



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: Bradley Monroe Gabrielson

Settlement Hearing: November 18, 2010 in Calgary, Alberta
Reasons for Decision: January 17, 2011

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Daniel Ish, Q.C.
Elaine Bradley
Nada Israeli

Chair
Industry Representative
Industry Representative

Appearances:

Michelle Pong)	For the Mutual Fund Dealers Association of
)	Canada
)	
Dana Carlson)	For the Respondent
)	
Bradley M. Gabrielson)	In Person
)	

Introduction and Overview

1. In a Notice of Hearing, dated May 10, 2010, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following allegations against Bradley Monroe Gabrielson (the “Respondent”):

Allegation #1: On or about October 25, 2004, the respondent engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member by selling shares in a hotel project to a client, contrary to MFDA Rules 1.1.1 and 2.1.1.

Allegation #2: Between December 23, 2002 and September 11, 2007, the Respondent had and continued in another gainful occupation as the owner and an officer and a director of a hotel project that was not disclosed to or approved by the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

Allegation #3: Commencing on August 6, 2008, the Respondent has failed to provide information concerning a hotel project requested by Staff during the course of its investigation, contrary to section 22.1 of MFDA By-law No.1.

Procedure

2. This Panel first dealt with the allegations on June 21, 2010 at which time Ms. Pong appeared on behalf of the MFDA and Mr. Carlson appeared on behalf of the Respondent. At that time it was agreed that the matter would be adjourned to November 18, 2010 for hearing.

3. A hearing was convened on November 18, 2010 in Calgary, Alberta. At the hearing the Settlement Agreement entered into between staff of the MFDA and the Respondent was presented to the Hearing Panel. The Hearing Panel then considered, whether pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the Settlement Agreement.

4. Prior to receiving submissions from the parties, the Hearing Panel made an order on the consent of the parties to move the proceeding “*in camera*” under Rule 15.2(2) of the Rules of

Procedure. This order was made on the condition that should the Hearing Panel accept the Settlement Agreement, members of the public in attendance at the hearing would be invited back into the hearing room for the balance of the hearing and that 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 Rules of Procedure.

5. The Panel then considered the provisions of the Settlement Agreement. After having received the submissions of the MFDA and the Respondent with respect to the applicable principles and the reasons supporting acceptance of the Settlement Agreement, the Panel retired to consider whether the agreement should be accepted. After consideration, we unanimously accepted the Settlement Agreement and made an order to this effect on November 18, 2010. We advised that our reasons would follow.

The Settlement Agreement

6. The parties agreed that the facts giving rise to the allegations brought by the MFDA were accurately set out in an affidavit sworn on November 12, 2010 by Indira Nadarajan. Ms. Nadarajan is the Investigations Manager of the Pacific Region of the Enforcement Department of the MFDA. The lengthy affidavit was attached as Schedule “C” to the Settlement Agreement. For ease of reference, the affidavit is attached to this decision as Schedule “A” and we accept it as accurately representing the facts giving rise to the three allegations and to this disciplinary procedure.

7. The Settlement Agreement, after introductory paragraphs and after making reference to the affidavit of Indira Nadarajan as the agreed facts, continues as follows:

V. CONTRAVENTIONS

7. The Respondent admits that on or about October 25, 2004, the Respondent engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member by selling shares in a hotel project to a client, contrary to MFDA Rules 1.1.1 and 2.1.1.

8. The Respondent admits that between December 23, 2002 and September 11, 2007, the Respondent had and continued in another gainful occupation as the owner and an officer and a director of a hotel project that was not disclosed in writing to or approved by the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

9. The Respondent admits that commencing on August 6, 2008, the Respondent has failed to provide information concerning a hotel project requested by Staff during the course of its investigation, contrary to section 22.1 of MFDA By-law No. 1.

VI. TERMS OF SETTLEMENT

10. The Respondent agrees to the following terms of settlement:

(a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to section 24.1.1(e) of By-Law No. 1;

(b) the Respondent shall pay a fine of \$10,000 upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1, payable as follows:

- (i) \$2,000, payable upon acceptance of this Settlement Agreement; and
- (ii) \$2,000, payable on the 18th of each and every month thereafter, commencing on December 18, 2010 until paid in full;

(c) the Respondent shall pay \$2,500 in respect of the costs of the investigation and settlement of this matter upon the acceptance of this Settlement Agreement, pursuant to section 24.2 of By-law No. 1;

(d) the Respondent will attend in person, on the date set for the Settlement Hearing;

(e) If the Respondent fails to honour the terms as outlined in paragraph 10(b)(ii), the outstanding balance shall immediately become due and payable and Staff may, at its own discretion and without further notice to the Respondent take such measures as are available to it to collect the outstanding amount;

(f) the Respondent shall complete the undertakings as outlined in Schedule “B”.

VII. STAFF COMMITMENT

11. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

12. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

13. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

14. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing

Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

15. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

16. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

17. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of Bylaw No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

18. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the

basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

19. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

20. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

Disposition and Reasons

8. Upon reviewing the Settlement Agreement, including the facts outlined in the affidavit of Ms. Nadarajan, the Panel accepts that the Respondent engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member. The Respondent did this by selling shares in a hotel project to a client. The Respondent also failed to disclose to the Member the fact that he continued in another gainful occupation as the owner and officer and Director of a hotel project between December 23, 2002 and September 11, 2007. We are also satisfied that the agreed facts demonstrate that the Respondent failed to provide information concerning the hotel project requested by MFDA staff during the course of its investigation. We find, as agreed to by the parties, that MFDA Rules 1.1.1, 2.1.1, 1.2.1(d), and Section 22.1 of By-law No. 1, have been violated. These breaches were acknowledged by the Respondent and are also found to be substantiated by this Hearing Panel.

Penalty and Order

9. After the Panel considered the agreed facts submitted to it, the balance of the hearing on November 18, 2010 dealt with the issue of the acceptance of the Settlement Agreement and the matter of the appropriate penalty that should be imposed on the Respondent if the Settlement Agreement was acceptable. The parties made a joint submission with respect to penalty.

Although the parties had agreed on penalty, the Rules of Procedure of the MFDA require that the Panel must be satisfied that the penalties imposed on the Respondent for the admitted infractions are appropriate ones in the circumstances. It is within the discretion of the Panel to determine whether to accept or reject the Settlement Agreement.

10. Several previous decisions of industry tribunals, including MFDA tribunals, have found that a number of factors must be taken into account in accepting settlement agreements and also in determining the appropriate sanction to impose for an infraction or infractions of the rules. Based on the previous authorities, the Panel has considered the following factors with respect to acceptance of this Settlement Agreement:

- (a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
- (d) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (g) Whether the settlement agreement will foster confidence in the regulatory process itself.

11. The above factors were considered in the following cases:

In the Matter of Rodney Jacobson (“Jacobson”), [2007] Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Decision dated July 13, 2007;

In the Matter of Investors Group Financial Services, [2004] Hearing Panel of the Ontario Regional Council, MFDA File No. 200401, Decision dated December 16, 2004;

In the Matter of IQON Financial Inc., [2007] MFDA Hearing Panel of the Pacific Regional Council, MFDA File No. 200713, Decision dated September 18, 2007.

12. The Panel has also taken into account the following factors in considering the appropriate penalty to be imposed upon the Respondent in the present case:

- (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 decisions made in similar circumstances.

13. The above-noted factors were taken into account in numerous industry tribunal decisions including the following:

Lamoureux (Re), [2002] A.S.C.D. No. 125;

In the Matter of Robert Roy Parkinson, [2005] Hearing Panel of the Ontario Regional Council, MFDA File No. 200501, Decision dated April 29, 2005;

In the Matter of Stephan Headley, [2006] Hearing Panel of the Ontario Regional Council, MFDA, File No. 200509, Decision dated February 21, 2006.

14. The MFDA also has published penalty guidelines intended to assist hearing panels, MFDA staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. The guidelines clearly are not binding upon Hearing Panels but rather suggest the types and ranges of penalties that would be appropriate. They are intended to provide a basis upon which discretion can be exercised consistently throughout the country. This Hearing Panel has taken the MFDA penalty guidelines into account.

15. The Hearing Panel has carefully considered the facts of this particular case, the submissions of the parties and previous authorities. We find that the Respondent has engaged in serious misconduct by promoting a share offering and selling shares in an undisclosed and unapproved outside business activity. This resulted in the client, whose accounts were serviced by the Respondent, investing \$27,000 in the outside business activity, a hotel project.

16. The Respondent also failed to cooperate with the MFDA, a self-governing body, which demonstrates a fundamental breach of the Respondent's obligations. Failure to cooperate is serious misconduct because it effectively undermines the MFDA's ability to self-regulate.

17. The Panel has also taken into account the fact that the Respondent has no past disciplinary history with the MFDA and that the \$27,000 invested by the client was ultimately fully repaid. Nevertheless, the period of time it took for repayment is, in itself, a "harm".

18. The Panel also considered that the Respondent's admissions to the misconduct described

in the Settlement Agreement indicate that he recognizes the seriousness of his misconduct. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct.

19. The Panel accepts the basic principle that a Hearing Panel should not interfere with a negotiated settlement where the penalties agreed upon are within the reasonable range of appropriateness having regard to the Respondent's conduct. It is our conclusion that the terms of the settlement are within both a reasonable range of appropriateness on the facts of the case and are appropriate having regard to past industry tribunal decisions and the Penalty Guidelines. Therefore, we accept the disposition of this matter as set out in the Settlement Agreement.

Order

20. It is hereby ordered that the Settlement Agreement is accepted, as a consequence of which:

(a) If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

(b) The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to section 24.1.1(e) of By-law No. 1;

(c) The Respondent shall pay a fine of \$10,000 pursuant to section 24.1.1(b) of By-law No. 1, payable as follows:

- i. \$2,000, payable upon acceptance of this Settlement Agreement; and
- ii. \$2,000, payable on the 18th of each and every month thereafter, commencing on December 18, 2010 until paid in full;

(d) The Respondent shall pay \$2,500 in respect of the costs of the investigation and settlement of this matter, pursuant to section 24.2 of By-law No. 1;

(e) If the Respondent fails to honour the terms as outlined in paragraph 10(b)(ii) of the Settlement Agreement, the outstanding balance shall immediately become due and payable and Staff may, at its own discretion and without further notice to the Respondent take such measures as are available to it to collect the outstanding amount;

21. It is also ordered that the present disposition is conditional upon the Respondent having completed the following undertakings (made at the hearing on November 18, 2010) on or before the close of business December 17, 2010:

(a) Provide copies of all Alberta Securities Commission filings up to, and including, proof of exemption in relation to the securities at issue; and

(b) Provide a letter from the Respondent's responsible securities lawyer, addressed to the MFDA, advising the Respondent not to disclose the information requested of the Respondent identified in paragraphs 1 and 2 of the MFDA's letter dated August 29, 2008.

DATED this 17th day of January, 2011.

"Daniel Ish"

Daniel Ish, Q.C.,
Chair

"Elaine Bradley"

Elaine Bradley,
Industry Representative

"Nada Israeli"

Nada Israeli,
Industry Representative



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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: Bradley Monroe Gabrielson

AFFIDAVIT OF INDIRA NADARAJAN

I, **INDIRA NADARAJAN**, of the city of Vancouver, in the province of British Columbia,
MAKE OATH AND SAY:

1. I am employed as the Investigations Manager of the Pacific Region of the Enforcement Department of the Mutual Fund Dealers Association of Canada ("MFDA") and have held this position since February 2010. Prior to my promotion to my current position, I held the positions of Investigations Manager of the Pacific and Prairie Regions from July 2008 to February 2010, Senior Investigator from July 2006 to June 2008, and Investigator from December 2002 to June 2006. In October 2007, I was assigned the investigation of the conduct of Bradley Monroe Gabrielson (the "Respondent") and as such have knowledge of the matters to which I hereinafter depose. Where I do not have direct knowledge of the matters to which I depose, I have identified the source of my information and I believe the information to be true.

The Investigation of the Respondent

2. On August 29, 2007, the MFDA Enforcement Department's Case Assessment Group

opened a file with respect to the conduct of the Respondent following receipt of a complaint about the Respondent filed by RM on behalf of her son, SE on or about July 22, 2007. Attached and marked as **Exhibit “A”** to my affidavit is a copy of the complaint form dated July 22, 2007 filed by RM on behalf of SE. David Liptrott, who is now a Manager of the Case Assessment Group, was a case assessment officer at that time and was assigned the file.

3. The Respondent was registered in Alberta and British Columbia as a mutual fund salesperson with Assante Financial Management Ltd. (“Assante” or the “Member”) from September 2001 to October 9, 2007 and in Alberta as a branch manager with Assante from June 6, 2006 to October 9, 2007. The Respondent was registered in Alberta and British Columbia as a mutual fund salesperson and a branch manager with FPC Investments Inc. (“FPC”) from January 1993 to September 2001. Attached and marked as **Exhibit “B”** to my affidavit is a copy of Form 33-109F4, Registration Information of Individuals and Review of Permitted Individuals for Bradley Monroe Gabrielson obtained from the National Registration Database on October 25, 2010.

4. When the Respondent was registered as an Approved Person of Assante in December 2001, he signed an Agreement of Approved Person dated December 15, 2001, which stated among other things that he agreed to be bound by, observe and comply with the MFDA Rules as they are from time to time amended or supplemented and that he agreed to submit to the jurisdiction of the MFDA. A copy of the Agreement of Approved Person which was signed by the Respondent and dated December 15, 2001 is attached and marked as **Exhibit “C”** to my affidavit.

5. The Respondent also signed an Advisor Agreement with Assante dated December 15, 2001, a copy of which is attached and marked as **Exhibit “D”** to my affidavit. Requirement number 8 of the “MFDA Requirements – Conditions of Membership” of the Agreement, states that “The Advisor shall not conduct mutual fund or other securities related business with or in respect of any person other than [Assante].” Requirement number 9 provides, among other things, that “While the Advisor is an advisor with [Assante], the Advisor shall not engage in or carry on any Outside Activity, including any business or activity which is subject to regulation by any regulatory authority other than a securities commission, unless:

- (i) the Advisor is permitted by Applicable Rules, to engage in or carry on such

Outside Activity; and

- (ii) [Assante] has agreed in writing that the Advisor may engage in or carry on such Outside Activity.

The Advisor acknowledges and agrees that the terms or basis on which the Advisor may be engaged in or carry on any Outside Activity shall not, and that any Outside Activity engaged in or carried on by the Advisor does not, prevent or impair the ability of:

- (i) [Assante], the MFDA, or any applicable regulatory authority from monitoring and enforcing compliance by the Advisor with the terms of the Agreement(s) or the Applicable Rules; and
- (ii) [Assante] from monitoring and enforcing compliance with [Assante] policies and procedures.”

6. According to MFDA records, Assante has been a Member of the MFDA since April 12, 2002.

7. Mr. Liptrott conducted an initial review of the complaint and requested, by letter dated August 30, 2007, that Assante provide assistance and conduct an investigation in respect of the complaint. Attached and marked as **Exhibit “E”** to my affidavit is a copy of the letter dated August 30, 2007 from Mr. Liptrott to Assante.

Allegations #1 and #2

8. The investigations conducted by the MFDA Enforcement Department’s Case Assessment Group and Assante determined that on or about October 25, 2004, the Respondent engaged in securities related business that was not carried on for the account of Assante or through the facilities of Assante by selling shares in a hotel project to a client, WE.

9. The investigations also revealed that between December 23, 2002 and September 11, 2007, the Respondent had and continued in another gainful occupation as the owner and an officer and a director of a hotel project that was not disclosed to or approved by Assante.

10. WE was a client of FPC (which was subsequently acquired by Assante). The Respondent was the Approved Person responsible for servicing WE's accounts. This is confirmed in a letter from the Respondent to WE dated October 24, 1994, a copy of which is attached and marked as **Exhibit "F"** to my affidavit; and a letter dated September 20, 2007 from Assante to Mr. Liptrott, a copy of which is attached and marked as **Exhibit "G"** to my affidavit.

11. On December 23, 2002, the Respondent incorporated Squirrel Inn Inc. ("Squirrel") in Alberta. Squirrel was a hotel project. The Respondent was the owner as well as an officer and a director of Squirrel and held 100% of the voting shares in Squirrel. Attached and marked as **Exhibit "H"** to my affidavit is a copy of the data obtained from the official records of the Alberta Corporate Registry on June 20, 2007 for Squirrel Inn Inc.

12. The hotel project was completed using the proceeds of shares sold by the Respondent by way of an offering memorandum and currently operates as Comfort Inn & Suites, Red Deer, Alberta. The Respondent promoted the share offering as an officer and the director of Squirrel. This is confirmed in a letter dated September 14, 2007 from the Respondent to Assante, a copy of which is attached and marked as **Exhibit "I"** to my affidavit; and Assante's Internal Investigation Report dated January 23, 2008, a copy of which is attached and marked as **Exhibit "J"** to my affidavit.

13. On September 20, 2004, WE submitted a request to transfer his locked-in retirement account ("LIRA") in cash from B2B Trust to Olympia Trust Company ("Olympia") and designated his son, SE as the beneficiary. On the same day, WE also instructed Olympia to subscribe for 27 shares of Squirrel for the aggregate price of \$27,000 and authorized Olympia to provide any information on the account to the Respondent. This is confirmed by a Transfer Authorization for Registered Investments dated September 20, 2004 from WE; a Registered Plan Application dated September 20, 2004 from WE; a Letter of Indemnity & Direction dated September 20, 2004 from WE to Olympia; and a letter dated September 20, 2004 from WE to Olympia, copies of which are attached and marked as **Exhibit "K"** to my affidavit.

14. On October 19, 2004, B2B Trust transferred the amount of \$26,301.71 into a LIRA at Olympia. This is confirmed in Section E of the Transfer Authorization for Registered Investments dated September 20, 2004 from WE, previously attached and marked as **Exhibit**

“K” to my affidavit; and a Locked-In Confirmation form dated October 18, 2004 from B2B Trust, a copy of which is attached and marked as **Exhibit “L”** to my affidavit.

15. On October 25, 2004, WE purchased 27 Class E non-voting Preferred shares in Squirrel (the “Shares”) for \$27,000 with funds from WE’s Olympia LIRA. The Shares were held in WE’s Olympia LIRA. This is confirmed in a letter dated October 25, 2004 from Olympia to Squirrel; a Subscription for Preferred Shares of Squirrel dated September 30, 2004 from WE; and a Certificate of 27 Class E Preferred Squirrel Shares held by Olympia in trust for WE dated September 30, 2004, copies of which are attached and marked as **Exhibit “M”** to my affidavit.

16. Assante did not have a carrying dealer or services agreement in place with Olympia. The Shares were not approved for sale by Assante, the transaction was not processed through the facilities or recorded on the records of Assante, and the Shares were never held by WE in any Assante account. This is confirmed in the letter dated September 20, 2007 from Assante to Mr. Liptrott, previously attached and marked as **Exhibit “G”** to my affidavit; a letter dated October 2, 2007 from the Respondent to Assante; and a letter dated October 9, 2007 from Assante to Mr. Liptrott., copies of which are marked as **Exhibit “N”** to my affidavit.

17. The Respondent’s Advisor Agreement with Assante, which was executed on December 15, 2001, stipulated that the Respondent was not to conduct mutual fund or other securities related business with or in respect of any person other than for the account and through the facilities of Assante. A copy of the Respondent’s Advisor Agreement with Assante dated December 15, 2001 was previously attached and marked as **Exhibit “D”** to my affidavit.

18. On April 14, 2005, WE died intestate. Attached and marked as **Exhibit “O”** to my affidavit is a copy of the Funeral Directors Statement of Death dated May 27, 2005. The Shares became the property of WE’s estate. Attached and marked as **Exhibit “P”** to my affidavit is a copy of the Statement of the Estate of WE dated February 14, 2007. Although SE was the beneficiary of WE’s Olympia LIRA, SE was unable to sell or redeem the Shares because of conditions pertaining to the LIRA. This is confirmed in a letter from SE to Olympia dated March 28, 2007, a copy of which is attached and marked as **Exhibit “Q”** to my affidavit; a letter from Gurevitch Headon & Associates (“Gurevitch”) to SE dated March 28, 2007 re: Estate of WE, a copy of which is attached and marked as **Exhibit “R”** to my affidavit; and a letter from

Gurevitch to the Respondent dated March 28, 2007 re: Estate of WE, a copy of which is attached and marked as **Exhibit “S”** to my affidavit.

19. I am advised by Mr. Liptrott that he was informed by SE and RM that in or about May 2005, SE and RM asked the Respondent to transfer ownership of the Squirrel shares to SE so that he could redeem the Shares.

20. The Respondent advised SE and RM that they would get paid out in full on November 30, 2008, but if they wanted their payment earlier then they would have to accept a discounted amount of \$12,000. SE and RM declined the Respondent’s offer for an early payment. This is confirmed in a letter dated September 14, 2007 from the Respondent to Assante, a copy of which is attached and marked as **Exhibit “T”** to my affidavit.

21. In or about November 2006, the Respondent offered to redeem the Shares for \$15,000 and for \$17,000 two weeks later. Both offers were rejected by SE and RM. This was provided in the complaint form dated July 22, 2007 filed by RM on behalf of SE, previously attached and marked as **Exhibit “A”** to my affidavit.

22. On March 15, 2007, the Respondent offered to redeem the Shares for \$17,000. This is confirmed in the letter dated March 28, 2007 from Gurevitch to SE re: Estate of WE, previously attached and marked as **Exhibit “R”** to my affidavit. SE and RM declined the Respondent’s offer. This is confirmed in the letter dated March 28, 2007 from Gurevitch to the Respondent re: Estate of WE, previously attached and marked as **Exhibit “S”** to my affidavit.

23. Assante’s investigation determined, however, that the terms and conditions of the subscription agreement for the Shares provided that the Shares could only be redeemed by the issuer following the third year from the date of issue and at the discretion of the issuer. There was no market for the Shares and thus, there was no way to determine what their redemption value was other than what the issuer was willing to pay for them. This is confirmed in a letter from Assante to SE and RM dated October 12, 2007, a copy of which is attached and marked as **Exhibit “U”** to my affidavit.

24. Assante states that it became aware of the Respondent’s involvement with Squirrel on

September 11 and 12, 2007 while Assante was interviewing the Respondent about the complaint. This is confirmed in the letter dated September 20, 2007 from Assante to Mr. Liptrott, previously attached and marked as **Exhibit “G”** to my affidavit.

25. I am advised by Michelle Pong that in a letter delivered by e-mail on April 26, 2010, the Respondent claimed that he disclosed his involvement with Squirrel to Assante during Assante’s compliance branch review of its branch located in Red Deer in August 2005. Attached and marked as **Exhibit “V”** to my affidavit is a copy of the letter delivered by e-mail on April 26, 2010 from the Respondent to Ms Pong. However, in his response to Assante’s Outside Business Activity Questionnaire on August 18, 2005, the Respondent disclosed only his involvement as the President of a business named “Canadian Asset Management Inc.” that provided tax preparation and insurance services. Attached and marked as **Exhibit “W”** to my affidavit is a copy of Assante’s Outside Business Activity Questionnaire completed by the Respondent on August 18, 2005. The results of Assante’s compliance branch review were subsequently summarized and issued to the Respondent in a report dated September 30, 2005. In the report, under the heading, “Outside Business Activity”, the Respondent was informed that, “The branch is using an unapproved Trade/Style Name known as ‘Canadian Asset Management’. Brad Gabrielson, Branch Manager, has completed the OBA Acknowledgement form and submitted to the Registrations Department for approval.” MFDA Rule 1.2.1(d) was listed under the heading, “Regulatory Requirement.” Under the heading, “Compliance Reference”, the Respondent was informed that “A Representative shall not engage in any such outside activity until they have obtained the approval of the Compliance Department.” Attached and marked as **Exhibit “X”** to my affidavit is a copy of Assante’s Branch Review Report dated September 30, 2005.

26. On October 5, 2007, the Respondent resigned from his position as an Approved Person of Assante. Attached and marked as **Exhibit “Y”** to my affidavit is a copy of a letter of resignation dated October 5, 2007 from the Respondent to Assante.

27. On October 15, 2007, Mr. Liptrott recommended escalation of the matter to the MFDA Enforcement Department’s Investigation Group. I was assigned carriage of the matter.

Allegation #3

28. On August 6, 2008, a process server, retained by Staff of the MFDA (“Staff”), attempted to personally deliver a letter from Staff to the Respondent at his office located at #200, 4928 – 53 Avenue, Red Deer, Alberta. The Respondent was not present. The receptionist telephoned the Respondent for the process server. The process server advised the Respondent that he had a letter from the MFDA and was directed by the Respondent to return the letter. This is confirmed in an e-mail dated August 6, 2008 from Prairie Bailiff Services to me, a copy of which is attached and marked as **Exhibit “Z”** to my affidavit.

29. By letter dated August 29, 2008, I requested that the Respondent provide a statement and copies of specified documents relating to his involvement with Squirrel by September 5, 2008. I also requested that the Respondent contact me to schedule an interview for the purposes of providing a statement concerning the circumstances surrounding his termination by Assante by September 5, 2008. I advised the Respondent that Staff was prepared to initiate disciplinary proceedings against him pursuant to section 22.1 of MFDA By-law No. 1 should he fail to satisfy Staff’s requests. The letter was sent to Comfort Inn & Suites Red Deer, 6846 – 66th Street, Red Deer, Alberta by registered mail and regular mail. Attached and marked as **Exhibit “AA”** is a copy of my letter dated August 29, 2008 to the Respondent.

30. The copy of my letter dated August 29, 2008 that was sent by registered mail was picked up and signed for by Glenda Couture on September 2, 2008. A copy of Canada Post’s scanned delivery date and signature of the recipient of my letter from Canada Post’s website is attached and marked as **Exhibit “BB”** to my affidavit.

31. The Respondent did not deliver a statement or copies of the specified documents to me or contact me by September 5, 2008.

32. By letter dated September 12, 2008, I advised the Respondent that he had not satisfied Staff’s requests and that he was required by section 22.1 of MFDA By-law No. 1 to cooperate with Staff’s investigation, failing which disciplinary proceedings may be commenced against him. The letter was sent to Comfort Inn & Suites Red Deer, 6846 – 66th Street, Red Deer, Alberta by registered mail and regular mail. Attached and marked as **Exhibit “CC”** to my affidavit is a copy of my letter dated September 12, 2008 to the Respondent.

33. The copy of my letter dated September 12, 2008 that was sent by registered mail was picked up and signed for by Marilyn Blair on September 17, 2008. A copy of Canada Post's scanned delivery date and signature of the recipient of my letter from Canada Post's website is attached and marked as **Exhibit "DD"** to my affidavit.

34. By voice-mail on September 17, 2008, the Respondent advised me that his lawyer was going to provide a written response. No contact information for the lawyer was provided.

35. By letter dated September 30, 2008, I requested that the Respondent provide a statement and copies of specified documents relating to his involvement with Squirrel and his lawyer's contact information. I advised the Respondent that he was required by section 22.1 of MFDA By-law No. 1 to cooperate with Staff's investigation and that Staff was seeking authorization to commence disciplinary proceedings against him for failing to satisfy Staff's requests. The letter was sent to Comfort Inn & Suites Red Deer, 6846 – 66th Street, Red Deer, Alberta by registered mail and regular mail. Attached and marked as **Exhibit "EE"** to my affidavit is a copy of my letter dated September 30, 2008 to the Respondent.

36. The copy of my letter dated September 30, 2008 that was sent by registered mail was picked up and signed for by Brandean Ravensborg on October 2, 2008. A copy of Canada Post's scanned delivery date and signature of the recipient of my letter from Canada Post's website is attached and marked as **Exhibit "FF"** to my affidavit.

37. By e-mail on October 7, 2008, the Respondent replied that he was going to send SE his money but could not as long as the MFDA matter remained unresolved and that it was his understanding that everything was fine and addressed a year ago. Attached and marked as **Exhibit "GG"** to my affidavit is a copy of the Respondent's e-mail dated October 7, 2007 to me.

38. By e-mail on October 8, 2008, I advised the Respondent that his failure to cooperate with the investigation and any other allegations that may be made at the completion of Staff's investigation will be referred to MFDA's Litigation Department for review. I requested that the Respondent provide Staff with the specified documents previously requested, provide his lawyer's contact information or have his lawyer contact Staff, should the Respondent wish to engage in the process. Attached and marked as **Exhibit "HH"** to my affidavit is a copy of my e-

mail dated October 8, 2008 to the Respondent.

39. The Respondent did not respond to or satisfy any of Staff's requests.

40. In or about June 2009, SE received \$27,000 for the Shares from the Respondent. This is confirmed in a letter dated November 10, 2009 from SE & RM to the MFDA, a copy of which is attached and marked as **Exhibit "II"** to my affidavit.

41. I make this affidavit in support of the MFDA disciplinary proceeding against the Respondent and for no other or improper purpose.

Sworn before me at)	
the City of Vancouver,)	
in the Province of British Columbia,)	<u>"Indira Nadarajan"</u>
this 12th day of November, 2010.)	INDIRA NADARAJAN
)	
<u>"Sarah Hentschel"</u>)	
A Commissioner of oaths, etc.)	