



**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: Marlene Legare**

Heard: December 15, 2008, March 19, 2009, May 25, 28, 2009,  
April 19-23, 2010, September 13, 14, 2010 (in person) and  
February 24, 2010 & July 30, 2010 (by teleconference)  
Decision and Reasons: October 29, 2010

**DECISION AND REASONS  
(Misconduct)**

Hearing Panel of the Pacific Regional Council:

The Hon. H. Benjamin Casson, Q.C.  
Darlene Thomas  
Tina Coulson

Chair  
Industry Representative  
Industry Representative

Appearances:

Maria L. Abate	)	For the Mutual Fund Dealers Association of
	)	Canada
Gilbert S. Wong	)	For the Respondent, Marlene Legare
	)	

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**A. LIST OF EXHIBITS**

TENDERED BY MFDA

1.	MFDA	Notice of Hearing dated June 12, 2008
2.	MFDA	Affidavit of Service from Process Server sworn June 21, 2008
3.	MFDA	Letter dated December 4, 2008 from Wesley J. McMillan to Mutual Fund Dealers Association of Canada
4.	MFDA	Affidavit of Harry Wenzel sworn December 1, 2008
5.	MFDA	Affidavit of attempted service
6.	MFDA	Service affidavit
40.	MFDA	Letter dated March 12, 2009 from Wesley McMillan to Marlene Legare
41.	MFDA	Information 008-21296
42.	MFDA	Information 008-26017

TENDERED BY RESPONDENT

7.	Respondent	Letter dated October 18, 2007 from Allison Howse to Kieran A.G. Bridge (Tab 1 of Respondent Document Book)
8.	Respondent	Affidavit of S.G. Sworn May 22, 2009 (Tab 10 of Respondent Document Book) ( <i>Letter dated July 7, 2006, (May 31, 2006 is actual date) at Tab 13 of Respondent's Documents</i> )
9.	Respondent	Letter from Gail Winzoski dated May 31, 2006 (Tab 13 of Respondent Document Book) same as Exhibit 32
10.	Respondent	Registration history of Marlene Legare (Tab 2 of Respondent Document Book)
11.	Respondent	Registration history of Gregory Cameron (Tab 3 of Respondent Document Book)
12.	Respondent	Registration history of Gail Winzoski (Tab 4 of Respondent Document Book)
13.	Respondent	Registration history of Wah Bo Chew (Tab 5 of Respondent Document Book)
14.	Respondent	Registration history of Richard Wayne Speer (Tab 6 of Respondent Document Book)
15.	Respondent	Registration history of Simon Anthony Newton (Tab 7 of Respondent Document Book)
16.	Respondent	Registration history of Chartwell Financial Inc. (Tab 8 of Respondent Document Book)
17.	Respondent	Affidavit of Harry Wenzel sworn February 8, 2010
18.	Respondent	Letter to Gail Winzoski dated July 6, 2006 (pages 1 – 5 of Additional Disclosure)
19.	Respondent	Complaint Log for Marlene Legare (pages 32-33 of Additional Disclosure)
20.	Respondent	E-mail from Gail Winzoski to Robert Lamshead dated November 6, 2006 (pages 97-100 of Additional Disclosure)
21.	Respondent	Chartwell Branch Audit Report for Marlene Legare (pages 34-41 of Additional Disclosure)
22.	Respondent	Limited Authorization (Individual Accounts) (pages 99-100 of Additional Disclosure)
23.	Respondent	Record of Conversation prepared by Allison Howse dated June 22, 2007 (pages 101-105 Of Additional Disclosure)
24.	Respondent	Record of Conversation prepared by Allison Howse dated May 4, 2007 (pages 106-110 of Additional Disclosure)
25.	Respondent	Record of Conversation of Harry Wenzel Dated July 29, 2008 (page 111 of Additional Disclosure)
26.	Respondent	Affidavit of Marlene Legare sworn May 23, 2009
27.	Respondent	Affidavit of Marlene Legare sworn May 27, 2009
28.	Respondent	Affidavit of Marlene Legare sworn October 19, 2009
29.	Respondent	MFDA Bulletin #0191-M dated April 17, 2006 (Tab 9 of Respondent Document Book)
30.	Respondent	Letter from Greg Cameron dated May 19, 2006 (Tab 11 of Respondent Document

		Book)
31.	Respondent	Document entitled "Timeline" (Tab 12 of Respondent Document Book)
32.	Respondent	Letter from Gail Winzoski dated May 31, 2006 (Tab 13 of Respondent Document Book)
33.	Respondent	Chartwell Financial Inc. website Announcement of merger with Quadrus Investment Services Ltd.
34.	Respondent	Email chain between Gail Winzoski and Marlene Legare dated April 27, 2006
35.	Respondent	E-mail dated June 1, 2006 from Gail Winzoski to Marlene Legare
36.	Respondent	Insurance Council of British Columbia License Information of Marlene Legare
37.	Respondent	Decision and Order under Section 231 and 238 Of the <i>Financial Institutions Act</i> dated March 3, 2009
38.	Respondent	E-mail dated March 12, 2009 from Marlene Legare to Steve Barron
39.	Respondent	E-mail dated November 5, 2003 from Norm Lihaven to Marlene Legare

## **B. THE ALLEGATIONS**

1. As set out in the Notice of Hearing [Exhibit 1] dated June 12, 2008, and personally served on the Respondent, Marlene Legare ("the Respondent") on June 21, 2008, the Respondent is alleged by The Mutual Fund Dealers Association of Canada ("the MFDA") to have violated Rules 2.1.4 and 2.1.1 of the MFDA Rules and Section 22.1(c) of the MFDA By-law No. 1. More specifically:

**Allegation #1:** Between November 2005 and June 2006, the Respondent borrowed \$49,650 from client SG to cover personal expenses, thereby placing her own interests above those of her client and giving rise to an actual or potential conflict of interest, contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1

**Allegation #2:** Commencing August 24, 2007, the Respondent failed to attend and give information to the MFDA during the course of an investigation, contrary to section 22.1(c) of MFDA By-law No. 1

## **C. REVIEW OF PROCEEDINGS**

2. The First Appearance was held by teleconference on August 18, 2008. The Respondent did not appear nor was she represented.

3. The Hearing commenced on December 15, 2008. The Respondent did not appear and was not represented at the Hearing. MFDA Enforcement Counsel, Maria L. Abate ("Enforcement Counsel"), with the approval of the Disciplinary Hearing Panel ("the Panel"), proceeded to present its evidence through witness Harry Wenzel ("Wenzel"), an MFDA

Investigator. Exhibits 1 (Notice of Hearing), 2 (Affidavit of Service), 3 (Letter of Wesley J. McMillan to MFDA dated December 4, 2008) and 4 (Affidavit of Harry Wenzel) were entered into evidence. The Panel ordered that a Transcript of Proceedings on December 15, 2008 and copies of the four exhibits be delivered to the Respondent.

4. The Hearing resumed on March 19, 2009. The Respondent was present and requested an adjournment to obtain counsel. Following a recess, the Respondent informed the Panel that she had acquired the services of Gilbert Wong to represent her (“Respondent’s Agent”). The Hearing was adjourned to May 25 and May 28, 2009 to provide the Respondent’s Agent time to prepare.

5. The Hearing resumed on May 25, 2009. The Respondent’s Agent presented a Motion, pursuant to Rule 6 of the MFDA Rules of Procedure, which concerned the application of the Canadian Charter of Rights and Freedoms to a Disciplinary Hearing of the MFDA. The application to make the Motion was dismissed on the procedural ground that no notice, as required by Rule 6.1(2), was given to the MFDA; Enforcement Counsel did not waive the notice requirement and the Panel found that there were insufficient reasons for waiving the notice requirement.

6. The Respondent’s Agent presented a second Motion. The Motion concerned the MFDA’s jurisdiction to proceed with a Disciplinary Proceeding against a former Approved Member. The Application to make the Motion was dismissed on the procedural ground that no notice was given to the MFDA; Enforcement Counsel did not waive the notice requirement; and the Panel found that there were insufficient reasons for waiving the notice requirement.

7. The Respondent’s Agent presented a Third Motion. The Motion called for a Declaration that certain documents, some of which were entered as evidence as part of the MFDA’s case, be ruled inadmissible.

8. The Application to make the Motion was dismissed on the procedural ground that no notice was given to the MFDA; Enforcement Counsel did not waive the notice requirement and the Panel found that there were insufficient reasons for waiving the notice requirement.

9. Enforcement Counsel called MFDA witness Wenzel to permit cross-examination by the Respondent's Agent.

10. The Hearing resumed and proceeded on May 28, 2009, and was further adjourned to November 4 through to November 6, 2009.

11. On October 22, 2009, the MFDA was served with five Notices of Motion with supporting materials by the Respondent. The five Motions raised the following issues:

- (a) The applicability of the Canadian Charter of Rights and Freedoms to MFDA Disciplinary Proceedings.
- (b) Whether the standard of disclosure applicable to MFDA Disciplinary Proceedings met the standard set by R. v. Stinchcombe [1991] 3 S.C.R. 326.
- (c) Whether the MFDA had jurisdiction to discipline former Approved Members.
- (d) The exclusion of admitted evidence.
- (e) A Reasonable Apprehension of Bias on the part of the Panel as a result of thirteen alleged incidents of bias.

12. On February 24, 2010, the Panel heard, by teleconference, an MFDA Motion to Vary a Panel Order of January 7, 2010 which set deadlines to the Parties for responding with written submissions to the five Motions filed by the Respondent on October 20, 2009.

13. The Hearing resumed on April 19, 2010, at which time the following Motions were made by the Respondent:

***Motion 1***

This proceeding be stayed as Section 2.1.4 of MFDA By-Law No. 1 is unconstitutional and not legally enforceable and that certain remedies under section 24(1) of the Canadian Charter of Rights and Freedoms be granted.

***Motion 2***

This is a motion that the Panel declare that Staff of the Mutual Fund Dealers Association of Canada ("MFDA") lacks jurisdiction to pursue its allegations made against the Respondent as noted in the June 12, 2008 Notice of Hearing.

***Motion 3***

A motion that the Panel declare that MFDA Staff have failed to meet the appropriate standard of disclosure to the Respondent and that a mistrial be declared.

***Motion 4***

A motion to declare certain documents inadmissible for the purposes for the June 12, 2008 Notice of Hearing.

***Motion 5***

A motion that the Panel declare that a reasonable apprehension of bias has arisen and that the hearing be declared a mistrial. This Motion rests on thirteen grounds of alleged inappropriate incidents on the part of the Panel.

The Panel, with reasons, dismissed Motions No. 1, 2, 3 and 4 and each of the thirteen allegations of bias on the part of the Panel which made up Motion No. 5.

14. The Respondent's Agent made a further Motion, without objection from Enforcement Counsel, concerning the teleconference call on February 24, 2010, which was held to hear an MFDA Motion to vary an Order of the Panel dated January 7, 2010.

15. The Respondent's Motion was for a declaration that a reasonable apprehension of bias had arisen on the part of the Hearing Panel and that the current proceeding be declared a mishearing and that a stay of proceedings be granted or, alternately, a new Hearing Panel be appointed to hear the matter *de novo*.

16. The Respondent's Agent states (at lines 20 to 25, p.24, Transcript of Proceedings April 20, 2010) that "the grounds of the motion are that the Respondent submits he did not receive sufficient or any notice of Staff's or the Hearing Panel's intention to hear and make determinations on Staff's February 12, 2010 Motion during the February 24, 2010 teleconference."

17. The Panel dismissed the Motion for reasons given at pp.28 to 50, Transcript of Proceedings, April 20, 2010.

18. The MFDA and the Respondent closed their respective cases on April 23, 2010 and the

Hearing was adjourned to September 13 and 14, 2010, for closing oral submissions.

19. On July 13, 2010, the MFDA was served with a Notice of Motion, dated July 13, 2010 by the Respondent claiming “bias arising from Failure to Disclose Conflict of Interest.

20. The Respondent submitted that a reasonable apprehension of bias arose when Panel Members Coulson and Thomas failed to disclose to Panel Chair Casson and to the Respondent that they had served as Members of the MFDA’s Pacific Regional Council in the same period as G.C. and G.W., both of whom were officers of Chartwell Financial Inc., the Member firm which terminated the services of the Respondent.

21. The Motion was for a declaration that a reasonable apprehension of bias has arisen on the part of the Hearing Panel and an Order that:

- (a) The Hearing Panel be struck;
- (b) A permanent stay of proceedings be granted, or alternatively, a new Hearing Panel be appointed to hear the matter *de novo*;
- (c) Panel Member Darlene Thomas (“Thomas”) be disqualified from this proceeding;
- (d) Panel Member Tina Coulson (“Coulson”) be disqualified from this proceeding;
- (e) Panel Chair Benjamin Casson (“Casson”) be disqualified from this proceeding;
- (f) Panel Member Thomas be barred from any future enforcement action against the Respondent;
- (g) Panel Member Coulson be barred from any future enforcement action against the Respondent;
- (h) Panel Chair Casson be barred from any future enforcement action against the Respondent;
- (i) MFDA Enforcement Counsel Maria Abate (“Abate”) be barred from any future enforcement action against the Respondent;
- (j) MFDA Director of Litigation Hugh Corbett (“Corbett”) be barred from any future enforcement action against the Respondent;
- (k) MFDA Vice President of Enforcement Shaun Devlin (“Devlin”) be barred from any future enforcement action against the Respondent;
- (l) Costs be awarded to the Respondent; and

(m) Such further relief that the Respondent may advise and the Hearing Panel may permit.

22. The Panel dismissed the Motion for reasons given at p.58 to 63 of the Transcript of Proceedings dated July 30, 2010.

23. Closing arguments were made and a decision was reserved.

24. On September 10, 2010, the Hearing Panel was informed by Staff that the Respondent had filed a Notice of Motion dated September 3, 2010, with supporting materials, which required a re-opening of Motion #5 concerning the thirteenth alleged incident of bias on the part of the Panel and which was heard and dismissed on April 20, 2010.

25. The Respondent claimed that she had new evidence which contradicted evidence given by the MFDA witness Wenzel and which concerned events which allegedly occurred during a recess on May 28, 2009.

26. The new evidence was a transcript of a recording made by the Respondent during a recess, on her personal recording device, of a conversation between Enforcement Counsel and the MFDA witness, Harry Wenzel. The recording was made without the approval of the Panel and, admittedly, without the knowledge or approval of the Respondent's Agent. The recording was available for transcribing since May 28, 2009.

27. Much of the transcript, which the panel examined, is inaudible.

28. The Panel dismissed the Motion for reasons given at pp.58 to 63 of the Transcript of Proceedings dated July 30, 2010.

29. Closing oral arguments were made and a decision was reserved.

**D. ALLEGATION NO. 1**

**Allegation #1:** Between November 2005 and June 2006, the Respondent borrowed \$49,650 from client SG to cover personal expenses, thereby placing her own interests above those of her client and giving rise to an actual or potential conflict of interest,

contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1

30. **Facts as Submitted by the MFDA:**

- G.W., Past Compliance Officer, Chartwell Financial Inc. (“Chartwell”), by letter dated July 12, 2006, informed the MFDA that the Respondent had borrowed money from a client and, as a result, was terminated with cause on July 7, 2006. The client was informed by Chartwell that Chartwell would be returning to her the money she had lent to the Respondent in the amount of \$49,650.00.

Chartwell was investigating further. (Ex.4, Tab C)

- The Respondent was registered as a mutual fund salesperson at Chartwell between December 11, 2002 and July 7, 2007. (Ex.4, p.2, par.3)
- S.G. was a client of Chartwell. (Ex.4, p.2, par.2)
- S.G.’s former husband, L.G., who was deceased, was a relative of the Respondent’s former husband.
- Between November 2005 and June 2006, S.G. provided the Respondent with nine personal loans totaling \$49,650.00. (Ex.4, p.3, par.6)
- The loans were obtained by the Respondent from S.G. as follows:

When the Respondent requested a loan from S.G., S.G. instructed the Respondent to redeem mutual funds in her account. The redemption proceeds were deposited into S.G.’s bank account. The Respondent then withdrew monies from S.G.’s bank account by using pre-signed cheques that S.G. had given to the Respondent and which S.G. had provided to the Respondent to keep in her client file for the purpose of executing trades. (Ex.4, P.3, Par.7)

- Between November 28, 2005 and May 14, 2006, nine payments were received by the Respondent from S.G. through this process. (Ex.4, p.3, par.8).
- S.G. stopped payment on a tenth cheque and contacted Chartwell. (Ex.4, P.3, par.8)
- The ten transactions are as follows:

<b>Date of Redemption Request</b>	<b>Redemption Amount</b>	<b>Date of Loan</b>	<b>Cheque Number</b>	<b>Amount of Loan</b>
November 28, 2005	\$5,000	December 1, 2005	055	\$4,000
December 19, 2005	\$4,500	December 22, 2005	007	\$4,000
January 6, 2006	\$3,500	January 14, 2006	010	\$3,000
January 24, 2006	\$4,000	January 26, 2006	006	\$3,850
February 6, 2006	\$2,500	February 11, 2006	057	\$2,300
February 27, 2006	\$6,500	March 1, 2006	058	\$6,000
March 27, 2006	\$2,000	April 1, 2006	059	\$7,000
April 26, 2006	\$5,500	April 28, 2006	060	\$5,000
May 14, 2006	\$15,000	May 16, 2006	062	\$14,500
June 20, 2006	\$10,000	Payment stopped	-	-
			<b>TOTAL</b>	<b>\$49,650</b>

(Ex.4, pp.4,5, par.8)

- On June 26, 2006, S.G. contacted Chartwell. Chartwell conducted an investigation and the Respondent admitted to borrowing the money from S.G. to cover personal expenses. (Ex.4, p.4, par.9)
- On July 7, 2006, the Respondent entered into an Agreement of Purchase and Sale (“the Agreement”) with G.C., an Approved Person with Quadrus. This Agreement covered the terms and conditions for the sale of the Respondent’s book of business to G.C. Paragraph 2(a) of the Agreement acknowledged the outstanding loan owed to S.G. from the Respondent. (Ex.4, p.4, par.10)
- Chartwell has compensated S.G. by reinvesting \$49,650 into her mutual fund account. (Ex.4, p.4, par.11)
- Copies of Order Entry Forms and corresponding cashed cheques confirm the nine transactions. (Ex.4, p.3, par.7, Tab B)

- The Respondent acknowledged that Chartwell paid \$49,650 to S.G. (Transcript April 23, 2010, p.8, lines 2 to 5)
- The MFDA's Enforcement Department wrote a letter dated July 20, 2006, to the Respondent informing her that the MFDA had received a Notice of her termination from Chartwell as a consequence of her having borrowed monies from S.G., a client of Chartwell. (Ex.4, Tab G)
- By letter dated August 24, 2006, K.A.G.B., counsel for the Respondent, informed the MFDA, in part, as follows:

“5. Ms. Legare became embroiled in a very stressful and difficult family dispute in the spring of 2006. This necessitated her making a total of nine trips from Vancouver to Winnipeg, and to incur significant travel and accommodation costs and legal fees. It was in this context and for this reason that she borrowed money from a relative, Suzanne Grimard, to cover these unexpected expenses. The money was borrowed in a series of smaller loans as these costs were incurred. All of the money has been repaid by Ms. Legare pursuant to the attached agreement.”

(Ex.4, Tab H, p.2, par.5)

- The Respondent testified, under cross-examination by Enforcement Counsel, that she had met with her counsel, K.A.G.B., and had provided him with the details of her situation that are listed in K.A.G.B.'s letter of August 24, 2006 to the MFDA.
- The Respondent testified, under cross-examination by Enforcement Counsel, that she had met with her counsel, K.A.G.B., and had provided him with a copy of the Agreement of Purchase and Sale (the “Agreement”) which covered the terms and conditions for the sale of her book of business to G.C. and which, in paragraph 2(a) thereof, acknowledged a loan by the Respondent to the client, S.G.

(Transcript April 22, 2010, p.94, lines 21 to 25 and p.95, lines 1 to 9)

### 31. **Facts as Submitted by the Respondent**

- The Respondent “did not receive a loan from S.G.” (Transcript April 22, 2010, p.75,

line 22)

- The Respondent received monies from S.G. “but it wasn’t by way of a loan.” (Transcript Apr. 22, 2010, p.76, line 3)
- S.G. made a transfer of funds. It was not a loan.” (Transcript Apr. 22, 2010, p. 92, line 23)
- Respondent signed an “Agreement of Purchase and Sale” with G.C. to purchase the Respondent’s book of business which contained a clause (a) at page 2 as follows:

*\$50,808.47 of the purchase price will be used immediately to pay back loans and costs to clients made by Marlene Legare (Grimard and Parsons).*

but did so because G.C. threatened to call in the police if she did not make full disclosure and she “could go to jail.” She was “under great duress and without legal counsel.” (Ex. 26, p. 1, para. 4 and 6)

- The Respondent testified that the details of her situation which she provided to her counsel, K.A.G.B., and which he provided to MFDA in a letter dated August 24, 2006, were erroneous.
- The Respondent testified that she signed the “Agreement” before reading it and without legal representation because she was under duress and was told by G.C. that “the ‘Agreement’ was a ‘standard agreement.’”

The Respondent testified that she gave the Agreement to her counsel before reading it.

- The Respondent testified that she did not recall requesting pre-signed cheques from S.G. and that she did not keep pre-signed cheques in her S.G. client file. (Transcript April 22, 2010, p.27, lines 22 to 24)

## 32. **Analysis and Decision**

- (a) Following closing oral submissions on September 14, 2010, Enforcement Counsel and the Respondent's Representative agreed with the Panel that the central issue to be decided in regards to Allegation No. 1 is whether the money which S.G. paid to the Respondent was a loan to cover the Respondent's expenses or a transfer of funds to compensate the Respondent for monies that she and her ex-husband had loaned to S.G.'s former husband for investment purposes.
- (b) Wenzel was the only witness called by Enforcement Counsel. He underwent lengthy examination and cross-examination. The Panel found him to be a credible witness. The Panel recognizes that, for the most part, his evidence was based on documents obtained in the course of an investigation conducted by A.H., an Investigator with the MFDA, who had commenced a parental leave and who did not testify.
- (c) The Panel found no reason to reject the evidence contained in Exhibit 4.
- (d) The Panel finds, on the balance of probabilities, that the monies which S.G. paid to the Respondent constituted a loan from S.G. and not a transfer of funds to repay the Respondent for monies loaned to S.G.'s former husband for investment purposes.
- (e) This finding is based on the following:
- The Respondent's explanation that the monies were a transfer of funds owed to her by S.G.'s former husband was not raised prior to her evidence-in-chief on April 22, 2010 (which was more than four years from the date of her termination from Chartwell (July 3, 2006); the request by Enforcement Counsel for her assistance and cooperation in explaining the reason for her termination; and twenty-two months after being served with a Notice of Hearing on June 12, 2008).
  - The Respondent's explanation that her counsel, K.A.G.B., was mistaken in stating the details of her conversation with him in his letter to the MFDA of August 24,

2006, is not believable. The Panel finds that those details (referring to the necessity of his client's nine trips from Vancouver to Winnipeg, thereby incurring significant travel and accommodation expenses) were provided by the Respondent to K.A.G.B. and accurately reflect the information which was conveyed by his letter of August 24, 2006, to the MFDA.

- The Respondent's explanation that she signed the Agreement under duress and without reading it because she was told by G.C. that it was a standard agreement is not believable. The Respondent admitted that she was aware that Chartwell had compensated S.G. in the amount of \$49,650.00. The Respondent signed the Agreement and by doing so accepted the terms and conditions of the Agreement including the provision (2(a)) that "\$50,808.47 of the purchase price, \$82,973.11" would be used, immediately, to pay back loans and costs to clients made by M.L. (the Respondent) to S.G. and R. P.
- There is no independent evidence to corroborate the explanation by the Respondent that the monies paid to her by S.G. was a transfer of funds to repay a loan to S.G.'s deceased husband for investment purposes.

**E. ALLEGATION NO. 2**

**Allegation #2:** Commencing August 24, 2007, the Respondent failed to attend and give information to the MFDA during the course of an investigation, contrary to section 22.1(c) of MFDA By-law No. 1

**33. Facts as Submitted by the MFDA:**

- On January 2, 2003, the Respondent signed an "Agreement of Approved Person" binding her to the jurisdiction of the MFDA, its Rules and wherever applicable, the Board of Directors, officers, committees and councils.
- By letter dated July 20, 2006, sent by regular and registered mail, Staff contacted the Respondent to request information regarding her termination from Chartwell

- By facsimile dated August 24, 2006, Staff received a response from the Respondent's lawyer. The letter provided details of her termination from Chartwell and confirmed that the Respondent had borrowed funds from S.G.
- By letter dated April 30, 2007, sent by regular and registered mail, Staff requested the Respondent's attendance at an interview for the purposes of providing a statement to assist the investigation and to ensure that there were no other real or potential conflicts of interest between the Respondent and other clients of the Member. The letter requested that the Respondent contact Staff within 10 days to schedule an interview.
- Between May 14 and May 31, 2007, Staff contacted the Respondent's lawyer, by telephone and facsimile, to discuss its request that the Respondent attend an interview and the Respondent's obligation to cooperate with the investigation. Staff further advised that according to Section 2.1.4 of MFDA By-law No. 1 and for the purpose of investigations, examinations or disciplinary hearings, the MFDA retains jurisdiction over Approved Persons ("AP") and former AP's for a period of 5 years from the date upon which such person ceased to be an AP or hold a relevant position with a Member.
- By letter dated July 5, 2007, sent by facsimile and regular mail, Staff confirmed the MFDA's continuing jurisdiction over the Respondent for the purpose of conducting an investigation into her conduct pursuant to Section 22 of the MFDA By-law No. 1. The Respondent was advised that Staff would be sending a request for an interview and that should the Respondent fail to attend, the matter would be escalated to litigation on the basis of the Respondent's failure to cooperate with an investigation.
- By facsimile dated July 17, 2007, Staff was advised by the Respondent's lawyer that the Respondent would not participate in any investigatory or disciplinary proceedings, nor would she recognize the validity of any penalties imposed by the MFDA because of his opinion that the MFDA did not have jurisdiction over former Approved Persons.
- By facsimile dated July 20, 2007, Staff attempted to arrange an interview with the Respondent and informed the Respondent that should she fail to attend the MFDA would proceed with a failure to cooperate, an allegation to which the Respondent could

reply at a scheduled hearing.

- By facsimile dated July 20, 2007, the Respondent's lawyer indicated that the Respondent would not participate in MFDA proceedings unless or until ordered to do so by a court.
- By letter dated August 13, 2007, sent by registered and regular mail, Staff requested the Respondent's attendance at an interview scheduled for August 30, 2007 at 9.30 AM in the MFDA's Vancouver Office. The letter requested that the Respondent confirm her attendance at the interview no later than August 24, 2007. Neither the Respondent nor her lawyer responded to the letter or the request for an interview.
- By letter dated August 27, 2007, sent by registered and regular mail, Staff confirmed the Respondent's non-attendance at the scheduled interview and advised that Staff would seek to commence enforcement proceedings against the Respondent for failure to cooperate with the investigation.
- By letter dated May 29, 2008, sent by facsimile, Staff wrote to the Respondent's lawyer requesting his consent to serve the Notice of Hearing on his office. On that same day, Staff received a facsimile from the Respondent's lawyer advising that he will not be consenting to the service of the Notice of Hearing on his office and warning Staff not to communicate with his client.
- On June 21, 2008, Staff was successful in personally serving the Respondent with the Notice of Hearing in this matter.
- By letter dated November 10, 2008, sent by facsimile and regular mail, Staff wrote to the Respondent's lawyer reminding him of the pending hearing and requesting confirmation of the Respondent's intentions regarding participation in the hearing. To date, Staff has not had a response to their letter.

34. **Facts as Submitted by the Respondent**

- In her Affidavit sworn on May 27, 2009, (Ex.27) the Respondent stated:

**par. 19**

On or about May 2007 my lawyer Kieran Bridge advised me that several legal cases had questioned the MFDA's jurisdiction over representatives who no longer worked for a MFDA firm. He advised me not to concede any jurisdiction to MFDA Staff, which included not giving any information to MFDA Staff nor attending any interviews with MFDA Staff.

**par. 20**

On May 31, 2007 my lawyer Kieran Bridge wrote a letter to the MFDA citing lack of jurisdiction.

**par. 21**

On July 10, 2007 my lawyer Kieran Bridge received research from his associate lawyer indicating that existing case law questioned the MFDA's jurisdiction over former representatives.

**par. 22**

On July 17, 2007, July 20, 2007, February 27, 2008, May 27, 2008 and May 29, 2008 my lawyer Kieran Bridge wrote letters to the MFDA citing lack of jurisdiction.

**par. 23**

My lawyer Kieran Bridge advised me not to attend the 10.00 AM August 18, 2008 set date hearing at the MFDA's offices in Vancouver, BC as my attendance at that hearing would concede jurisdiction to the MFDA.

**par. 24**

I followed my lawyer's advice and did not attend the August 18, 2008 hearing.

35. **Analysis and Decision**

- (a) On January 2, 2003, the Respondent signed an Agreement of Approved Person document (Ex.4, Tab F) which required her, by Terms 2 and 4 thereof, to:

*be bound by, observe and comply with the MFDA Rules as they are from time to time amended or supplemented;*

*submit to the jurisdiction of the MFDA and, wherever applicable, the Board of Directors, officers, committees and councils thereof.*

- (b) MFDA By-law No. 1, Section 22, provides, in part, 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:

- (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.

36. The Panel finds that between July 20, 2006 and May 29, 2008, the Respondent, on the advice of her counsel, K.A.G.B., failed to participate in any MFDA investigatory proceedings required of her as an Approved Person.

37. The Panel concludes that by accepting and following the advice of her counsel, K.A.G.B., in that regard, the Respondent breached Terms 2 and 4 of the Agreement of Approved Person (Ex.4, Tab F) which she signed on January 2, 2003.

38. The Panel concludes, therefore, that commencing August 24, 2007, the Respondent failed to attend and give information to the MFDA during the course of an investigation thereby

violating section 22.1(c) of MFDA By-law No.1.

39. Having found that the Respondent borrowed monies from a client. S.G., the Panel finds, as alleged, that the Respondent violated the MFDA Rule 2.1.4 and the MFDA Rule 2.1.1.

40. Rule 2.1.4, in part, provides:

**Rule 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.

41. In finding that the Respondent violated the MFDA Rule 2.1.4, the Panel made the following observations:

- There was no record, documentary or otherwise, of the loans by S.G. to the Respondent i.e. rate of interest; time of repayment, etc. The absence of such a record would not serve the interests of S.G. in case of a default by the Respondent but did place the Respondent's interests above those of S.G.
- It was not disputed that the Respondent was intimately familiar with S.G.'s personal and financial circumstances. At the time the Respondent received the loans from S.G., S.G. was under stress as a result of having recently lost her husband (July, 2005), her nephew

(by suicide) in the summer of 2006 and the death of her father in April, 2006. As a client, S.G. was vulnerable.

- Prior to joining Chartwell, the Respondent was registered in the following capacities at the following mutual fund dealers:
  - a) **August 2000 to December 2002:** the Respondent was employed as a mutual fund salesperson with Foresight Capital Corporation;
  - b) **December 1999 to July 2000:** the Respondent was employed as a mutual fund salesperson with Royal Advent Securities Corporation;
  - c) **March 1999 to November 1999:** the Respondent was employed as a mutual fund salesperson with DPM Securities Inc.;
  - d) **March 1997 to March 1999:** the Respondent was employed as a mutual fund salesperson with The Height of Excellence Financial Planning Group Inc.;
  - e) **April 1995 to September 1996:** the Respondent was employed as a mutual fund salesperson with AAI Financial Group Ltd.;
  - (f) **March 1995 to April 1995:** the Respondent was employed as a mutual fund salesperson with Harold T. Hope Investment Services Ltd.; and
  - (g) **January 1991 to March 1995:** the Respondent was employed as a mutual fund salesperson with PFSL Investment Canada Ltd
  
- Notwithstanding the relationship, through marriage, which the Respondent had with S.G., the Respondent, because of her experience as a mutual fund salesperson, would have been aware of the possibility of a conflict of interest arising between herself and client S.G. by borrowing monies from her. At no time did the Respondent disclose such conflict or the potential for such conflict to Chartwell or take any measures to ensure that such a conflict or potential conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of S.G.

**Rule 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.
- The Respondent knew, or ought to have known from her experience, that borrowing monies from client S.G., who she knew was in a time of stress, placed her in a conflict of interest or potential conflict of interest which required her to inform Chartwell. The Respondent’s conduct offended the standard of behaviour required by the MFDA Rule 2.1.1.

**F. PENALTY HEARING**

42. The Panel directs that the MFDA’s Hearing Coordinator, after consultation with the Panel and the Parties, set a date and time for a Penalty Hearing in this matter.

**DATED** this 29<sup>th</sup> day of October, 2010.

“H. Benjamin Casson”  
\_\_\_\_\_  
The Hon. H. Benjamin Casson, Q.C.  
Chair

“Darlene Thomas”  
\_\_\_\_\_  
Darlene Thomas,  
Industry Representative

“Tina Coulson”  
\_\_\_\_\_  
Tina Coulson,  
Industry Representative