



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

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Christopher Philip Jones**

Heard: January 21, 2011 in Toronto, Ontario  
Reasons for Decision: February 7, 2011

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Terrance Sweeney  
Selwyn Kossuth  
Brigitte Geisler

Chair  
Industry Representative  
Industry Representative

Appearances:

Lyla Simon	)	For the Mutual Fund Dealers Association of
	)	Canada
Christopher Philip Jones	)	Not in attendance or represented by counsel
	)	

1. By Notice of Hearing dated September 30, 2010,<sup>1</sup> the following allegations were made against Christopher Philip Jones (the “Respondent”):

**Allegation #1:** Between February 26, 2003 and March 18, 2008, the Respondent engaged in personal financial dealings with client AS (“AS”) by borrowing a total of \$13,000 from AS which he failed to repay in full or otherwise account for, contrary to MFDA Rules 2.1.4 and 2.1.1.

**Allegation #2:** Commencing September 2008, the Respondent failed to cooperate with an MFDA investigation by failing to comply with a request by MFDA Staff (“Staff”) that he provide a written statement concerning the matters under investigation, contrary to section 22 of MFDA By-law No. 1.

### **Service**

2. The Notice of Hearing provided for a first appearance by teleconference before the Hearing Panel on November 8, 2010. The Respondent did not appear nor did anyone appear on his behalf. The Hearing Panel received an affidavit of service of Chris Russell.<sup>2</sup> The affiant swore that he personally served the Respondent with a true copy of the Notice of Hearing, a copy of a letter dated October 1, 2010 from the MFDA, a copy of the MFDA’s Rules and Procedures, and a copy of the MFDA’s Guide to the Disciplinary Process.

3. At the first appearance, the Hearing Panel set the hearing date as January 21, 2011. Neither the Respondent nor anyone on his behalf appeared at that time. The Hearing Panel received another affidavit of service, sworn January 18, 2011 by Mr. Russell, in which he stated that he personally served the Respondent with a copy of a letter addressed to him, an affidavit of Stephen Davis, together with written submissions of MFDA Staff and a Book of Authorities.

4. The delivery of the Notice of Hearing, in the manner described above, constitutes good and sufficient service on the Respondent in accordance with the MFDA Rules<sup>3</sup> and we so ordered.

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<sup>1</sup> Exhibit 1

<sup>2</sup> Exhibit 5

<sup>3</sup> Rule 4, MFDA Rules of Procedure, Updated Version, July 16, 2010

## **Procedure**

5. The MFDA Rules<sup>4</sup> provide ample authority for the Hearing Panel to proceed in the absence of a properly served Respondent and the Hearing Panel ordered counsel for the MFDA to proceed with her submissions.

## **The Hearing**

6. Counsel for the MFDA tendered the affidavit of Stephen Davis, an investigator with the MFDA, sworn on January 13, 2011.<sup>5</sup> The affidavit is 62 paragraphs long with 39 attachments.

7. Mr. Davis solemnly affirmed and testified, during which testimony he augmented the facts to which he swore in his affidavit. He also answered a few questions from members of the Hearing Panel.

8. The Hearing Panel is entitled under the MFDA Rules to accept affidavit evidence<sup>6</sup> and we accepted Mr .Davis' affidavit and direct testimony in full. Accordingly, the Hearing Panel ruled that the following facts are proven:

### **Registration History**

- 1) From October 2001 to June 2004, the Respondent was registered in Ontario as a mutual fund salesperson with Cartier Partners Financial Services Inc. (“Cartier”).
- 2) Cartier was a Member of the MFDA from April 12, 2002 until June 1, 2004, when it was acquired by Dundee Private Investors Inc. (“Dundee”) on June 2, 2004.
- 3) From June 1, 2004 to March 18, 2008, the Respondent was registered in Ontario as a mutual fund salesperson with Dundee, currently a Member of the MFDA.
- 4) The Respondent resigned from Dundee effective March 18, 2008.

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<sup>4</sup> Rule 7.3, *ibid*

<sup>5</sup> Exhibit 4, p. 2

<sup>6</sup> Rule 13.4 MFDA Rules of Procedure, *ibid*

5) The Respondent is not currently registered in the securities industry in any capacity.

**Respondent's Conflict of Interest/Personal Financial Dealings with Client AS**

6) AS was born in 1922, is retired, and lives on a fixed income.

7) Staff was advised by Dundee that the Respondent had been the mutual fund salesperson responsible for servicing AS's account from December 1997 until March 2008.

**Loans from AS to the Respondent**

8) In 2003, the Respondent requested that AS lend him money for his personal use and promised to repay the money to AS with interest.

9) The following loans from AS to the Respondent, totaling \$13,000, took place at the Respondent's request:

- i. On February 26, 2003, the Respondent borrowed \$5,000 from AS.
- ii. On March 28, 2003, the Respondent borrowed \$3,000 from AS.
- iii. On December 1, 2003, the Respondent borrowed \$5,000 from AS.

**Loans Were Funded by Mutual Fund Redemptions**

10) On each of the three occasions the Respondent borrowed money from AS:

- i. AS authorized the Respondent to make redemptions in her mutual fund account immediately prior to the loans and in the identical amounts as the loans;
- ii. The mutual fund redemption proceeds were electronically transferred to AS's bank account; and
- iii. AS then wrote cheques to the Respondent personally for the amount of the loans from the same bank account to which the redemption proceeds had been electronically deposited.

11) On the occasion of the third (November 21, 2003) redemption, AS incurred DSC fees of \$238.20.

### **Respondent's Promises of Repayment**

12) On the mutual fund redemption form dated November 21, 2003, the Respondent made a handwritten note stating that he would reimburse AS "later in January with [his] bonus"; however, no such reimbursement took place.

13) On January 1, 2004, the Respondent provided a promissory note to AS indicating that he would repay AS \$13,000 on demand.

14) In March 2004, the Respondent provided AS with a typed document purporting to set out a repayment schedule for the \$13,000 he owed her.

15) The Respondent did not make good on the promissory note or the repayment schedule he had provided to AS; as such, substantially all the funds were misappropriated.

16) In 2004, the Respondent provided postdated cheques to AS for some of the amounts owed. The cheques were as follows:

- i. Cheque in the amount of \$1,000 dated May 31, 2004;
- ii. Cheque in the amount of \$1,000 dated June 30, 2004; and
- iii. Cheque in the amount of \$500 dated July 31, 2004.

17) The Respondent later instructed AS not to cash the cheques, advising that if AS did attempt to cash them, they would be returned "NSF", i.e. insufficient funds.

18) AS followed the Respondent's instructions and did not attempt to cash the three cheques given to her by the Respondent in 2004.

19) In 2004, the Respondent paid AS \$1,500 and in 2008, the Respondent paid AS \$121.00, for a total repayment of \$1,621.

## **Respondent's Further Promises of Repayment**

- 20) During the course of 2004 to 2008, AS made further requests for payment from the Respondent; however, according to AS, her requests were met with "false promises and excuses" as to why the Respondent was unable to repay the loans.
- 21) On August 4, 2004, the Respondent wrote to AS advising that he would call her in August 2004 to meet with her and give her some cheques to make payments to her. No such payments were ever made.
- 22) On March 11, 2005, the Respondent wrote to AS advising that he would call her in April 2005 to meet with her and make payments to her. No such payments were ever made.
- 23) On June 6, 2005, the Respondent wrote to AS advising that he would soon have some business going through that would allow him to pay back "a good chunk" of the money owing to AS. He further advised that he would call AS to arrange to meet with her to set up further payments to her. Again, according to AS, no such payments were made.
- 24) In early 2008, the Respondent provided three further postdated cheques to AS for some of the amounts owed; however, when AS attempted to cash the cheques at RBC in March 2008, they were all returned "NSF". The cheques were as follows:
- i. Cheque in the amount of \$250 dated January 18, 2008;
  - ii. Cheque in the amount of \$500 dated February 15, 2008; and
  - iii. Cheque in the amount of \$750 dated March 15, 2008.
- 25) In March 2008, the Respondent wrote to AS advising that he had been to the bank and noticed that the three cheques had not gone through. He advised that he would call AS before the end of March to set up a meeting and start monthly payments to AS. Again, according to AS, no such payments were made.

26) Of the total amount of \$13,000 that the Respondent borrowed from AS, a balance of \$11,379 remains unpaid by the Respondent. The Respondent has never accounted for the unpaid monies.

### **Complaint from AS to Dundee**

27) The Respondent resigned from Dundee effective March 18, 2008.

28) In or about July 2008, AS's brother, FJB, made a written complaint to Dundee regarding the Respondent's personal financial dealings with AS.

29) On July 11, 2008, AS then made her written complaint to Dundee.

### **Member Policies and Procedures**

30) Dundee's written policies and procedures prohibited personal financial dealings between an Approved Person and a client.

31) The Respondent was required to, and did in fact, execute Acknowledgments confirming that he had received, read, and understood Dundee's Compliance Manual.

32) Dundee had not been aware of the Respondent's personal financial dealings with AS, and at no time did the Respondent disclose the conflict of interest to the Member. Dundee did not become aware of the Respondent's personal financial dealings with AS until Dundee received AS's complaint in July 2008.

33) When Dundee became aware of AS's complaint, Dundee commenced an investigation, including attempting to make inquiries of the Respondent. The Respondent, who had already tendered his resignation from Dundee, failed to respond to Dundee's request for information concerning the complaint.

34) In January 2009, following the completion of its internal investigation, Dundee reimbursed AS \$11,400.

## **Failure to Cooperate**

- 35) The Respondent was given notice of, and ample opportunity to participate in, the MFDA's investigation and litigation proceedings in this matter.
- 36) The series of correspondence detailed below make clear that although Staff did put the Respondent on actual notice at every step of the proceedings, he has not formally responded or otherwise participated.
- 37) By letter dated September 15, 2008, sent by registered and regular mail, Staff requested that the Respondent provide a written response to the complaint made by AS to Dundee by October 6, 2008.
- 38) Although the registered copy of the letter was, according to Canada Post, not claimed, the Respondent appears to have received the regular post copy of the letter because the Respondent telephoned Staff on October 7, 2008, and requested an extension of time in which to provide his written response. Staff granted the extension; however, the Respondent did not initiate any further contact with Staff. In fact, this was the last time Staff received any communication from the Respondent.
- 39) By letter dated November 20, 2008, sent by registered and regular mail, Staff reiterated the request that the Respondent provide a written response to the complaint made by AS to Dundee by December 4, 2008.
- 40) The copy of the letter sent by registered mail was not signed for, was marked "unclaimed" by Canada Post, and returned to the MFDA. The regular post letter was not returned to the MFDA.
- 41) The Respondent did not respond to the November 20, 2008 letter.
- 42) By letter dated January 12, 2009, sent by registered and regular mail, Staff advised the Respondent that the matter was being escalated to MFDA Investigations.

- 43) The copy of the letter sent by registered mail was not signed for, was marked “unclaimed” by Canada Post, and returned to the MFDA. The regular post letter was not returned to the MFDA.
- 44) By letter dated July 13, 2009, sent by courier and regular mail, Staff advised the Respondent that his written statement was required in response to AS’s complaint. He was requested to schedule and attend for an MFDA interview; and advised of the possibility of failure to cooperate proceedings. The letter set out a deadline of July 31, 2009 to respond.
- 45) The courier copy of the July 13, 2009 letter was delivered and signed for by “H. Jones” on July 15, 2009.
- 46) The Respondent did not respond to the July 13, 2009 letter.
- 47) By letter dated August 13, 2009, personally served on the Respondent on August 17, 2009, Staff again advised the Respondent that his written statement was required in response to AS’s complaint. He was requested to schedule and attend for an MFDA interview; and advised of the possibility of failure to cooperate proceedings. The letter set out a deadline of August 27, 2009 to respond.
- 48) The Respondent did not respond to the August 13, 2009 letter.
- 49) By letter dated November 2, 2009, personally served on the Respondent on November 5, 2009, Staff again advised the Respondent that his written statement was required in response to AS’s complaint. He was requested to schedule and attend for an MFDA interview; and advised that if he continued to fail to cooperate, Staff would be seeking authorization to commence enforcement proceedings. The letter set out a deadline of November 16, 2009 to respond.
- 50) The Respondent did not respond to the November 2, 2009 letter.
- 51) By letter dated January 11, 2010, sent by registered and regular mail, Staff wrote to

- the Respondent and advised that the matter was being escalated to MFDA Enforcement Counsel.
- 52) The copy of the letter sent by registered mail was not signed for, was marked “unclaimed” by Canada Post, and returned to the MFDA. The regular post letter was not returned to the MFDA.
- 53) The Respondent did not respond to the January 11, 2010 letter.
- 54) By letter dated May 6, 2010, personally served on the Respondent on May 8, 2010, Staff advised the Respondent that the MFDA was contemplating issuing a Notice of Hearing to start proceedings against him, and invited the Respondent to provide a response to the allegations being considered. The letter set out a deadline of May 21, 2010 to respond.
- 55) The Respondent did not respond to the May 6, 2010 letter.
- 56) On October 4, 2010, the Respondent was personally served with a letter from Staff dated October 1, 2010, enclosing the Notice of Hearing and the MFDA Rules of Procedure. As noted earlier in this affidavit, the Respondent did not serve a Reply or otherwise communicate with Staff.
- 57) By letter dated January 10, 2011, personally served on the Respondent, Staff reminded the Respondent that the hearing on the merits in this matter was upcoming and requested that he contact Staff with any questions.
- 58) The Respondent’s failure to:
- i. provide a written statement to Staff; and
  - ii. communicate in any fashion with Staff,
- have prevented Staff from determining the full nature and extent of the Respondent’s possible misconduct regarding AS, as well as with other clients or individuals.

## **Decision and Order**

9. At the end of the hearing, the Hearing Panel adjourned to consider all of the evidence and the submissions of counsel for the MFDA.

10. We easily concluded that counsel had proven the allegations against the Respondent, on a balance of probabilities, and that the proposed penalties were reasonable and in the public interest.

11. The Hearing Panel returned to the hearing room, reopened the hearing, and signed the Order attached hereto as Appendix "A".

12. The reasons for our decision and Order follow.

## **Reasons**

### **Allegation 1**

#### **Conflicts of Interest-Personal Financial Dealings**

13. MFDA Rule 2.1.4 reads as follows:

##### 2.1.4 Conflicts of Interest

- (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
- (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person 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(c) and (d).
- (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

14. The evidence establishes that the Respondent was in a conflict of interest with his client AS when he borrowed money from her on three occasions and failed to pay back most of it. He made matters worse for AS as he caused redemptions from her mutual funds account so that she could obtain money to lend to him. He gave her only a promissory note which is mere evidence, and not security, for the loan.

15. A previous MFDA Hearing Panel<sup>7</sup> has held that when an Approved Person borrows money from a client, he is in breach of the obligation to exercise reasonable business judgment influenced only by the best interests of the client.

16. In this case, the Respondent did none of the things required of him under Rule 2.1.4. The MFDA has proved this allegation.

## **Allegation 2**

### **Failure to Cooperate**

17. MFDA By-law No. 1, s. 21 reads as follows:

#### **EXAMINATIONS AND INVESTIGATIONS**

##### **21. POWER TO CONDUCT EXAMINATIONS AND INVESTIGATIONS**

The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Member, Approved Person of a Member or any other person under the jurisdiction of the Corporation pursuant to the By-laws and/or the Rules as it considers necessary or desirable in connection with any matter relating to compliance by such person with:

21.1 the By-laws, Rules or Policies of the Corporation;

Section 22.1 of the By-law reads as follows:

22.1 For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

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<sup>7</sup> *Tonnies (Re)*, 2005 LNCMFDA 7

- (a) to submit a report in writing with regard to any matter involved in any such investigation;
- (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and
- (c) to attend and give information respecting any such matters;
- (d) to make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation; and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

18. The Respondent is a contemptible human being who has preyed upon an elderly woman by borrowing money from her and failing to repay despite numerous promises to do so. Further, he should have known that this activity is a violation of the MFDA Rules, the covenant which he signed with the Employer-Member,<sup>8</sup> and the compliance manual of the Employer-Member.

19. In Puri,<sup>9</sup> the Hearing Panel said:

MFDA Hearing Panels have consistently held that that where an approved person solicits and accepts money, and fails to pay it back or otherwise account for it, the approved person engages in conduct which is inconsistent with the standard of conduct set out in Rule 2.1.1.

20. Here, the Respondent has failed each of the four standards of conduct set out in Rule 2.1.1. The allegation against him is, therefore, proven.

21. The Ontario Divisional Court<sup>10</sup> has said in this context, “fundamentally, every professional has an obligation to cooperate with his self-governing body”.

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<sup>8</sup> Exhibit 6

<sup>9</sup> *Puri (Re)*, 2007 LNCMFDA 34, para. 33

<sup>10</sup> *Artinian v. College of Physicians and Surgeons of Ontario*, [1990] 73 O.R (2d) 704 (Div. Ct.), para. 9

22. Mr Davis in his affidavit<sup>11</sup> set out graphically the numerous attempts by the MFDA to communicate with the Respondent and elicit some explanation from him to justify his conduct. The only time he communicated with the MFDA was in a telephone call in October 2008, in which he requested an extension of time to file his Response, which he did not file.

23. We find that the Respondent failed to cooperate with the MFDA in its investigation and has, thus, contravened the sections of By-law No. 1 cited above.

### **Penalty**

24. The Respondent demonstrably exploited an elderly woman. He deceived her and used his position of trust to cause her to redeem mutual fund units so that she could lend money to him which loan was not secured.

25. AS lost her money and the Employer-Member reimbursed her as the Respondent had only repaid less than 10% of what he had borrowed.

26. The Respondent has shown no remorse and failed to cooperate with the MFDA in its investigation.

27. The only mitigating factor is that the Respondent has not previously been disciplined by the MFDA. The Hearing Panel, in the context of the facts of this case, gave little weight to this factor.

28. The Hearing Panel is grateful to counsel for the MFDA for the extensive analysis of the case law and guidance on the appropriate penalty in this case which she provided which we do not reproduce in this judgment.

29. The Hearing Panel is well aware of the MFDA Penalty Guidelines.<sup>12</sup> The primary goal of securities regulation is the protection of the investor.<sup>13</sup> The penalty which this Hearing Panel imposes should be preventative, protective and prospective in nature.<sup>14</sup>

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<sup>11</sup> Exhibit 4

<sup>12</sup> Updated Version, September 20, 2006

30. The Hearing Panel accepts the recommendations of counsel for the MFDA and imposes the following Penalties:

- (a) A permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- (b) A fine in the amount of \$50,000.00 for failure to cooperate with the MFDA; and
- (c) A fine in the amount of \$21,400.00 for personal financial dealings.

**Costs**

31. The Hearing Panel awards costs in the amount of \$5,000.00 against the Respondent.

**DATED** this 7<sup>th</sup> day of February, 2011.

“Terrance Sweeney”

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Terrance Sweeney,  
Chair

“Selwyn Kossuth”

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Selwyn Kossuth,  
Industry Representative

“Brigitte Geisler”

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Brigitte Geisler,  
Industry Representative

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<sup>13</sup> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, per Iacobucci J. at paras. 59 and 68.

<sup>14</sup> *Headley (Re)*, 2006 LNCMFDA 6, para. 81.



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

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Christopher Jones**

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**ORDER**

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**WHEREAS** on September 30, 2010, the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing pursuant to ss. 20 and 24 of By-law No. 1 in respect of a disciplinary proceeding commenced against Christopher Jones ("Respondent");

**AND WHEREAS** a hearing on the merits of this matter was conducted on January 21, 2011 ("Hearing") in Toronto, Ontario, before a hearing panel of the Central Regional Council of the MFDA ("Hearing Panel");

**AND WHEREAS** the Respondent did not file a Reply in these proceedings; did not attend at the Hearing; was not represented by counsel at the Hearing; and did not otherwise participate in the Hearing;

**AND WHEREAS** the Hearing Panel considered the evidence, including:

- the affidavit of Stephen Matthew Davis ("Mr. Davis") with attached exhibits numbered 1-39, sworn January 13, 2011;
- the evidence given by Mr. Davis in person at the Hearing;

- other affidavits and materials filed and marked as exhibits at the Hearing; and
- the written and oral submissions of Staff of the MFDA;

**AND WHEREAS** the Hearing Panel finds that the Respondent:

- i. breached MFDA Rules 2.1.4 and 2.1.1 in that between February 26, 2003 and March 18, 2008, he engaged in personal financial dealings with a client by borrowing a total of \$13,000 which he failed to repay in full or otherwise account for; and
- ii. commencing September 2008, failed to cooperate with an MFDA investigation, contrary to s. 22 of MFDA By-law No. 1;

**IT IS HEREBY ORDERED THAT:**

1. The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay:
  - i. a fine in the amount of \$50,000 for failure to cooperate, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
  - ii. a fine in the amount of \$21,400 for conflict of interest / personal financial dealings, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
4. If a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, 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.

**DATED** this 21<sup>st</sup> day of January, 2011.

“Terrance Sweeney”

Terrance Sweeney,  
Chair

“Selwyn Kossuth”

Selwyn Kossuth,  
Industry Representative

“Brigitte Geisler”

Brigitte Geisler,  
Industry Representative

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