was to build a financial services agency across Canada consisting of female brokers providing services to female clients.

17. On or about September 24, 2009, the Respondent entered into an agreement with WFM whereby WFM retained the Respondent to act as a mutual fund advisor ("WFM Agreement"). According to the WFM Agreement, the Respondent agreed:

a) to comply with the rules, policies and by-law of the MFDA;
b) not to sell any exempt security without having received prior written confirmation from WFM that she is authorized to sell such securities; and
c) that all sales of securities must be placed through WFM and must be processed, and records of such trades maintained, in accordance with WFM's Policies and Procedures Manual.

18. The WFM Agreement allowed the Respondent to engage in outside business activities, if the activities were disclosed in accordance with their Policies and Procedures Manual. The Respondent disclosed and WFM permitted the Respondent to act as an insurance salesperson through SHE and to recruit advisors for SHE.

19. On or about October 16, 2009 Worldsource Wealth Management Inc. ("WWM), a related company of WFM, and SHE, entered into a Letter of Understanding whereby WWM advanced SHE $50,000 in the form of a loan.

20. On or about October 16, 2009, WWM loaned SHE $50,000.

21. In November 2009, 2010 and 2011 mutual fund registration renewal applications, the Respondent disclosed that her non-mutual fund related business activities were the sale of insurance for both her and SHE.

22. In or about April 2010, the Respondent prepared a document entitled "Shefinancial group inc. proposal" (the "Proposal"). The Proposal stated that its purpose was to secure funding for the expansion of SHE. The Respondent did not disclose the existence of the Proposal to WFM or WWM, nor did she provide them with a copy.

Sale of shares in SHE

23. In or about May 2010, the Respondent met AW through a mutual friend at a business networking event. At the time AW had an online business development company called AMW Media Ventures.

24. In May 2010, the Respondent solicited AW's investment in SHE by:

a) providing AW with a copy of the Proposal;
b) verbally stating that AW would become a 10% shareholder in SHE for a $50,000 investment; and
c) sending AW e-mail correspondence stating that the Respondent was seeking an investor in SHE for a $50,000 contribution yielding a return on interest of 10% or 10% of shares.

25. In or about June 2010, the Respondent and AW entered into an agreement whereby AW would provide social media/online marketing consulting/IT services to SHE for $10,000. They also discussed the possibility of AW becoming a salaried employee of SHE, depending on the future growth of SHE.

26. Between June and September 2010, AW provided the services under the contract to SHE.

27. In or about June 2010, AW provided $50,000 to the Respondent for the purposes of becoming a 10% shareholder in SHE; $40,000 of the funds were payable to the Respondent and $10,000 was payable to SHE. The funds were partially payable to the Respondent because she was the owner of the shares being sold.

28. On or about June 3, 2010, the Respondent met MM at a breast cancer fundraiser organized by the Respondent.

29. Between June 3 and August 5, 2010, the Respondent solicited MM's investment in SHE by:

a) providing MM with a copy of the Proposal; and
b) verbally stating that MM would become a 10% shareholder in SHE for a $50,000 investment.

30. In or about August 2010, MM provided the Respondent with $50,000 for the purposes of becoming a 10% shareholder in SHE. The funds were payable to the Respondent because she was the owner of the shares being sold.

31. On August 6, 2010, the Respondent entered into an agreement with AW, whereby the Respondent agreed to sell AW 120 of her 1200 common shares in SHE to AW for a total purchase price of $50,000.

32. On August 6, 2010, the Respondent entered into an agreement with MM, whereby the Respondent agreed to sell MM 120 of her 1200 common shares in SHE to MM for a total purchase price of $50,000.

33. On or about August 6, 2010, 120 common shares were transferred to each of AW and MM. The Respondent used the services of a corporate lawyer to complete both the sale and the transfer of shares to AW and MM; AW and MM were not represented by counsel.

34. Between August 19, 2010 and October 2011:

a) AW, MM, and the Respondent attended SHE shareholder and business meetings;
b) AW was paid $5,000 towards her employment contract with SHE;
c) AW and MM carried and distributed SHE business cards with their names on them;
d) AW and MM held themselves out as VP, Social Media and Marketing, and VP, Public Relations of SHE, respectively;
e) Between 2010 and November 2011, AW and MM were dissatisfied in their business dealings with the Respondent and communicated this to her; and
f) AW and MM asked the Respondent to provide an accounting of their investment in SHE and for the financial statements of SHE and were provided with limited information.

35. On or about November 14, 2011, AW and MM demanded that the Respondent repay them the purchase price for their shares in SHE.

36. There was nothing in the share purchase agreement between the Respondent, AW and MM that obligated SHE or the Respondent to return monies to AW and MM.

37. On or about November 17, 2011, the Respondent told AW and MM that she was seeking an investor to purchase their shares in SHE.

38. The Respondent did not return AW or MM's investment in SHE nor did she secure an investor to purchase their shares.

39. The Respondent defaulted on the loan made by WWM to SHE.

40. In or about May 2012, the Respondent filed for personal bankruptcy in British Columbia.

41. On June 5, 2012, the Respondent's registration with the Member ceased. In or about June 2012, the website and email address for SHE Financial ceased to be operational. In or around the same time, the Respondent moved to a location outside of Canada.

42. The Respondent participated in an investigation interview (the "Interview") with Staff on June 7, 2013. During the Interview, the Respondent stated that she was the co-owner of a bar and was engaged in real estate business where she resided, outside of Canada.

43. The Respondent now claims that her circumstances have changed and she is impecunious and unable to pay any amount towards either a fine or costs.

44. In the Interview, the Respondent also stated and Staff has not found evidence to the contrary that:

a) WFM was aware that AW and MM were shareholders in SHE from 2010 – 2011; and
b) SHE is no longer operational.

45. During the Interview, the Respondent also stated that she was unaware that selling shares in SHE was a violation of the policies and procedures of WFM and the Rules of the MFDA, and that she did not intentionally contravene the Rules of the MFDA.

46. Notwithstanding the Respondent's statements in the Interview to the effect that WFM was aware that AW and MM were shareholders in SHE, there is no evidence that WFM was aware of or condoned the fact that the Respondent was the person who had sold the shares of SHE to AW and MM, that the Respondent had prepared the Proposal, or that the Respondent was potentially soliciting investments in SHE from other prospective investors.

47. During the Interview and subsequent to the Interview, Staff made numerous requests of the Respondent to produce the financial statements for SHE but the

Respondent has either been unable or unwilling to provide such statements. As a result, Staff have been unable to verify if or how the Respondent used the monies she received from the investors.

Violations of WFM's Policies and Procedures and MFDA Rules

48. At all material times, shares in SHE were not an investment product approved by WFM for sale by its Approved Persons, including the Respondent.

49. At all material times, WFM's policies and procedures prohibited its Approved Persons from selling securities outside the Member.

50. At all material times, the Rules of the MFDA prohibited Approved Persons from selling securities outside the Member.

51. The Respondent did not seek or obtain permission from WFM to sell shares in SHE.

52. By selling 240 shares of her company, SHE, to AW and client MM at a total price of $100,000 as described above, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Misconduct Admitted

53. By engaging in the conduct described above, the Respondent admits that:

(a) Between May and August 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling 240 shares in a company she owned to AW and MM at a total price of $100,000, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Execution of Agreed Statement of Facts

54. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

55. A facsimile copy of any signature shall be effective as an original signature.

DATED this 4 day of June, 2014.

_____

Penny Diann Deming

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Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President, Member Regulation – Enforcement

Allegation #1 - Securities Related Business outside the member

3. The Respondent has admitted Allegation #1, which invokes MFDA Rules 1.1.1(a) and 2.1.1. Those Rules state:

> "1.1.1 **Members**. No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:
>
> (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:
>
> (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
>
> (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act* (Canada) and the regulations thereunder and applicable securities legislation."
>
> "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;

(b) observe high standards of ethics and conduct or practice which is unbecoming or detrimental to the public interest;

(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation."

4. The power of hearing panels to discipline approved persons, as per section 24.1.1 of MFDA Bylaw No. 1 states:

"24.1 **Power of Hearing Panels to Discipline**

24.1.1 Approved Persons

A Hearing Penal of the applicable Regional Council shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000.00 per offence; and

(ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;

(c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;

(d) revocation of the authority of such person to conduct securities related business;

(e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

(f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

if, in the opinion of the Hearing Panel, the person:

(g) has failed to carry out any agreement with the Corporation;

(h) has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

(i) has failed to comply with the provisions of any By-law, Rule or Policy of the Corporation;

(j) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

(k) is otherwise not qualified whether by integrity, solvency, training or experience."

5. With respect to costs, section 24.2 of MFDA Bylaw No. 1 states:

> "24.2 **Costs**
>
> A Hearing Panel may in any case in its discretion require that the Member or Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel pursuant to Section 20 and Section 24.1 or Section 24.3 and any investigations relating thereto."

6. As will be seen by paragraph 4 of the ASF, on agreement of the parties Allegation #2 and #3 have been withdrawn.

7. There is ample authority supporting the principal that a hearing panel should not interfere with a joint recommendation of MFDA staff and the Respondent unless the recommendation is seen to be manifestly unfit. The Court of Appeal in the case R. v. R.W.E. [2007] OJ 2515 (Ont. C.A.) stated:

> "It is trite law that a sentencing judge is not bound to accept a joint submission. It is well settled, however, that a judge should not reject a joint submission unless it is contrary to the public interest and the sentence would bring the administration of justice into disrepute: R. v. Cerasuolo (2001), 151 C.C.C. (3rd) 445 (ONT. C.A.); R. v. D. Dorsey (1999), 123 O.A.C. 342 (C.A.)."

8. It is also appropriate for a hearing panel to consider the MFDA Penalty Guidelines. The Guidelines are not mandatory, but are for the assistance of the Panel.

9. As MFDA staff pointed out in their submissions, there are a number of specific factors that are frequently considered when determining the appropriateness of a penalty. Those include the seriousness of the misconduct; the respondent's past conduct; including prior sanctions; the respondent's experience and level of activity in the capital market; whether the respondent recognizes the seriousness of the improper activity; the harm suffered by investors as a result of the respondent's activities; the penalties received by the respondent as a result of the improper activity; 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 to the consequences of inappropriate activities to those who are permitted to participate in the capital market; and previous decisions made in similar circumstances. *Re Tonnies*, MFDA File No. 200503, p. 23.

10. The MFDA Penalty Guidelines recommend the following minimum penalties for the misconduct proven in this matter: securities related business: minimum $10,000 fine; standard of conduct: minimum $5,000 fine. In this case, as per paragraph 5 of the Agreed Statement of Facts, MFDA staff submits, the Respondent does not oppose, that the appropriate penalty is a 4 year and 6 month prohibition on the Respondent's capacity to conduct securities related business while in the employ of, or sponsored by, an MFDA member; a fine in the range of $20,000; and costs of $2,500. These exceed the penalties recommended in the MFDA Penalty Guidelines.

11. MFDA staff submitted, and we agree, that the misconduct admitted by the Respondent in the present case is serious. As is clear by the Agreed Statement of Facts, the Respondent exposed two investors to actual risks of loss having regard to the nature of the investments, which were off book sale of securities. Further the funds went to the Respondent personally, and to a company she controlled. As these were off-book sales, the member had no opportunity to conduct due diligence, or regulatory oversight of those investments.

12. In *MFDA Re Vitch*, September 22, 2011, the Panel stated:

> "53. We need say only a few words about the misconduct covered by Allegation #1 and Allegation #2. The need for a Member to know what other occupations and businesses its employee might be engaged in is obvious. There are many reasons why a Member must know what its employees are doing. We will mention only two of what seem to us

> to be the most important reasons. The first is that a failure to know about an employee's other commercial activities impinges upon the Member's ability to properly supervise its employee. The second reason is that the Member could be exposed to litigation alleging that the Approved Person's activity was within the scope of his/her employment with the Member. It is, therefore, our opinion that we are required to view very seriously the conduct covered by Allegations #1 and #2."

13. MFDA staff submitted, and we agree, that the Respondent's misconduct is aggravated by her failure to seek or obtain permission from WFM (the Member) to sell the shares in her company, and her failure to disclose to the Member that she was selling and/or sold shares in her company. As per paragraph 10 of the Agreed Statement of Facts, the Respondent was registered in British Columbia from October, 2003; and from August, 2006 to September, 2009 she was a branch manager as well as a mutual fund salesperson. The Respondent is currently not registered or licensed in any capacities in the Canadian securities or insurance industries.

14. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

15. Clearly the Respondent was a very experienced registrant, and we have no doubt that she was aware of the regulatory and dealer imposed obligations regarding off-book business. All mutual fund salespersons are required to be familiar with and adhere to the Rules of the MFDA.

16. The admissions by the Respondent of her misconduct as per the facts and circumstances set forth in the Agreed Statement of Facts, and her non-opposition to the penalties sought by MFDA staff demonstrate to the Panel that she recognizes the seriousness of the misconduct that has been admitted. Further, the Respondent has accepted responsibility for the misconduct, and her admissions have meant the MFDA did not have to conduct a lengthy hearing, which undoubtedly would have been at significant expense.

17. With respect to benefits received by the Respondent as a result of the admitted improper activity, it is clear that the two investors provided the Respondent with a total of $100,000 of which $90,000 was payable to the Respondent as she owned the shares that were sold. We note also that the Respondent did not provide any financial records for her company, as requested by MFDA staff. However, staff also acknowledged that they have no evidence that there were in fact financial records for the Respondent's company.

18. In its submissions, staff acknowledged that the Respondent has cooperated with the MFDA's investigation of this matter.

19. It is appropriate for MFDA hearing panels to consider deterrence among the factors to be considered when determining penalty. The Supreme Court of Canada in *Re Cartaway Resources Corp.* [2004] 1 S.C.R. 672 at paragraphs 60 to 62, stated:

> "60. In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos, supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration, in making orders that are both protective and preventative. Ryan J. A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para. 125).
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> 61. The *Oxford English Dictionary* (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as [page 698] a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.
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> 62. It may well be that the regulation of market behaviour only works effectively when securities commissions impose *ex post* sanctions that deter forward-looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving confidence in our capital markets."

20. We agree with the submission of MFDA staff that the proposed sanctions will deter others from engaging in similar misconduct, and are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its members and approved persons. We agree the proposed sanctions also reflect the seriousness of the Respondent's admitted misconduct.

21. We agree with the submission of staff that the penalties proposed in the present case are consistent with previous decisions rendered in other similar MFDA cases and we have reviewed

Re Parke where the penalty was a 10 year suspension, $10,000 fine and $5,000 in costs; *Re Kaley* where the penalty was a 6 month suspension, $10,000 fine and $2,500 in costs; and *Re Laverdiere* where the penalty was a permanent ban, $20,000 fine and $2,500 in costs.

22. MFDA staff submitted that the Respondent cooperated with staff during the investigation, and cooperated in that the matter proceeded by way of an Agreed Statement of Facts. By the admissions in the Agreed Statement of Facts, and in not opposing the penalty sought by staff, a potentially expensive lengthy hearing was avoided. Staff submitted an award of costs in the amount of $2,500 would be appropriate in the circumstances.

23. Counsel for the Respondent, Mr. Kent, submitted that a great deal of work went into the Agreed Statement of Facts, and that the Panel, in these circumstances, ought not to look beyond the facts that are set forth. He pointed out that the Respondent is 51 years of age, and had no prior disciplinary history. He submitted that the two investors were in reality in a business relationship with the Respondent, and that one of the investors was not a client at the time of the purchase. He submitted the Respondent knows that she should have told the Member of the sales of shares in her company. Further, he submitted that the investors were not vulnerable individuals, were not elderly, and there is no evidence that they were taken advantage of, as is the circumstance in a number of other cases. He emphasized the admissions in paragraph 34 of the Agreed Statement of Facts in that for more than one year (August, 2010 to October, 2011) the two investors and the Respondent attended shareholder and business meetings; one investor was paid $5,000 re her employment contract; and the two investors carried and distributed business cards with their names on them, and held themselves out as Vice Presidents of the company. He further submitted, and we agree, there is no evidence before us where the investor's funds went. Of the authorities cited, counsel for the Respondent submitted that the case of the MFDA and Kaley was the only case that had some relevance to the case before us.

24. The Panel has carefully considered not only the Agreed Statement of Facts, but the authorities cited to us, and the submissions of Staff and counsel for the Respondent. We have carefully considered those factors related to the appropriateness of a penalty. In our view the Agreed Statement of Facts and the proposed penalties are appropriate, and are in keeping with

the goals of the MFDA. They will enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring members and approved persons shall observe high standards of ethics and conduct in the transaction of business.

25. In this case it is our view that the Respondent will be deterred by the penalties. To be prohibited from engaging in any mutual fund business for 4 ½ years essentially means that if the Respondent wishes to return to the industry, she will have to start over again.

26. There is also the fact that these proceedings, and the penalty, will be in the public domain, and are bound to have an effect upon the Respondent's ability to participate in the securities industry.

27. We also wish to acknowledge that the Agreed Statement of Facts was reached by the parties after significant discussions and negotiations. The MFDA and the Respondent are to be commended for reaching agreement on the Agreed Statement of Facts, and penalty recommendations.

28. This Panel therefore orders that the Respondent, Penny Diann Deming, be prohibited for 4 years and 6 months from conducting securities related business while in the employ of, or sponsored by, any MFDA member; pay a fine of $20,000; and pay $2,500 on account of costs.

29. These Reasons may be signed in counterpart.

DATED this 20th day of October, 2014.

"Stephen D. Gill"

Stephen D. Gill
Chair

"Holly A. Millar"

Holly A. Millar
Industry Representative

“Brian Cheung’

Brian Cheung
Industry Representative

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