



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: Wayne Larson

Heard: August 27, 2009
Edmonton, Alberta

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Alan V. M. Beattie, Q.C.
Patricia M. Kloepfer
Rick Strong

Chair
Industry Representative
Industry Representative

Appearances:

Kara Beitel)	For the Mutual Fund Dealers Association of Canada
Sarah Cohen)	
)	
Wayne Larson)	In Person
)	

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1. THE ALLEGATIONS (NOTICE OF HEARING)

By Notice of Hearing dated July 2, 2008 (Exhibit 1) the MFDA alleged the following violations by Wayne Larson (“the Respondent”) of the By-Laws, Rules or Policies of the MFDA:

Allegation #1: Between September 2005 and September 2006, the Respondent facilitated investments in the amount of approximately \$1.76 million by 7 clients¹ in a company, Global Consulting Corporation (“GCC”), which investments were not carried on for the account of the Member or through the facilities of the Member, contrary to MFDA Rules 1.1.1 and 2.1.1.

Allegation #2: Between September 2005 and September 2006, the Respondent directed, or permitted his clients to direct, redemption proceeds from their accounts to his personal bank account or bank accounts under his control, thereby engaging in personal financial dealings with the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #3: Commencing June 7, 2007, the Respondent failed to attend an interview at the offices of the MFDA for the purposes of providing a statement concerning his termination by the Member, contrary to section 22.1 of MFDA By-law No. 1.

2. REPLY OF THE RESPONDENT

The Respondent’s Reply to the Notice of Hearing, dated September 10, 2008, (Exhibit 3) states:

With respect to allegations 1 and 2 I did not know at that time all investments had to go through the member, I had never seen those bylaws. With respect to allegation 3, a letter was sent by John McCally to the council that I was sick and could not attend.

I flew to Amsterdam in August 2006 for three days to attend the offices of GCC and inspect their books. Everything seemed that this was a very good company and I was satisfied that it would be worth investing in. It did not seem to be any scam. I again flew to London in Sept. 2006 to inspect a subsidiary company of GCC and it again seemed very good and not a scam.

I don’t know how to answer the other allegations in this reply but all the investors knew this was an investment in an overseas company. For those who said they were not aware of what I was doing with their money is not true. I would not have done anything knowing it would hurt my clients in any way.

¹ Hearing Panel note: The amount became \$1,340,825.74 by 6 clients.

I am taking medication for severe depression and chronic pain and am unable to focus or concentrate. I am not able to work because of this. I have loss everything and have nothing left. I cannot afford council and don't know what to do. At this point I have no future. I don't know if I will be able to complete the hearing on sept 12 because to my medical condition.

3. THE PROCEEDINGS

This Hearing has been delayed for some time because of medical issues of the Respondent. He was served with the Notice of Hearing on July 10, 2008. The date set for the first appearance was September 12, 2008. On September 10, the Respondent provided to the MFDA a "Reply" (Exhibit 3, above) indicating that he did not know if he would be able to complete the hearing on September 12 "because (of) my medical condition". A teleconference took place on September 12, in which the Respondent participated, and because of his medical issues the first appearance was adjourned to October 29, 2008. A teleconference took place on that date, with the Respondent participating. The Hearing Panel ordered that the Hearing of this matter on the merits would take place on March 24, 2009. The Hearing was adjourned and a teleconference took place on May 22, 2009, in which the Respondent participated. The Hearing Panel issued an Order directing that the Hearing would take place on August 27 and 28, 2009, in Edmonton.

The Hearing was conducted on August 27. The Respondent attended without Counsel. Following presentation of evidence by Counsel for the MFDA, brief evidence under oath by the Respondent, submissions by Counsel for the MFDA and brief submissions by the Respondent, the Hearing Panel advised the parties of its decision regarding all relief sought excepting the quantum of one of the two fines sought, reserving that part of its decision to this final formal Decision.

4. NATURE OF THE EVIDENCE AND APPLICABLE RULES

The evidence submitted by the MFDA was entirely by affidavit. Ms. Indira Nadarajan is the Manager of Investigations, Pacific and Prairie Regions with the Enforcement Department of the MFDA and between July, 2006 and July 1, 2008, was a Senior Investigator of the Enforcement Department of the MFDA. In those roles she was familiar with the investigation of the

Respondent by the MFDA. An extensive affidavit of Ms. Nadarajan, with exhibits, was entered in evidence (Exhibit 5). She states that Allison Howse and Harold Eric Wenzel, investigators with the Enforcement Department of the MFDA, conducted the investigation, that she has conferred with Mr. Wenzel and reviewed both of their files. She also reviewed documents provided by Clarica (the MFDA Member firm with whom Mr. Larson was associated), the correspondence between Clarica and the MFDA relating to the Clarica investigation and the MFDA investigation (“the Investigation”) of the Respondent. In her affidavit she traced the history of the Investigation and the evidence supporting the allegations against the Respondent regarding each of the affected clients, much of which evidence was recited in the Notice of Hearing (Exhibit 1).

There was also entered in evidence by the MFDA affidavits of clients JG, SH and JG(2) [referred to herein as “JG (2)” to differentiate her from JG, a different client]. The MFDA Rules of Procedure include:

RULE 1: INTERPRETATION AND APPLICATION

....

1.6 Admissibility of Evidence

- (1) Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.

RULE 13: CONDUCT OF DISCIPLINARY HEARINGS

13.4 Evidence by Sworn Statement

- (1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

The Respondent did not require the attendance of any of the witnesses for cross-examination although he gave evidence which, to some extent, contradicted the evidence in the clients’ affidavits. We have addressed those contradictions in our Decision (below).

5. THE EVIDENCE²

Mr. Larson was a former Approved Person with Clarica Investco Inc. (“Clarica”), a Member of the MFDA. In June, 2007, Clarica changed its name to Sun Life Financial Investment Services (Canada) Inc.

Mr. Larson was registered in Alberta as a mutual fund salesperson with Clarica from about December 13, 2002 to September 29, 2006. Prior to December 2002, Mr. Larson was registered as a mutual fund representative with another company (for approximately 12 years).

On May 16, 2002, Mr. Larson signed an Acknowledgement that he would act honestly, in good faith, and in the best interest of Clarica and its clients, and in a manner consistent with the highest standard of professional ethics.

Mr. Larson was terminated for cause by Clarica effective September 29, 2006 as a result of the events described herein (the “Termination”). The Termination resulted from an initial investigation conducted by the president of a Clarica multi-advisory corporation in Edmonton, which revealed that Mr. Larson was involved in outside business activities that included the solicitation of Clarica clients to invest in a non-Clarica investment. At the time of the Termination, Clarica commenced a further investigation of Mr. Larson (the “Clarica investigation”). As part of the Clarica investigation, Clarica contacted or attempted to contact clients AL, DY, MLK, NG and JG, SH and JG(2) by telephone. (A summary of notes taken during the telephone calls is Exhibit E to Ms. Nadarajan’s affidavit.)

THE INVESTIGATION

I. OUTSIDE BUSINESS ACTIVITIES AND PERSONAL FINANCIAL DEALINGS WITH CLIENTS

² The Hearing Panel has set out, below, a summary of the evidence as presented in the Affidavit of Indira Nadarajan (Exhibit 5) supplemented, in italics, by the evidence of the three clients’ affidavits referred to in Section 4, above. We have also incorporated, in italics, under the headings for each of the clients, the evidence given by the Respondent pertaining to that client. We have, with a couple exceptions, omitted reference to the numerous exhibits in Ms. Nadarajan’s affidavit, which substantiate the statements in her affidavit.

The Investigation revealed that beginning in the autumn of 2005 and ending in September 2006, the Respondent solicited funds from and made investments on behalf of six clients in Global Consulting Corporation (“GCC”), which investment was not known to or approved by Clarica. The documentation of the Clarica interview of the Respondent (Exhibit “D”) includes:

- The Lucky Day Lottery
 - In Summer/Fall 2005, Mr. Larson had received an email indicating that he had won one million euros in the Lucky Day Lottery. In order to receive his winnings, he would have to send money over to the lottery company to cover the taxes, withdrawal fees and other miscellaneous fees. Initially Mr. Larson did not pursue the winnings. However, eventually he was advised that his winnings could grow to four million euros but he would have to send the required administrative fees. Mr. Larson did so and ultimately gave \$600,000 to the lottery company.
 - In Spring 2006, the lottery company asked Mr. Larson to cash a cheque through his own accounts and wire the funds to them as part of the administrative fee process. Mr. Larson did cash the \$275,000.00 cheque, wired the funds and later learned the cheque was fraudulent. In late Spring 2006, Mr. Larson’s bank, the CIBC contacted him and advised him that he was responsible for repaying the Bank \$250,000.00 for the fraudulent cheque.
- Global Consulting Corporation (Global)
 - In Fall 2005, Mr. Larson was investigating a side business distributing products on behalf of other organizations. In doing so, he came in contact over the internet with a gentleman living in Nigeria, Dennis Uku. Mr. Larson and Mr. Uku became friendly and Mr. Uku invited Mr. Larson to invest in Global. Global was a construction company that worked on very large, international construction projects such as airports, skyscrapers, etc. In an effort to complete jobs on time or in advance of their deadline so as to receive a completion bonus, Global sought outside investors. These investors would invest funds that would be used to complete the job and would later share in the substantial bonus realized from the on-time or early completion. The turn-around time on the investment was 45 days to 1 year generally and the rate of return was from 12% to 20% and in some cases double the original investment.
 - In the fall 2005, Mr. Larson invested his own funds into Global and those of his aunt, AL. His son-in-law also invested.
- Based on Mr. Larson’s significant financial difficulties resulting from his involvement in the Lucky Day Lottery, he began seeking other investors in Global. His intention was to have them invest and take a small portion of the returns when that investment was paid back by the construction company. As a result, in Spring 2006, he began specifically seeking out additional investors for Global including AL, DY, MK and (JG and NG).

During two interviews conducted by Clarica, the Respondent confirmed that there were a total of six clients who invested in GCC, being AL, DY, MLK, NG and JG (husband and wife), SH and JG(2). Mr. Larson further confirmed that some of the investors' funds were transferred into accounts he controlled. Mr. Larson's clients invested approximately \$1,340,825.74 in GCC.

In a November 13, 2006 response to the MFDA, the Respondent advised, among other things, that:

- the off-shore investment did not have a name but was related to government construction contracts,
- there were no marketing materials associated with the product, and
- his clients invested approximately \$1,404,000. (Mr. Larson said that he personally invested \$175,000: Exhibit F to Ms. Nadarajan's affidavit.)

Mr. Larson also provided documentation related to the investment in question. These documents show that Mr. Larson made investments in GCC from five bank accounts, three of which were in the name of Mr. Larson and two of which were in the name of GM, Mr. Larson's son-in-law (which account Mr. Larson controlled).

During Clarica's interview of Mr. Larson on October 5, 2006, he explained that he had used GM's bank account because he was investing in many different companies and needed another account. He advised that GM was unaware of his activities. During an interview on October 12, 2006, Mr. Larson told Clarica that he used GM's bank account because his had been frozen.

The Clients

i. Client AL

Mr. Larson is the nephew of AL's late second husband. AL was 89 years old at the time of the Clarica investigation and resided in a long-term care facility. AL's son, RC, managed AL's affairs. Three redemptions, totalling \$567,368.62 were made from AL's Clarica account, and the funds deposited into either Mr. Larson's or GM's account. Mr. Larson then invested the proceeds

of the redemptions in GCC.

On July 13, 2006, Mr. Larson sent an email to RC (AL's son) in which Mr. Larson explained that he had invested AL's money in a company called Global Consulting Inc. In the email, Mr. Larson:

- (i) apologized for "...the confusion with [RC's] Mom's account";
- (ii) admitted that he had "...not been straightforward with [RC] and ...[had] made a judgment call regarding [RC's] Mom's account that was not fair to [RC]";
- (iii) advised that "the rest of [Mr. Larson's] career is now in [RC's] hands because [Mr. Larson could] lose [his] job over this"; and
- (iv) begged RC to "...give [Mr. Larson] until next week to clear everything up." Further, Mr. Larson stated that he now wished "...that [he] would have talked to [RC] first" and that he "...was very stupid to have done what [he] did."

Between July 19 and September 22, 2006, Mr. Larson sent seven emails to RC updating him on the status of AL's Clarica account. (The emails explained that there were further delays but money would be repaid soon to RC, for AL. The money was never repaid.)

As part of the Clarica investigation, Clarica sent two of the redemption requests to a handwriting expert. The expert concluded that AL's signatures were traced and that there was pencil visible underneath each of the signatures.

AL sued Mr. Larson, Clarica and others for the return of the redemptions. As of March 2009, the entire principal amount of the redemptions remains outstanding.

In summary, based on the Investigation and the Clarica investigation, Mr. Larson deposited proceeds of the redemptions into an account controlled by him, and then invested the proceeds of the redemptions in an investment product that was not known to or approved by Clarica.

Mr. Larson testified at the Hearing that he had looked after AL for many years and that she always told him if he found opportunities he should go ahead with them. Mr. Larson denied the allegations about her signature being traced on the redemptions and said that "she signed

them”. He was asked in cross-examination why he said, in the email to AL’s son, that there was “confusion with (AL’s) account”; he responded: “I can’t even remember”. Asked why he said that he could lose his job, he responded that it was because of the judgment call which he made which was “against the rules”.

ii. Client DY

DY was a client of Clarica. Mr. Larson was the mutual fund salesperson responsible for DY’s account. The Clarica investigation revealed that DY invested a total of \$503,492.86 in GCC. DY was elderly at the time these investments were made. The funds for the GCC investments came from redemptions from DY’s Clarica account. Between June 27, 2006 and September 25, 2006, there were five redemptions from DY’s Clarica account totalling \$514,644.90.

The Investment Directions Summaries show that the funds from the DY redemptions (less declining service charges of \$11,152) were electronically deposited to two Royal Bank accounts, one being in the name of Mr. Larson and one in the name of his son-in-law, GM. During Clarica’s interview of Mr. Larson he confirmed that approximately \$479,000 redeemed from DY’s account was invested in GCC.

DY, along with her husband, sued Mr. Larson, Clarica and others for, among other things, the return of the funds invested by Mr. Larson on behalf of DY in GCC and other non-Clarica investment products.

DY advised an investigator with Clarica that “she didn’t know much about the investment other than the fact that it involves the government” and “she’s aware the investment is not with Clarica” (Exhibit E to the affidavit of Ms. Nadarajan).

iii. Client MLK

MLK was a client of Clarica. Mr. Larson was the mutual fund salesperson responsible for MLK’s account.

The Clarica investigation revealed that in April 2006, prior to MLK moving to Turkey, MLK provided Mr. Larson with two bank drafts. The first was payable to GM in the amount of \$60,000.00 (which MLK later told Clarica was intended to be invested with Clarica); the second was payable to Clarica in the amount of \$83,767.95.

The Clarica investigation revealed that between May 16, 2006 and June 23, 2006, Mr. Larson made five redemptions from MLK's Clarica account totalling \$80,500. The proceeds of the five redemptions were all deposited to accounts held in Mr. Larson's name or on behalf of Mr. Larson.

Clarica sent correspondence to MLK, questioning whether MLK had authorized certain redemptions made from MLK's Clarica contract to a certain bank account (an account in GM's name). MLK advised that she had not signed the redemption forms on the dates indicated and had not authorized the redemptions.

Subsequently MLK advised Clarica that Mr. Larson advised her to sign blank redemption requests so he could service her account while she was out of the country. Clarica compensated MLK by payment of \$148,799.83 and she executed a Release.

Mr. Larson said that MLK was a good friend, that he had advised her and she was aware "of Global". He said she gave him a bank draft with advice to "do what I saw fit". He said that she was "fully aware that the investment involved government contracts".

iv. Clients JG and NG

JG and NG were clients of Clarica. Mr. Larson was the mutual fund salesperson responsible for JG's and NG's account. JG and NG are husband and wife. Based on the Clarica investigation, the Investigation and JG's affidavit, Mr. Larson invested \$10,000 on behalf of JG and NG in an investment which was not known to or approved by Clarica. In the course of making this investment, Mr. Larson deposited the funds in a Royal Bank account in Mr. Larson's name. Further, JG and NG were not aware that this investment was not in a Clarica product. JG

complained to Clarica, and was reimbursed in the amount of \$10,000.

JG in her affidavit states:

Both my husband and I are retired. I retired in 1990, and my husband retired in 1991.

Around the end of August or the beginning of September 2006, Mr. Larson came to our home and discussed our insurance and investments.

Shortly thereafter, Mr. Larson telephoned me and suggested that we invest in an investment product that would double our investment within about forty-five days. Mr. Larson did not provide details of the investment product, but he suggested that we invest \$20,000. Further, Mr. Larson suggested that we transfer funds to finance this investment from a Clarica product that we were then investing in.

In reliance on Mr. Larson's advice, I agreed to invest \$10,000 in the investment product suggested by Mr. Larson.

Mr. Larson did not advise that the investment product he was suggesting was not a Clarica product; indeed, when I made the Investment, I believed that we were investing in a Clarica product.

I trusted Mr. Larson as our financial advisor and relied heavily on him for investment and financial planning advice. The Investment was comprised of a significant portion of our retirement savings.

v. Client SH

SH was a client of Clarica. Mr. Larson was the mutual fund salesperson responsible for SH's account. Based on the Clarica investigation, the Investigation and SH's affidavit, SH provided Mr. Larson with a bank draft for \$100,000, which SH believed would be invested in Clarica investment products on his behalf. Instead, Mr. Larson invested the funds in a product that was not known to or approved by Clarica. SH has not been compensated by Clarica.

SH states in his affidavit:

I was solicited by Mr. Larson to make an investment in an investment product. Mr. Larson did not provide me with details about this investment product, other than that I could expect a good rate of return within less than a year.

Mr. Larson did not advise that the investment product he suggested was not a Clarica product. Had I known that the investment product was not a Clarica product, I would not have made the Investment.

I trusted Mr. Larson as my financial advisor. I invested a substantial part of my savings with Mr. Larson.

Mr. Larson testified that he had discussed the investment opportunity with SH who had agreed to invest.

vi. Client JG(2)

JG(2) was a client of Clarica. Mr. Larson was the mutual fund salesperson responsible for JG(2)'s account. In summary, based on the Clarica investigation, the Investigation and JF(2)'s affidavit, JG(2) drew a bank draft in the amount of \$20,000 and deposited it to the credit of an account at the Royal Bank of Canada, pursuant to Mr. Larson's instructions. JG(2) was advised by Mr. Larson that the money would be invested in an investment product related to industrial or construction work. JG(2) has confirmed that she knew this investment was not offered by Clarica.

On or about September 28, 2006, JG(2) telephoned Clarica asking for a receipt or invoice confirming the investment. It was JG(2)'s telephone call that triggered the Clarica investigation and subsequently the Termination.

JG(2) has not been compensated by Clarica.

JG(2) in her affidavit states that the bank draft was made payable to Mr. Larson personally. She also states:

I trusted Mr. Larson as my financial advisor and relied heavily on him for investment and financial planning advice. Prior to the events described herein, Mr. Larson had been my financial advisor since 1992.

Mr. Larson testified that he had a short conversation with JG(2) in which he told her that he proposed to invest the money in "industrial contracts". He said the biggest mistake he made was telling her, and others, that her money would be returned in 45 days which is what he had been

advised by Global.

Summary

In total, between September 2005 and September 2006, Mr. Larson facilitated investments in the amount of \$1,340,825.74 by six Clarica clients, \$1,160,825.74 of which were the net proceeds of redemptions from the Clarica accounts of four clients (AL, MLK, DY and JG).

II. MR. LARSON'S FAILURE TO COOPERATE

On June 7, 2007, MFDA staff sent an interview request letter to Mr. Larson advising that a response was required within 10 business days. The letter was sent via registered mail and regular mail to the last known address of Mr. Larson. Delivery of the registered letter was confirmed by MFDA staff on June 9, 2007. MFDA staff did not receive a response to the letter.

On June 28, 2007 MFDA staff sent another interview request letter to Mr. Larson requesting that he attend an interview in Edmonton, Alberta on July 18, 2007 at 9:30 am. This letter was sent via registered mail and regular mail to the last known address of Mr. Larson. Delivery of the registered letter was confirmed by MFDA staff on June 29, 2007.

On July 18, 2007, Mr. Larson failed to attend the interview. Commencing June 7, 2007 and continuing to date, Mr. Larson has failed to attend an interview at the offices of the MFDA to give a statement regarding his conduct while an Approved Person or to contact the MFDA in response to requests for his cooperation.

Mr. Larson testified that at the time of the interviews he was in hospital suffering from colon cancer and he understood a letter had been sent by his lawyer to Clarica (Sun Life) advising them of the situation.

Counsel for MFDA produced a letter dated July 9, 2007 (Exhibit 11) from a lawyer advising "in furtherance to your correspondence dated June 28, 2007" that he was representing Mr. Larson

with respect to a Statement of Claim and stating, regarding “the limits or extent of my representation for Mr. Larson” that he was representing Mr. Larson only in the defence of the civil litigation. He did state that he was uncertain as to whether Mr. Larson would be available for the planned hearing dates because he has been diagnosed with colon cancer which has “obviously greatly impacted his day to day activities and organizational priorities”.

The MFDA had responded to the lawyer, on July 10 (part of Exhibit 11) that, based on the lawyer’s letter, the MFDA would “continue to correspond directly with Mr. Larson, unless advised otherwise by Mr. Larson and/or yourself”.

Notes of a telephone discussion by Ms. Howse of the MFDA with the lawyer on July 11, 2007 (part of Exhibit 11), indicate that although the lawyer was only acting for Mr. Larson on the civil litigation, he was aware that Mr. Larson was having medical, including mental, problems as well as problems in his personal life. He advised Ms. Howse that he did not believe that Mr. Larson was “intentionally being evasive” and that he had told Mr. Lawson to call Ms. Howse.

EVIDENCE OF THE RESPONDENT

In addition to the testimony which he gave regarding individual clients (above), Mr. Larson testified that “all clients knew they were investing in international government contracts”. He said that he had not given any of the clients an indication that the money was going into “Clarica products”. He said that he was not aware of the rules prohibiting investing clients’ money in investments such as Global. In cross-examination he acknowledged that he did not advise his clients that the investments were “not through Clarica”. He acknowledged that he had not advised Clarica of the investments so there could be due diligence on the part of Clarica, nor could Clarica supervise him regarding the investments.

6. ARGUMENT OF THE ASSOCIATION

At the Hearing, Counsel for the MFDA summarized the Association’s position which is set forth in written “Submissions of Staff” and “Brief of Authorities”.

I. OVERVIEW

The Respondent committed misconduct involving unauthorized transactions, forgery, directing or permitting clients to direct redemptions through accounts held by the Respondent or under the Respondent's control, and soliciting funds from and making investments on behalf of six clients in investments not known to or approved by the Member. The misconduct was deliberate, dishonest and deceitful. The Respondent abused the trust placed in him by clients, some of whom were elderly and vulnerable. He took advantage of his privileged position as a registrant in the industry with access and influence over clients and their assets. The Respondent solicited funds from and made investments on behalf of six clients in Global Consulting Corporation [or other companies that the Respondent believed invested in Global Consulting Corporation (collectively, the "GCC Investment")], which investment was not known or approved by the Member. In most instances, the clients were unaware that their assets were being invested in a non-Clarica product. Some of the clients' funds which the Respondent invested in the GCC Investment were transferred into accounts controlled by the Respondent. Further, in some instances, the Respondent redeemed client funds and invested the proceeds of the redemptions in the GCC Investment without the authority of the client, and even went so far as to forge client signatures on the alleged client redemption requests. For the reasons set out herein, such misconduct warrants penalties at the high end of the range of penalties that the Hearing Panel is permitted to impose, including a permanent prohibition on the Respondent's authority to conduct securities related business in the future.

II. LAW

APPLICABLE RULES

The relevant provisions applicable in this matter are:

BY-LAW NO. 1

22. INVESTIGATORY POWERS

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:

....

(c) to attend and give information respecting any such matters;

RULES

1. RULE NO. 1 – BUSINESS STRUCTURES AND QUALIFICATION

1.1.1 **Members.** No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than: (*Not applicable in this case*)

2. RULE NO. 2 – BUSINESS CONDUCT

2.1 General

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.

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.

....

Rule 2.1.1 articulates the standard of conduct imposed upon all Members and Approved Persons. The rule encompasses the most fundamental obligations of all registrants in the securities industry.

Jurisdiction

At all material times, the Respondent was an Approved Person subject to MFDA By-Law No. 1.

Pursuant to s. 24.1.4 of MFDA By-Law No. 1 and s. 63 of the Alberta *Securities Act*, an Approved Person subject to the jurisdiction of the MFDA remains subject to the jurisdiction of the MFDA notwithstanding the fact that the individual has ceased to be an Approved Person.

ALLEGATION #1: The Respondent conducted securities related business that was not carried on for the account or through the facilities of the Member or in accordance with MFDA By-laws And Rules, contrary to MFDA Rules 1.1.1 and 2.1.1.

MFDA Hearing Panels have consistently held that Approved Persons who facilitate investments by clients in products or companies unknown to and unapproved by the Member, or who acts as an intermediary between clients and the perpetrators of an investment scheme, are engaged in securities related business outside of the Member and have therefore breached Rule 1.1.1.

Van Der Velden and Stokman (2005) MFDA File No. 200507 (Ontario Regional Council)
Kenneth Roy Breckenridge (2007) MFDA File No. 200718 (Ontario Regional Council)

MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. MFDA Rule 1.1.1(a) creates a regime whereby an Approved Person is only permitted to sell investment products that have first been approved for sale by the Member with which the Approved Person is registered and which are sold through the facilities of the Member.

Breckenridge, supra at p. 17

In particular, MFDA Rule 1.1.1(a) advances the interests of investor protection and ensures that Members are in a position to properly discharge their supervisory obligations with respect to the activities of Approved Persons by restricting Approved Persons to the sale of mutual funds and other investments (such as exempt securities where permitted) through the facilities of the Member.

By recommending that clients of the Member participate in the GCC Investment and, in most instances, by failing to disclose that the GCC Investment was a non-Clarica product, the Respondent was in clear violation of MFDA Rule 1.1.1(a). As a direct result, numerous clients invested, and subsequently lost, substantial sums in the GCC Investment, mistakenly believing that they were purchasing an investment that had been approved by Clarica and that the transaction itself was being conducted under Clarica's supervision.

ALLEGATION #2: Further, the Respondent directed, or permitted his clients to direct, redemption proceeds from their accounts to the Respondent's personal bank accounts or bank accounts under his control, thereby engaging in personal financial dealings with the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

The Respondent directed or permitted four clients to direct redemption proceeds from their accounts to be deposited in bank accounts held in the name of the Respondent or under his control, thereby engaging in personal financial dealings with his clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

* * * * *

The Respondent's conduct clearly violates the standards of conduct set out in MFDA Rule 2.1.1. The Respondent's conduct was:

- (a) unfair, dishonest, and not in good faith;
- (b) unethical;
- (c) unbecoming; and
- (d) detrimental to the public interest.

In addition, by actively concealing from the Member the business activity he was engaging in outside the accounts and facilities of the Member, the Respondent failed to observe high standards of ethics and conduct and failed to refrain from engaging in business conduct which was unbecoming to the public interest.

ALLEGATION #3: The Respondent failed to co-operate with the MFDA by failing to attend at an interview at the offices of the MFDA to provide a statement, contrary to section 22.1 of MFDA By-law No. 1.

There is a general duty upon all members of self-regulated professions to co-operate with their governing bodies.

Arnold Tonnies (2005) MFDA File No. 200581 at p. 9 (Prairie Regional Council)

Section 22 of MFDA By-Law No. 1 codifies this obligation by requiring Approved Persons to, *inter alia*, attend and give information during investigations conducted by the MFDA. A failure to co-operate is serious misconduct in that it subverts the ability of the MFDA to perform its regulatory function.

Tonnies, supra at p.20

MFDA Hearing Panels have noted the seriousness of a failure to co-operate with a regulatory investigation. As discussed below, these Hearing Panels have generally imposed the following sanctions for failure to co-operate:

- 1) A permanent prohibition;
- 2) A fine of \$50,000; and
- 3) Costs of the proceedings.

Robert Roy Parkinson (2005) MFDA File No. 200501, at p. 25 (Ontario Regional Council)
Tonnies, supra at p. 26

The Respondent's refusal to attend and give information at an interview with the MFDA warrants a finding of misconduct. The MFDA has been unable to obtain complete information from the Respondent, thereby frustrating the ability of the MFDA to fully investigate and determine the extent of the Respondent's misconduct.

III. PENALTY

A permanent prohibition on the authority of the Respondent to conduct securities related business is warranted in this case. In addition, substantial fines should be imposed on the Respondent of at least \$200,000 for contravening MFDA Rules 1.1.1, 2.1.1 and 2.1.4 (Allegations #1 and #2) and a fine of \$50,000 should be imposed on the Respondent for contravening section 22.1 of MFDA By-Law No. 1 (Allegation #3). Staff of the MFDA also seeks an order for costs in the amount of \$7,500 pursuant to the discretion granted to the Hearing Panel by s. 24.2 of the MFDA By-Law.

The proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Members and Approved Persons. The proposed sanctions will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry. The proposed sanctions are also consistent with the objectives of securities regulation as set out below.

General Considerations

The primary goal of securities regulation is the protection of the investor. The goal of securities regulation also includes the ensuring of capital market efficiency and public confidence.

Breckenridge, supra at p. 21

Headley, (2006) MFDA File No. 200509 (Ontario Regional Council)

Tonnies. Supra at p. 21

In exercising its discretion to impose a penalty, a Hearing Panel should consider:

- (a) the protection of the investing public;
- (b) the integrity of the securities markets;
- (c) specific and general deterrence;
- (d) the protection of the MFDA's membership; and
- (e) the protection of the integrity of the MFDA's enforcement processes.

Kerry Scharfenberg (2008) MFDA File No. 200824 (Prairie Regional Council)

It is appropriate for a 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.

Headley, supra at p. 25, quoting with approval *Cartaway Resources Corp.* (2004) 1 S.C.R. 672 (Supreme Court of Canada)

Van Der Velden and Stokman, supra at. 4

Glen Murray Greyeyes (2006) MFDA File No. 200510 (Ontario Regional Council)

Other factors that Hearing Panels frequently consider when determining an appropriate penalty include the following:

- (a) the seriousness of the allegations proved against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;
- (c) the Respondent's experience in the capital markets;
- (d) the level of the Respondent's activity in the capital markets;
- (e) whether the Respondent recognizes the seriousness of the improper activity;
- (f) the harm suffered by investors as a result of the Respondent's activities;
- (g) the benefits received by the Respondent as a result of the improper activity;
- (h) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (i) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (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.

Breckenridge, supra at p. 22

7. ARGUMENT OF THE RESPONDENT

The Respondent spoke very briefly. In addition to his statements regarding individual clients

(above) he said that “all clients were advised the money was in international government contracts; there was no indication from me that (the money) was in Clarica products”. He said he was not aware of the Rules and “not aware I couldn’t do it or I wouldn’t have done it”. He acknowledged, in cross-examination, that he did not advise the clients that the investments were not through Clarica. He acknowledged that he did not advise Clarica of the investments so that they could perform due diligence and supervise him.

On the “failure to co-operate” allegation the Respondent said that he was in hospital with colon cancer at the time the interview was scheduled and he understood that his lawyer had written a letter to the MFDA regarding his inability to attend an interview.

On the matter of penalty he testified:

I lost everything. I have no way of paying (fines). I made a bad judgment call but I don’t believe that (I am) that big a threat. The only way I could pay them back (is to stay in the industry). If I had money I’d pay them back.

8. DECISION

This case involves misconduct which, sadly, has resulted in serious financial set-backs for some of the Respondent’s clients (as well as for the Respondent). It is an extreme case of misconduct by an Approved Person and demands severe penalties.

We agree with, and adopt, the submissions of counsel for the MFDA (above), virtually in their entirety and, as stated at the conclusion of the Hearing, we unanimously find that the MFDA has proven all three of the allegations against the Respondent (set out at p. 3 above). A very helpful “overview” of the misconduct is found at p. 16 above. The evidence and submissions of the MFDA having been set out in some detail, above, there is nothing to be gained by reciting them again at any length.

Instead, we will first examine the Respondent’s brief evidence:

(1) He has taken the position throughout (in interviews, documentation and in sworn testimony) that “all clients knew they were investing in international government contracts”. Even if that were so (which we do not accept) he acknowledged in cross-examination that he did not advise the clients that the investments were “not through Clarica”. (It is to be noted however, in partial defence of the Respondent, that during an interview with a Clarica representative clients DY and JG acknowledged that they knew it was not a Clarica product.) Client SH, in his affidavit swears that he did not know anything about the investment other than he could “expect a good rate of return” and “had I known (it) was not a Clarica product I would not have made the investment”. Client JG swears in her affidavit that she believed she was investing in a Clarica product and says that she had no “details of the investment product”. Client MLK in her letter to the MFDA said that she did not authorize the redemptions and that she intended all of her funds to be invested with Clarica; the obvious implication is that she did not know what the investment was since it was not a Clarica product.

We recognize that this is affidavit, not *viva voce* evidence, or is in a letter form, untested by cross-examination and is disputed by the Respondent in his testimony who claims that all clients knew the nature of the investment. We are inclined to believe that these three clients did not know of the nature of the investment and the fact it was not a Clarica product. It would be unusual for three clients to independently provide the same information. Any doubt we have about whose evidence to accept as between the three clients and the Respondent, is all but removed by reference to client AL. She was very elderly (89) and resided in a nursing home. It is clear that the Respondent did not discuss the investment with her, that she knew nothing of the redemption or the investment and that he “made a judgment call” on his own regarding the investment of \$567,000 of AL’s money. He put it mildly in his e-mail to AL’s son (p. 7 above) that there was “confusion” with AL’s account. [It is noted that there was no evidence of whether the investments were ever made in the clients’ names or were in Mr. Larson’s name. No documentation was ever provided by him to the clients. It is reasonable to assume that the investments were all in Mr. Larson’s name because he states in his email to RC (son of AL), in what is at the very least an unusual proposition about his anticipated repayment to AL; “The interest will be \$56,600 and will not be taxable to your mom because I am paying it to her and will not issue a tax slip”.]

By the same reasoning we are not persuaded that he did not trace her signature on the redemption forms and we do not accept his contention that “she signed (the redemption forms)”.

(2) The Respondent says he was not aware of the Rules prohibiting an investment which is not “through the facilities of the Member”. It is difficult to believe that a person who had been registered as a mutual fund salesman for 16 years would not be aware of such a basic rule (and the associated obligation of the Member to supervise, which obviously could not occur as regards the GCC Investment which the Respondent conducted through his own, and his son-in-law’s bank accounts).

Whether some clients (2) did know the investment was not a Clarica product or whether, as with most clients, they allegedly did not know, the Respondent still is in violation of the MFDA Rules as set out in Allegations #1 and #2 (“investments not through the facilities of the Member” and “personal financial dealings with the clients”).

Further, with respect to Allegation #1, the importance of an Approved Person being only permitted to sell investment products that have been approved by, and sold through, the Member, is obvious. A transaction “off book” deprives the Member of the ability to supervise both the investment transactions and the Approved Person and to ensure that the investments are suitable for the clients. The consequences of breaching Rules 1.1.1 and 2.1.1 are sadly apparent in the present case.

As to Allegation #2 it is axiomatic that, having chosen to direct client funds outside the auspices of the Member, the Respondent was engaging in personal financial dealings with the clients in breach of Rules 2.1.4 and 2.1.1.

PENALTY

Again, we accept and adopt the submissions of Counsel for the MFDA including the factors which a Hearing Panel should consider in exercising its discretion to impose penalties [factors (a) to (e) and (a) to (k) at pp. 21 and 22 above].

Allegations #1 and #2

We will specifically address some of the latter factors. There can be no doubt about the misconduct of the Respondent, in breaching Rules 1.1.1, 2.1.1 and 2.1.4, being a very serious departure from appropriate conduct. Although the Respondent has no disciplinary history and does not appear to have benefited in any way from the transactions (although he hoped to benefit in the future) those circumstances do not merit mitigation of penalty for the serious misconduct over a period of nearly one year. Very real harm has been suffered by the investors although, fortunate for two of the clients, they have been reimbursed by Clarica. Although the Respondent has expressed a desire to make restitution to the clients it appears improbable that will occur, given his present circumstances. Although the Respondent has not apologized to any of the clients (except to AL's son when confronted by him) it seems to us that he now recognizes the seriousness of his misconduct; that, however, also cannot mitigate against very significant penalties being imposed.

The importance of general deterrence cannot be over emphasized. A passage from the judgment of the Supreme Court of Canada in *Cartaway Resources Corp.*, which was quoted with approval in the *Headley* decision (above, p. 19) is pertinent:

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...

Decisions of Hearing Panels of the MFDA's Regional Councils clearly support the penalties proposed by the MFDA in this case, as regards Allegations #1 and #2. The *Breckenridge* decision (above, p. 18) involved circumstances similar to the present case although (1) more clients (59) were involved but the total amount was in the same range, (2) the Respondent in that case concealed his misconduct from the Member for 3 1/2 years and provided false answers to compliance staff during annual compliance audits, and (3) he made partial restitution. As in *Breckenridge* the Respondent in this case has "endured significant personal suffering as a result

of his actions”. In *Breckenridge* the Panel imposed a permanent prohibition, a fine of \$350,000 and awarded costs of \$7,500. Similar penalties were imposed in the cases relied upon by the MFDA Counsel, *Tonnies, Parkinson, Scharfenberg and Greyeyes*.

Allegation #3

We are not persuaded that there is the same degree of culpability of the Respondent which the MFDA asserts, or as existed in several of the cases cited by MFDA Counsel.

The Respondent co-operated with Clarica in its investigation which enabled extensive evidence to be provided to the MFDA. He also responded to a letter from the MFDA by letter of November 13, 2006 (p. 8 above) and provided accurate answers to all the questions raised.

The allegation against him relates to his failure to attend an interview on July 18, 2007. He had previously failed to respond to a registered letter of June 7, 2007 requesting that he contact the MFDA to schedule an interview.

The Respondent’s justification for not responding and not attending the scheduled interview has been, throughout, that he was in hospital, suffering from colon cancer, at the time the interview was scheduled and he understood that his lawyer had written a letter to the MFDA regarding his inability to attend. The MFDA, at the Hearing confirmed that they had received the letter but in view of the limited scope of representation of the Respondent by the lawyer (civil litigation only) advised the lawyer they would continue to deal directly with the Respondent. In a subsequent telephone call with the lawyer he advised the MFDA that he did not believe the Respondent was “intentionally being evasive” and that he had told the Respondent to call the MFDA.

We have sympathy for the Respondent given his difficult circumstances. We do not know the extent of his disability in July, 2007, but obviously he could have telephoned the MFDA after either of the letters, explained his circumstances and requested a postponement of the interview (as has happened in the course of trying to get this Hearing scheduled: see “Proceedings” at p. 4 above). He should have done that, just as his lawyer purportedly had told him to do.

On the other hand the MFDA had enough information regarding the Respondent's condition to cut him some slack and show him some compassion. We believe they should have scheduled another interview a couple months later and insisted on hearing from the Respondent as to whether he would be in a position to attend and if not, his reasons (such as a letter from his doctor with an estimated date when the Respondent would be able to attend).

This is not a case of a flagrant, intentional failure to cooperate, particularly given his earlier willingness to provide information. It is, technically, a breach of section 22.1 of MFDA By-Law No. 1 and cannot be fully condoned. However, in our view, the extenuating circumstances of the Respondent mitigate against any significant fine being imposed for the breach such as the \$50,000 proposed by the MFDA.

Costs

The costs of \$7,500 sought by the MFDA are in line with costs awarded in other cases and strike us as being very reasonable.

* * * * *

The Panel's unanimous decision (given at the conclusion of the Hearing respecting Allegations #1 and #2, and the awarding of costs) is as follows:

1. A permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity.
2. A fine of \$200,000 with respect to Allegations #1 and #2, to be paid by the Respondent within twelve months from the date of this Decision.
3. A fine of \$5,000 with respect to Allegation #3, to be paid by the Respondent within twelve months from the date of this Decision.

4. Costs of \$7,500.

DATED at Edmonton, Alberta, this 14th day of October, 2009.

“Alan Beattie”

Alan V. M. Beattie, Q.C.
Chair

“Patricia Kloepfer”

Patricia Kloepfer
Industry Representative

“Rick Strong”

Rick Strong
Industry Representative