



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

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Ryan Raymond Edward Dibbley

Heard: June 7, 2018 in Toronto, Ontario
Decision: June 7, 2018
Reasons for Decision: September 12, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall QC
Guenther W.K. Kleberg
Brian Nowak

Chair
Industry Representative
Industry Representative

Appearances:

David Halasz)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Melissa MacKewn)	Counsel for the Respondent
)	
)	
Ryan Dibbley)	Respondent, in person
)	
)	

I. INTRODUCTION

1. By Notice of Hearing dated August 15, 2016, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Ryan Raymond Edward Dibbley (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. By news release dated May 16, 2018, the MFDA announced that, as a result of a settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent dated May 11, 2018 (the “Settlement Agreement”), a settlement hearing would take place on June 7, 2018 to determine whether the Settlement Agreement should be accepted by a hearing panel of the Central Regional Council (the “Hearing Panel”).

3. The subject matter of the Settlement Agreement concerns matters for which the Respondent might be disciplined pursuant to ss. 20 and 24.1.1 of MFDA By-law No. 1. In particular, the Settlement Agreement concerns allegations that the Respondent:

- a) between October 2012 and May 9, 2014, failed to disclose to the Member two outside business activities for which he was named officer and/or director, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.3.2);
- b) between 2013 and May 9, 2014, in his capacity as branch manager, did not adequately query or report to the Member unapproved outside business activities at the branch location supervised by him, contrary to MFDA Rules 2.5.5(f); and
- c) between January 2014 and May 9, 2014, in his capacity as a branch manager, failed to adequately query or advise the Member of information concerning financial difficulties at the branch location supervised by him, contrary to MFDA Rules 2.5.5(f).

4. In Part VI of the Settlement Agreement, at paragraph 45, the Respondent admits these allegations as follows:

- a) between October 2012 and May 9, 2014, he failed to disclose to the Member two outside business activities for which he was named officer and/or director, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.3.2);
- b) between 2013 and May 9, 2014, in his capacity as branch manager, he did not adequately query or report to the Member unapproved outside business activities at the branch location supervised by the Respondent, contrary to MFDA Rules 2.5.5(f); and
- c) between January 2014 and May 9, 2014, in his capacity as a branch manager, he failed to adequately query or advise the Member of information concerning financial difficulties at the branch location supervised by the Respondent, contrary to MFDA Rules 2.5.5(f).

5. Further, as is set out in paragraph 46 of the Settlement Agreement, the Respondent agreed to the following penalties:

- a) the Respondent shall be prohibited from acting in the position of a branch manager while in the employ of or associated with any MFDA Member for a period of six months effective from the date of the Order, pursuant to section 24.1.1(c) of MFDA By-law No. 1.
- b) the Respondent shall pay a fine in the amount of \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the payment by the Respondent of the fine and costs described in subparagraphs 46(b) and (c) shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$1,000 (fine) shall be paid on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;

- iii. \$1,000 (fine) shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iv. \$1,000 (fine) shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v. \$1,000 (fine) shall be paid on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vi. \$1,000 (fine) shall be paid on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel; and
- e) if the Respondent fails to make any of the payments described above in subparagraph 46(d) then:
- i. Any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii. The Respondent shall be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the fine and costs owed by the Respondent is paid to the MFDA, pursuant to section 24.3.13(c) of MFDA By-law No. 1.

6. The Hearing Panel, upon the joint motion of Staff and the Respondent, granted an order to move the proceedings “*in camera*”. This motion was brought pursuant to Rule 15.2(2) of the MFDA Rules of Procedure, which provides as follows:

“(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8”.

7. Rule 1.8(2) provides as follows:

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

8. We granted the Motion on the condition, which was agreeable to both Staff and the Respondent that, should the Hearing Panel accept the Settlement Agreement, we would provide Reasons for our Decision which, along with the Record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the MFDA Rules of Procedure.

9. After considering the Settlement Agreement, together with the full submissions made by counsel for the MFDA and counsel for the Respondent, as well as having received satisfactory answers to the questions posed by Panel members, the Hearing Panel unanimously accepted the Settlement Agreement. The Hearing Panel made an order to this effect and indicated that Reasons for Decision would follow in due course. These are those Reasons for Decision.

II. SETTLEMENT AGREEMENT AND AGREED FACTS

10. The additional portions of the Settlement Agreement which are relevant to these Reasons for Decision are contained in Part IV Agreed Facts and are reproduced below:

Registration History

6. From January 2012 until July 2014, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

7. From January 20, 2012 until May 12, 2014, the Respondent was designated a branch manager at a branch located at 25 Main Street, Suite 1210, Hamilton Ontario (the “Branch”).

8. As a result of the events described herein, FundEX suspended the Respondent’s activities as a branch manager on or about May 9, 2014, and terminated his registration on July 24, 2014.

The Respondent has not been registered in the securities industry in any capacity since July 24, 2014.

Background

9. Scott Reeves (“Reeves”) was registered as a mutual fund salesperson with FundEX from January 2004 to May 9, 2014 when his registration was terminated, in part, for failing to disclose to FundEX outside business activities.

10. Scott Reeves (“Reeves”) [sic] owned the Branch and operated it under the approved trade name, Reeves Financial Services Inc. (“Reeves Financial Services”). As President and Chief Executive Officer, Reeves was the sole officer and director of Reeves Financial Services.

11. In or about November 2011, the Respondent was hired by Reeves as Director of Sales and Business Development of Reeves Financial Services. Reeves asked the Respondent to act as branch manager, and on or about January 20, 2012, FundEX designated the Respondent as a branch manager at the Branch. The Respondent had no prior experience as a branch manager in the mutual fund industry.

12. The Respondent’s supervisory role was limited to the responsibilities and requirements of a branch manager pursuant to MFDA Policies, Rules and By-laws, and FundEX’s policies and procedures. The Respondent states that he did not have a role in establishing or the day-to-day operations of the non-mutual fund businesses at the branch

13. Based on representations made by Reeves, the Respondent states that he believed that he was joining a reputable company. The Respondent states that Reeves represented that Reeves Financial Services had in excess of \$140 million in assets under management, generated \$600,000 to \$700,000 in revenue and had over \$3 million in reserves.

Reeves’ MFDA Disciplinary Proceeding and Criminal Charges

14. Reeves was the subject of an MFDA disciplinary proceeding. In March 2017, the Hearing Panel found that Reeves engaged in the following conduct in violation of MFDA Rules, and imposed a fine of \$4,500,000, a permanent prohibition on engaging in securities related business with an MFDA Member, and a \$10,000 cost order:

- a) between 2004 and May 9, 2014, Reeves solicited and accepted from at least three clients a total of approximately \$5,064,208, some or all of which Reeves deposited into accounts that he controlled, which Reeves failed to invest, return or otherwise account for, contrary to MFDA Rule 2.1.1., 1.1.1, 2.1.4;
- b) between 2010 and 2014, on at least 34 instances, Reeves directed the Member to deposit redemptions totaling approximately \$1,126,117 from a client's account at the Member to a bank account that did not belong to the client, by providing the Member with a void cheque that had been altered so that it appeared to the Member that the cheque corresponded to the client's bank account when the client did not hold such an account, contrary to MFDA Rule 2.1.1;
- c) between 2009 and May 9, 2014, Reeves made statements and provided documents to at least three clients, which he knew were false, misleading or incorrect, and misrepresented to the clients the amounts and whereabouts of their investments and monies, contrary to MFDA Rule 2.1.1; and
- d) between January 8, 2004 and May 9, 2014, Reeves had and continued in other gainful occupations that were not disclosed to and approved by the Member by acting as an officer or a director for at least 11 corporations, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.2.1(d)) and 2.1.1.

15. Reeves was also charged with a number of criminal offences with respect to conduct described in paragraph 14 above. In October 2017, Reeves pleaded guilty to fraud in the Ontario Superior Court of Justice in Hamilton, Ontario. The sentencing hearing for Reeves is pending.

16. Staff does not allege that the Respondent was aware that Reeves was misappropriating client monies and misleading clients with respect to the whereabouts of their monies, or that the Respondent participated in any of these activities.

17. At all times the Respondent states that he trusted Reeves and was not suspicious of the manner in which Reeves conducted his business affairs at Reeves Financial Services. The Respondent states that he trusted that Reeves operated the business at the Branch in a compliant manner.

Contravention #1 – Undisclosed Outside Business Activities

18. At all material times, FundEX's policies and procedures with respect to outside business activities stated the following:

FundEX must be aware and approve of Representatives who wish to engage in another occupation before the Representative engages in such activity. Representatives must

notify Head Office Compliance in writing, using the “Outside Business Activity Approval Form,” of any employment or occupation proposed other than as a Representative dealing in mutual funds and related products for FundEX. On the Outside Activity Approval Form Representatives must provide details such as:

- *Name and nature of the business;*
- *The title or position of the Representative;*
- *The number of hours to be devoted to the business;*
- *A description of any potential for confusion or conflicts of interest; and*
- *Any applicable fees for the service provided through the business.*

19. On October 23, 2012, Reeves incorporated “Reeves Wealth Services Corp.” (“Reeves Wealth”). FundEX subsequently approved the trade name, Reeves Wealth Services.

20. The Respondent states that Reeves informed him that Reeves Wealth was set up as a division of Reeves Financial Services to receive and manage the commissions received from FundEX from the sale of mutual fund products. The Respondent was named as an officer and director of Reeves Wealth at the request of Reeves. The Respondent did not disclose to FundEX that he was named to those positions with Reeves Wealth.

21. At no time did the Respondent hold himself out as an officer or director of Reeves Wealth nor did he attend any meetings of directors of this entity. The Respondent did not receive any fees, commissions or any remuneration from Reeves Wealth.

22. At all times the Respondent believed that Reeves Wealth was part of the Reeves Financial Services’ core business and, as such, the fact that he was named as an officer and director of Reeves Wealth did not constitute an outside business activity. The Respondent now recognizes that he ought to have disclosed to FundEX that he was named as officer and director of Reeves Wealth.

23. On October 23, 2012, Reeves incorporated “Reeves Group Solutions Limited” (“Reeves Group”). Reeves did not disclose Reeves Group to FundEX for approval.

24. The Respondent states that Reeves informed him that Reeves Group was set up as a division of Reeves Financial Services for accounting purposes to manage group product commissions. The Respondent states that he was named as a director of Reeves Group at the request

of Reeves. The Respondent did not disclose to FundEX that he was named as a director of Reeves Group.

25. The Respondent did not conduct any business activities related to Reeves Group. At no time did the Respondent hold himself out as a director of Reeves Group nor did he attend any meetings of directors of this entity. The Respondent did not receive any fees, commissions or any remuneration from Reeves Group.

26. At all times, the Respondent believed that Reeves Group was part of the Reeves Financial Services' core business and, as such, the fact that he was named as a director of Reeves Group did not constitute an outside business activity. The Respondent now recognizes that he ought to have disclosed to FundEX the fact that he was named as a director of Reeves Group.

Contravention #2 – Failure to Report Outside Business Activities Operating at the Branch

27. At all material times, FundEX's Branch Manager Manual, stated the following:

The [branch manager] has two primary roles at FundEX:

- *The first role is trade review and account supervision; and*
- *The second is to act as FundEX's eyes and ears for front-line compliance at the branch supervising the activities of Representatives within their branch and sub-branch locations.*

* * *

Branch Manager General Responsibilities

Ensure that the business conducted on behalf of FundEX by a Representative and other employees and agents at the branch is in compliance with regulations and FundEX's policies and procedures.

* * *

Promote prudent business practices at the branch and ensure adherence to all applicable securities rules, regulations and policies.

* * *

Administrative Duties ... Immediately advise the [Regional Branch Manager] of any irregularities or contravention of any pertinent regulation of compliance policies by Representatives of the branch

28. The signage posted at the entrance of the Branch listed the following business entities as operating out of the location:

- (a) Reeves Financial Group;
- (b) Reeves Financial Services Inc.;
- (c) Reeves Group Solutions Limited;
- (d) Reeves Mortgage Solutions Inc.;
- (e) Reeves Private Wealth Inc.;
- (f) Reeves Wealth Services Corporation;
- (g) Reeves Portfolio Management Inc.; and
- (h) Reeves Financial Charitable Foundation.

29. Only Reeves Financial Services and Reeves Wealth had been disclosed to FundEX and approved by it.

30. On May 9, 2014, FundEX attended at the branch for an unannounced visit at which time it first identified the remaining business entities listed at paragraph 28 above.

31. Based on representations made by Reeves and other executives at Reeves Financial Services, the Respondent believed that the above entities were either divisions of Reeves Financial Services and, such, part of the its' core business [sic], or were not operational. As such, the Respondent believed that the signage listing the above business entities did not constitute reportable outside business activities.

32. The Respondent did not disclose to FundEX the signage listing these entities at the Branch. In his capacity as branch manager, the Respondent now recognizes that he ought to have (a) determined whether the outside business activities listed on the signage at the entrance of the Branch had been disclosed to FundEX and approved by it, and (b) if not, reported any undisclosed/unapproved outside business activities to FundEX.

Contravention #3 – Failure to report the Branch’s financial difficulties

33. The Respondent states that, in or about January 2014, Reeves held a meeting at the Branch with employees of the Branch, including the Respondent and executive management of Reeves Financial Services. During that meeting, Reeves advised that the Chief Financial Officer of Reeves Financial Services had inappropriately invested reserve monies totaling approximately \$3 million.

34. The Respondent states that Reeves showed him and other employees a copy of a portfolio statement purporting to show the reserve holdings managed by a company called “Adroit”. The Respondent states that he accepted the portfolio statement and Reeve’s statements that the liquidity issues at the Branch were temporary, that the Branch was financially stable.

35. The Respondent did not believe that the information provided by Reeves untrue [sic] or that the mutual fund business at the Branch and/or the servicing of mutual fund clients was compromised in any way. The Respondent states that neither he nor other employees questioned the veracity of the statements made by Reeves.

36. Subsequent to the January 2014 meeting, in his capacity as branch manager, the Respondent became aware of the following information at the Branch:

- a) the Respondent was not paid his salary in the amount of approximately \$25,000 for the last 15 weeks of employment with Reeves Financial Services;
- b) the Respondent personally made a \$3,500 payment of expenses at the Branch, including [sic] a furniture leasing company and a human resources company;
- c) the Respondent personally loaned a total of \$20,000 to Reeves and Reeves Financial Services in exchange for a promissory note dated March 17, 2014, to assist with paying expenses at the Branch, including to the Branch’s landlord; and
- d) In or about April 2014, the Respondent learned that expenses at the Branch were not paid as they came due such that it was necessary to put in place payment plans with service providers, including the Branch’s landlord, leasing companies, and a telecommunications company.

37. The Respondent states that he has not been repaid the monies he provided to pay expenses at the Branch.

38. Based on the representations made by Reeves, the Respondent states that he was not concerned about the mutual fund business at the Branch and, as such, did not believe that the above events constituted events that he was required to report to FundEX in his capacity as branch manager.

39. The Respondent now recognizes that he ought to have notified FundEX of the above information at the time that he was made aware of the information as the above events constituted red flags about the financial difficulties experienced at the Branch. FundEX would have been obligated to conduct a reasonable supervisory investigation into the activities at the Branch, as required by the MFDA Rules and Policies.

V. ADDITIONAL FACTORS

40. The Respondent fully cooperated with Staff's investigations in respect of the matters described above.

41. The Respondent has not been the subject of prior MFDA disciplinary proceedings.

42. There is no evidence that the Respondent sought to receive, or received, any financial benefit from engaging in the conduct described above.

43. The issue of client loss is currently before the courts as part of ongoing civil proceedings commenced by clients. No clients of FundEX have commenced direct claims against the Respondent.

44. By admitting the facts and contraventions described above, the Respondent has saved the MFDA the time and resources associated with conducting a fully contested hearing on the merits.

III. REASONS AND ANALYSIS

11. This case concerns the conduct of the Respondent while he was acting as a branch manager of a branch which, while owned and operated by Reeves, was a branch of FundEX, a member of the MFDA, as Reeves was a dealing representative with that firm. Thus it was FundEX that designated the Respondent as the branch manager, albeit on Reeves' nomination.

12. The Respondent was hired and paid by Reeves, but his appointment as branch manager required him to act in a supervisory role on behalf of FundEX in respect of the business conducted by the branch. There was an obvious inherent tension between the Respondent's role as Reeves' employee and his supervisory role on behalf of the Member.

13. The MFDA does not allege that the Respondent was aware of Reeves' defalcations and misappropriations which led to his guilty plea to criminal fraud charges. Nevertheless, the Respondent's failure to provide any warning, as he was obliged to do, deprived FundEX from acting earlier to stop Reeves' depredations.

14. MFDA Rule 2.5.5 Branch Manager, in relevant part, is as follows:

2.5.5 Branch Manager

(a) **Designation.** Each Member must designate an individual qualified as a branch manager pursuant to paragraph (d) for each branch office (as defined in By-law 1.1) of the Member. The Member is not required to designate a branch manager for a sub-branch office who is normally present at the office, provided that a branch manager who is not normally present at such sub-branch office supervises its business at the sub-branch office in accordance with the By-laws, Rules and Policies.

...

(d) **Proficiency Requirements.** An individual may not be designated by the Member as a branch manager pursuant to paragraph (a) or an alternate branch manager pursuant to paragraph (g) unless the individual has:

(i) Met the requirements for a salesperson as prescribed under applicable securities legislation and has passed any one of the following examinations:

- (A) The Branch Managers Course Exam offered by the CSI Global Education Inc.;
- (B) The Mutual Fund Branch Managers' Examination Course Exam offered by the IFSE Institute; or
- (C) The Branch Compliance Officers Course Exam offered by the CSI Global Education Inc.

15. As quoted in paragraph 27 on page 10 above, FundEX's Branch Managers' Manual which governed the Respondent's conduct at all material times provides as follows:

The [branch manager] has two primary roles at FundEX:

- The first role is trade review and account supervision; and
- The second is to act as FundEx's eyes and ears for front-line compliance at the branch supervising the activities of Representatives within their branch and sub-branch locations.

Branch Manager General Responsibilities

Ensure that the business conducted on behalf of FundEX by a Representative and other employees and agents at the branch is in compliance with regulations and FundEX's policies and procedures.

Promote prudent business practices at the branch and ensure adherence to all applicable securities rules, regulations and policies.

Administrative Duties...Immediately advise the 'Regional Branch Manager' of any irregularities or contravention of any pertinent regulation of compliance policies by Representatives of the branch.

16. In *Gentile Re*, a case which bears a significant similarity to the present case, the hearing panel said as follows:

A branch manager is an important and integral part of the MFDA regulatory regime. The branch manager is not only the eyes and ears of the Member, he/she is vested with a critical responsibility towards ensuring that the member's business is carried on in accordance with all of the regulatory requirements and that the clients of the Member are afforded all of the protections of that regime.

...

In short, branch managers were and are experienced, knowledgeable professionals on whom a great deal of trust and responsibility is imposed.

Gentile (Re), 2012 CanLII 102258 (CA MFDAC) (Misconduct decision)

17. The Hearing Panel accepts and endorses Staff's submission that:

[I]t is the branch manager's responsibility to ensure that all outside business activities occurring at the branch location have been approved by the Member, and if not, then to take steps to report the activity. Making the Member aware of unapproved activity allows the Member to take all supervisory measures that may be warranted in the circumstances to ensure the activities operating at its branch are in accordance with all regulatory requirements.

18. The duty of a branch manager goes further than merely being the "eyes and ears" of the Member. The branch manager must be alert to ensure that the Member is made aware of anything transpiring at the branch that could give cause for concern and report it to the Member. When in doubt, the branch manager should report to the Member.

Gentile (Re), 2012 Supra at para. 206

19. In this case there were two obvious failures by the Respondent in respect of his duty to report to the Member. The first is his failure to report the clear signs of financial distress that existed at the branch. The failure to receive salary for several months, together with having to lend his own money to Reeves to sustain the business, should have been red lights of the highest intensity. The Respondent now acknowledges that he should have reported these to the Member and that he failed to do so. However it should have been obvious to the Respondent at the time.

20. The second failure arises from the branch manager's duty to report on compliance with the requirement that all outside business activities occurring at the branch location had been reported to the Member. Without that information the Member is unable to ensure that all such activities are conducted both in accordance with the relevant regulatory requirements and in a way that is not detrimental to the integrity of the investment industry and the public interest.

21. Signage listed various businesses as operating out of the branch and in fact the Respondent was appointed as an officer and director of several of them. He should have been alerted to the fact that they were active. Instead, the Respondent accepted Reeves' representations to the effect that they were either moribund or simply adjuncts or divisions of the main business and need not be reported to the Member. These representations were false and while the Respondent now acknowledges that he did not adequately query or investigate and that he should have reported their existence to the Member, the result was that the Member was not aware of businesses being operated out of the branch.

22. Numerous MFDA panels have set out a number of factors which should be considered when determining an appropriate penalty. These include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activities;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) 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;
- j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) Previous decision made in similar circumstances.

Gentile (Re), 2016 CanLII 59864 (CA MFDAC)

23. In the present case, the Hearing Panel applied these factors in the manner described below:

i. Seriousness of the Misconduct

The contravention the Respondent has admitted in the Settlement Agreement are serious and fundamental to the regulatory framework. A higher standard of conduct is expected of branch managers who “should set an example” and “be a standard bearer of compliance”.

Failing to disclose or report outside business activities or financial difficulties at the Branch impairs the Member’s ability to supervise the Respondent’s and others’ conduct and the operation of the Branch and thereby endangers the regulatory system.

Van Schothorst (Re), 2017 CanLII 26897 (CA MFDA), at para. 34
Durotoye (Re), 2014 CanLII 31772 (CA MFDA), at para. 3

ii. The Respondent’s Recognition of the Seriousness of the Misconduct

The Respondent has fully cooperated with the MFDA’s investigation of the issues that form the subject matter of the Settlement Agreement. By entering into a Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA conducting a lengthy hearing at considerable additional expense to the MFDA, and ultimately to the membership of the MFDA.

iii. Client Loss and Benefit to the Respondent

The issue of client loss is currently before the courts as part of ongoing civil proceedings commenced by clients. No clients have commenced any claims against the Respondent.

There is no evidence that the Respondent sought to receive, or received, any financial benefit from engaging in the conduct described in the Settlement Agreement.

The Respondent was not paid salary totaling \$25,000, and he personally paid expenses at the Branch or loaned monies to Reeves totaling approximately \$23,500. The amounts have not been repaid to the Respondent. Staff took into account the amounts for which the Respondent is out-of-pocket in arriving at the appropriate penalty.

iv. Disciplinary History

The Respondent has never previously been the subject of a disciplinary proceeding by the MFDA. The Respondent is not currently registered in the securities industry in any capacity.

v. Deterrence

The Supreme Court of Canada in *Cartaway Resources Corp.* and MFDA hearing panels have held that deterrence should be taken into account when determining penalty. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated:

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...The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged...

Cartaway Resources Corp. (Re), [2004] 1 S.C.R. 672 at paras. 52 – 62.
Dixon (Re), 2017 CanLII 83857 (CA MFDAC) at para. 19.

vi. Previous Decisions Made in Similar Circumstances

The penalties agreed to were not inconsistent with those that have been imposed in similar circumstances.

Cunningham (Re), 2010 CanLII 86160 (CA MFDAC) (Settlement)
Gentile (Re), *Supra*, (Penalty) (Contested)
Dhindsa (Re), 2012 CanLII 42174 (CA MFDAC) (Settlement)

IV. CONCLUSION

24. It was for the foregoing reasons that, on June 7, 2018, the Hearing Panel accepted the Settlement Agreement and issued an order imposing the following penalties:

- a) the Respondent shall be prohibited from acting in the position of a branch manager while in the employ of or associated with any MFDA Member for a period of six months effective from the date of the Order, pursuant to section 24.1.1(c) of MFDA By-law No. 1.
- b) the Respondent shall pay a fine in the amount of \$5,000 pursuant to s. 24.1.1(b) of MFDA By-Law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-Law No. 1;
- d) the payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$1,000 (fine) shall be paid on or before July 31, 2018;
 - iii. \$1,000 (fine) shall be paid on or before August 31, 2018;
 - iv. \$1,000 (fine) shall be paid on or before September 28, 2018;
 - v. \$1,000 (fine) shall be paid on or before October 31, 2018; and
 - vi. \$1,000 (fine) shall be paid on or before November 20, 2018;
- e) if the Respondent fails to make any of the payments described above then:

- i. any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
- ii. the Respondent shall be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the fine and costs owed by the Respondent is paid to the MFDA, pursuant to section 24.3.13(c) of MFDA By-law No. 1.

DATED this 12th day of September, 2018.

“John Lorn McDougall”

John Lorn McDougall, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Brian Nowak”

Brian Nowak
Industry Representative

DM 634417