



**Decision and Reasons**

**File No. 200510**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

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: GLENN MURRAY GREYEYES**

**DISCIPLINARY HEARING**

Hearing: April 11, 2006

Decision: June 5, 2006

**DECISION and REASONS**

Hearing Panel of the Prairie Regional Council:

The Honourable Mary M. Hetherington  
Kathleen Jost  
Elaine Bradley

Chair  
Industry Representative  
Industry Representative

Appearances:

William Donegan	)	for the Mutual Fund Dealers Association
	)	of Canada
Thomas Lloyd	)	for Glenn Murray Greyeyes
	)	

## **Decision and Reasons**

### **Allegation**

In the Notice of Hearing in this case, dated the 4<sup>th</sup> of November, 2005, the Mutual Fund Dealers Association of Canada (the “MFDA”) alleged the following violation of the Rules of the MFDA by Glenn Murray Greyeyes, the Respondent:

“Allegation: Between May 2001 and June 2004, the Respondent engaged in a series of loan transactions whereby he borrowed monies totaling \$243,000, more or less, from two of his mutual fund clients, thereby:

- (a) placing his personal interests above those of his clients and giving rise to a conflict of interest, contrary to MFDA Rule 2.1.4, and;
- (b) engaging in conduct unbecoming an approved person contrary to MFDA Rule 2.1.1.”

### **Jurisdiction**

Mr. Greyeyes was registered in Alberta as a mutual fund sales representative from May of 1978 until May of 2004. From October of 2001 until the 11<sup>th</sup> of May, 2004, his registering firm was Cartier Financial Services Inc. (“Cartier”). Cartier became a member of the MFDA on the 15<sup>th</sup> of May, 2002. At that time Mr. Greyeyes became an Approved Person under By-law No. 1 of the MFDA, and subject to the Rules of the Association. He ceased to be an Approved Person under By-law No. 1 of the MFDA, and subject to the Rules of the MFDA, when he was terminated for cause on the 11<sup>th</sup> of May, 2004. The Hearing Panel must therefore decide whether he breached those Rules between the 15<sup>th</sup> of May, 2002, and the 11<sup>th</sup> of May, 2004.

## Facts

A copy of the Notice of Hearing referred to above was served on Mr. Greyeyes. Rule 8.1 of the Rules of Procedure of the MFDA provides that a Respondent must serve and file a Reply within 20 days of the effective date of service of the Notice of Hearing. Mr. Greyeyes did not do this. In fact, he did not ever file a Reply.

Rule 8.4 of the Rules of Procedure provides that:

“(1) Where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may do any one or more of the following:

. . .

(b) accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven . . . .”

In addition, the Hearing Panel has for consideration the affidavits of Angelique Ellerton, an investigator for the MFDA, and two people who will be referred to in these reasons as MD and NM. These affidavits support the facts and conclusions in the Notice of Hearing.

During the hearing Mr. Greyeyes did not dispute any of those facts or conclusions. For this reason and those set out above, the Hearing Panel accepted them as proven.

The facts and conclusions as set out in the Notice of Hearing are as follows:

“Borrowing from Client MD

3. MD was a client of the Respondent. MD was born in 1923. MD had no experience in investments or finance. She trusted and depended completely on the investment advice given to her by the Respondent.

4. On May 17, 2001, the Respondent gave a promissory note to MD. The promissory note was given for the purpose of recognizing and consolidating various advances of funds from MD to the Respondent, totaling \$108,000, more or less, made from time to time, prior to May 2001. The promissory note included the following terms:

Principal: \$108,000

Interest: One of two options to be selected on the first anniversary of the loan:

Option 1 – 5% per annum

Option 2 – a ‘trailer fee’ of 1/32 of 1 % of MD's managed assets to a maximum of \$50 million dollars of managed assets

Term: 5 years

Payments: No payment was stipulated. The Respondent had the option of paying any amount plus accrued interest during the term of the loan.

5. Between April 28, 2002 and April 23, 2004, the Respondent made sporadic payments to MD on account of the borrowings totaling \$7,600, more or less. During that time, he also attempted loan payments to MD by way of cheques totaling \$2,500, more or less, that were returned marked “NSF”.

6. In April 2004, the Respondent asked MD for a further loan. At that time, she loaned him an additional \$11,000.

7. On June 2, 2004, the Respondent provided to MD a second promissory note in the principal amount of \$96,500, more or less. The purpose of the second note was to recognize and consolidate the existing loans. The terms of the second promissory note were as follows:

Principal: \$96,522.61

Interest: 4.5% per annum, calculated half yearly

Term: 15 years

Payments: \$750 monthly, commencing July 2, 2004

8. Between July 20, 2004 and December 7, 2004, the Respondent made payments on account of the loans to MD totaling \$2,250, more or less. During that time, he also attempted loan payments to MD by way of cheques totaling \$2,250, more or less, that were returned marked "NSF".

9. The Respondent provided no security for the loans. No payments have been made on account of the loans since December 7, 2004. The loans are currently in default.

10. By requesting loans from MD, the Respondent preferred his own interest to that of MD. In so doing, he breached MFDA Rule 2.1.4 and engaged in conduct unbecoming a mutual fund salesperson, contrary to MFDA Rule 2.1.1.

#### Borrowings from Client NM

11. NM was a client of the Respondent. NM was born in 1923. NM had no experience in investments or finance. She trusted and depended completely on the investment advice given to her by the

Respondent.

12. In January of 2002, the Respondent asked NM for a loan. The Respondent told NM that he needed the money for personal reasons. In January 2002, NM loaned \$20,000 to the Respondent.

13. In March 2002, the Respondent asked NM for another loan. At that time, she loaned him \$10,000.

14. In May 2002, the Respondent asked NM for a further loan. At that time, she loaned him \$95,000.

15. The Respondent provided no security for the loans. Acting on the advice of the Respondent, NM instructed the Respondent to redeem mutual fund investments from her account for the purpose of financing the advance of \$20,000, made in January 2002 and the advance of \$95,000, made in May 2002.

16. The Respondent provided NM with a promissory note signed by him and his spouse dated May 22, 2002 in respect of part of the loan. The terms of the promissory note were as follows:

Principle: \$95,000

Interest: 7% per annum, calculated half yearly not in advance

Term: 15 years

Payments: \$854.05 monthly, commencing June 15, 2002

17. Between June 14, 2002 and July 31, 2004, the Respondent made payments to NM on account of borrowings totaling \$15,686.45. No payment has been made on account of the loan since July 31, 2004. The loan is currently in default.

18. The Respondent preferred his own interest to that of his client, NM by requesting loans from NM, and, recommending that she redeem mutual funds to provide loan advances. In so doing, he breached MFDA Rule 2.1.4 and engaged in conduct unbecoming a mutual fund salesperson contrary to MFDA Rule 2.1.1. ”

The Affidavit of NM reveals the following:

- When NM redeemed mutual funds so that she could loan money to Mr. Greyeyes, she was charged “deferred sales charges”, although she was not aware of this fact.
- On August 10, 2004, NM through her counsel filed a Statement of Claim naming the Respondent and his spouse as defendants and seeking payment of the outstanding loan.
- On December 8, 2004, NM obtained judgment against the Respondent and his spouse in the total amount of \$98,284.92.
- On December 13, 2004, NM through her counsel obtained a Writ of Enforcement pursuant to the Alberta Enforcement Act.

Counsel for the MFDA advised the Hearing Panel that Mr. Greyeyes had repaid \$17,100 of the outstanding debt to NM before NM obtained judgment against him. He also said that through garnishment \$6,000 has been paid into court. It is not clear how much NM will receive from this.

Except as set out above, Mr. Greyeyes has not made any payments on his indebtedness to MD and NM.

### **Application of Rules**

The Notice of Hearing dated November 4, 2005 alleges a breach of MFDA Rule

2.1.4. At the time the Notice of Hearing was issued, MFDA Rule 2.1.4 stated:

“2.1.4 Conflicts of Interest

(a) Each Member and Approved Person and other employee and agent of a Member shall be aware of the possibility of conflicts of interest arising in connection with business conducted by them for a client. In the event that such a conflict or potential conflict of interest arises, the Member shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(b) and (c).

(b) Any conflict of interest that arises or can reasonably be expected to arise as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing by the Member to the client prior to the Member, or any person acting on its behalf in connection with its business, conducting business for the client.

(c) . . . .”

In speaking to Ms. Ellerton Mr. Greyeyes acknowledged that the unsecured loans made to him by his clients NM and MD were higher risk investments than mutual funds. He admitted that he did not even consider whether the loans were in the best interests of these clients. He knew NM and MD to be unsophisticated investors, but he did not advise them to get independent advice. Clearly he did not exercise responsible business judgment influenced only by the best interests of his clients.

Mr. Greyeyes admitted to Ms. Ellerton that he did not consider the possibility that the loans put him in a conflict of interest with his clients. He did not, therefore, disclose this clear conflict of interest to Cartier.

Mr. Greyeyes was an Approved Person and subject to MFDA Rules from the 15<sup>th</sup> of May, 2002, to the 11<sup>th</sup> of May, 2004. The Hearing Panel has noted that he borrowed money from both MD and NM during that time – from NM on the 22<sup>nd</sup> of May, 2002, and from MD in April of 2004. The Hearing Panel is therefore satisfied that while he was an Approved Person, Mr. Greyeyes breached MFDA Rule 2.1.4, as it then was. Mr. Greyeyes does not dispute this.

It is not necessary for the Hearing Panel to decide whether Mr. Greyeyes' continuing indebtedness to NM and MD after the 15<sup>th</sup> of May, 2002, arising out of loans made before that date, constituted a breach of MFDA Rule 2.1.4.

The Notice of Hearing also alleges a breach of MFDA Rule 2.1.1. This Rule states:

“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 in the transaction of business;
- (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.”

It is clear from the facts set out above that in borrowing money from them, Mr. Greyeyes did not deal fairly, honestly or in good faith with MD and NM. He did not observe high standards of ethics and conduct. His conduct was not only unbecoming, it was detrimental to the interests of his clients, who are members of the public. Therefore the Hearing Panel is satisfied that between the 15<sup>th</sup> of May, 2002, and the 11<sup>th</sup> of May, 2004, when he was an Approved Person and subject to MFDA Rules, Mr. Greyeyes breached MFDA Rule 2.1.1. Mr. Greyeyes does not dispute this.

## **Penalty**

While Mr. Greyeyes was not subject to MFDA Rules until the 15<sup>th</sup> of May, 2002, the Hearing Panel will take into consideration his dealings with MD and NM both before and after that date with respect to the penalty which it will impose.

Counsel for the MFDA asked the Hearing Panel to prohibit Mr. Greyeyes from conducting securities related business in the future, and to direct that he pay a fine of \$225,000. This figure was arrived at by deducting the amount that Mr. Greyeyes has repaid to MD and NM, approximately \$25,000, from the amount that he borrowed from them, which was approximately \$243,000.

Counsel for the MFDA submitted that:

“The permanent prohibition is appropriate in order to reflect the seriousness of the misconduct of the Respondent. It is submitted that it is important that a strong general deterrent message be sent to the industry that misconduct involving personal financial dealings and in particular borrowing from vulnerable clients will result in serious consequences. The proposed penalty is 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 Approved Persons.”

The Hearing Panel agrees with this submission.

Counsel for the Respondent argued that the protection of the investing public is the major consideration in this case and that the integrity of the securities market does not apply in this case.

*In The Matter of Stephan Headley*, [2005], Hearing Panel of the Ontario Regional Council, MFDA File No. 200509, Hearing Panel Decision dated February 21, 2006, at p. 24, MFDA Book of Authorities at Tab 14

The factors to be considered with respect to penalty and the specific considerations which are relevant in the present case are presented in greater detail below.

#### Factors to be Considered

- (a) The primary goal of securities regulation is the protection of the investor.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994], SCJ 58, Iacobucci, J., at paras. 59, 68, MFDA Book of Authorities at Tab 7

*In The Matter of Robert Roy Parkinson*, (2005), 28 OSCB 4324 (Ontario Regional Council), MFDA File No. 200501, Hearing Panel Decision dated April 29, 2005, at p. 13, MFDA Book of Authorities at Tab 8

In this Hearing Panel’s view, any sanctions we impose should be preventative, protective and prospective in nature. One of the main objectives of securities regulation is to prevent harm to investors and capital markets.

It is therefore appropriate for this Hearing Panel to impose sanctions on the basis of past conduct that will protect the public interest, and prevent future conduct detrimental to the integrity of the capital markets by "removing from the capital markets - wholly or partially, permanently or temporarily as the circumstances may warrant - those whose conduct in the past leads us to

conclude that their conduct in the future may well be detrimental to the integrity of those capital markets."

*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] SCJ 38, per Iacobucci, J., at para. 42, MFDA Book of Authorities at Tab 9

*In The Matter of Mithras Management Ltd. et al* (1990), 13 OSCB 1600, at p. 4 (Q/L), MFDA Book of Authorities at Tab 10

*In The Matter of Arnold Tonnies*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005, at p. 22, MFDA Book of Authorities at Tab 3

*Re Arlington Securities Inc.* (2002), 25 OSCB 4247, at p. 7, MFDA Book of Authorities at Tab 11

This Hearing Panel believes that, in this case, this reflects the role of this Hearing Panel.

(b) In exercising its discretion to impose a penalty, this Hearing Panel should *inter alia*, consider:

- (1) the protection of the investing public;
- (2) the integrity of the securities markets;
- (3) specific and general deterrence;
- (4) the protection of the MFDA's membership; and
- (5) the protection of the integrity of the MFDA's enforcement processes.

*Parkinson, supra* at p. 21 (Q/L), MFDA Book of Authorities at Tab 8

*Tonnies, supra* at p. 22, MFDA Book of Authorities at Tab 3

(c) It is appropriate for this Hearing Panel to include general deterrence among the factors that it takes into account when determining an appropriate penalty. General deterrence tends to promote the prevention of future harm to the capital markets and thereby generally advances the goal of enhancing the

protection of investors. As the Supreme Court of Canada stated in *Re: Cartaway Resources Corp.*:

“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...”

*Re Cartaway Resources Corp.*, [2004] 1 SCR 672 at para. 61, MFDA Book of Authorities at Tab 12

*Tonnies, supra* at p. 22, MFDA Book of Authorities at Tab 3

(d) An MFDA Hearing Panel recently stated,

a "penalty must re-affirm public confidence in the regulatory system, and to do this, it must be seen to act as a general deterrent."

*In The Matter of Raymond Brown-John*, [2005] Hearing Panel of the Pacific Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005 at p. 5, MFDA Book of Authorities at Tab 4

(e) Other Hearing Panels have frequently considered a number of additional factors when determining an appropriate penalty which include the following:

- The seriousness of the allegations proved against the respondent;
- The respondent's past conduct, including prior sanctions;
- The respondent's experience in the capital markets;
- The level of the respondent's activity in the capital markets;

- Whether the respondent recognizes the seriousness of the improper activity;
- The harm suffered by investors as a result of the respondent's activities;
- The benefits received by the respondent as a result of the improper activity;
- The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- The need to deter not only those involved in the case being considered but also any others who participate in the capital markets from engaging in similar improper activity;
- The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- Previous decisions made in similar circumstances.

*Lamoureux (Re)*, [2002] ASCD No. 125, at para. 11, MFDA Book of Authorities at Tab 13

*Parkinson, supra* at pp. 14-15 (Q/L), MFDA Book of Authorities at Tab 8

*Tonnies, supra* at p. 23, MFDA Book of Authorities at Tab 3

The actions of the Respondent in borrowing funds from both MD and NM were planned and deliberate. His status as an Approved Person and his long standing relationship permitted him to gain the trust of these clients. He abused this trust in the most fundamental fashion. This abuse continued over an extended period of time occurring between May of 2001 to June of 2004. Only after a formal complaint was sent to the Member firm did the abuse stop due to termination of the Respondent's employment on May 11, 2004.

While the repayment of some of the borrowed funds is a mitigating factor, it does not alter the fact that the Respondent continually breached his position of trust and took advantage of his clients in his role as an Approved Person.

In this Hearing Panel's view it is important that a strong general deterrent message be sent to the mutual fund sales industry that misconduct, such as occurred in the present case, will result in serious consequences. It is also important to maintain public confidence in the regulatory system.

In this Hearing Panel's view a permanent prohibition on the authority of the Respondent to conduct securities related business will provide the appropriate general deterrent and maintain public confidence in the MFDA as an effective regulator.

There are a number of mitigating circumstances in this case:

- The Respondent has no disciplinary history;
- The Respondent co-operated with the MFDA in its investigation of the client accounts of MD and NM;
- The Respondent did not dispute the allegation in the Notice of Hearing;
- The Respondent has made some payments on his indebtedness to these clients; and
- The Respondent provided his clients with promissory notes and loan agreements in acknowledgment of the debts.

With respect to aggravating factors, this Hearing Panel has considered the following:

- In total the Respondent borrowed a substantial sum of money, approximately \$243,000, from his clients, MD and NM. He has repaid only about \$25,000;
- The events took place over a lengthy period of time;
- There were multiple transactions;
- There was no evidence of any remorse on the part of the Respondent;

- The Respondent made loan payments that were returned NSF;
- The Respondent provided no security with respect to the loans;
- The Respondent did not advise his clients to seek independent advice prior to advancing the loans;
- Both clients were elderly and had no experience in investing or any financial background prior to meeting the Respondent;
- The clients were dependent on the Respondent for advice and were vulnerable;
- The Respondent took advantage of their trust in him;
- The Respondent defaulted on the loans;
- The Respondent failed to notify the Member of the loans;
- The Respondent admits the loans were a higher risk than mutual funds;
- The Respondent admits he failed to consider the best interests of his clients;
- The Respondent recommended that his client, NM, redeem relatively low risk mutual funds to finance part of the higher risk loan to himself, and, in addition, NM unknowingly paid deferred sales charges in connection with the redemptions;
- Enforcement counsel advised that since the Notice of Hearing two other client accounts of the Respondent have been found to be connected to the Respondent by way of personal loans and that the Respondent refused to co-operate in the investigation of these additional client accounts; and
- Counsel for the Respondent revealed that the Respondent is giving unregistered financial advice as a means of employment.

The Hearing Panel therefore directs that Mr. Greyeyes is to pay a fine of \$225,000. It directs further that Mr. Greyeyes is prohibited from conducting securities related business at any time in the future.

## Costs

Counsel for the MFDA also asked the Hearing Panel to direct that Mr. Greyeyes pay costs in relation to this hearing in the sum of \$7,500.

Counsel for Mr. Greyeyes argued that given his client's limited means, the amount of the costs being sought would be put to better use by compensating the clients in this case. He said that Mr. Greyeyes' means were limited due to his considerable debt and that his employment as a courier and unregistered financial advisor limits his ability to pay. Counsel for MFDA pointed out that there was no evidence before the Hearing Panel as to Mr. Greyeyes financial means.

The Hearing Panel is of the view that in the circumstances of this case the imposition of costs is appropriate. It therefore directs that Mr. Greyeyes pay costs in the amount of \$7,500.

"Mary M. Hetherington"  
The Honourable Mary M. Hetherington, Chair

"Kathleen Jost"  
Kathleen Jost, Industry Representative

"Elaine Bradley"  
Elaine Bradley, Industry Representative