



**Decision and Reasons**

**Case No. 200512**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

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

**RE: ERNEST MING CHUNG LO**

**DISCIPLINARY HEARING**

Heard: March 3, 2006  
Panel Decision: April 3, 2006  
Toronto, Ontario

**DECISION and REASONS**

Hearing Panel of the Ontario Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Guenther Kleberg	Panel Member
Kenneth Mann	Panel Member

Appearances:

William Donegan	)	for Mutual Fund Dealers Association
	)	of Canada
Ernest Ming Chung Lo	)	In person

## 1. THE ALLEGATIONS

By Notice of Hearing, dated December 7, 2005, the following allegations were made against Ernest Ming Chung Lo (“Respondent”):

(a) Allegation No. 1: Commencing March 2004, the Respondent engaged in securities related business outside of the accounts and facilities of the Member, by facilitating the participation of a client, LC, in an investment (the “Braganza Investment”), contrary to Rule 1.1.1 of the Mutual Fund Dealers Association of Canada (“MFDA”).

(b) Allegation No. 2: Commencing March 2004, the Respondent failed to observe high standards of ethics and conduct in the transaction of business by facilitating the participation of a client, LC, in the Braganza Investment, contrary to MFDA Rule 2.1.1(b).

(c) Allegation No. 3: Commencing on or about September 6, 2005, the Respondent failed to provide a report in writing as required by the MFDA in the course of an investigation, contrary to Section 22.1 of MFDA By-Law No. 1.

## 2. FIRST APPEARANCE

The Notice of Hearing provided for a First Appearance before the Hearing Panel on Wednesday, January 11, 2006, at 10:00 a.m. Prior to the First Appearance, the Respondent requested that a Cantonese interpreter be present. The MFDA provided a Cantonese interpreter at both the First Appearance as well as at the eventual Hearing on the Merits.

At the First Appearance, the Respondent was present by teleconference. At the First Appearance, it was agreed by all parties that the Hearing on the Merits would take place on Friday, March 3, 2006, at 10:00 a.m., in the Hearing Room located at 121 King Street West, Suite 1000, Toronto, Ontario.

3. REPLY

Prior to the First Appearance, the Respondent served and filed a Reply to the Notice of Hearing. The Reply is the document contemplated by Rule 8 of the *MFDA Rules of Procedure*.

In the Reply, the Respondent made a number of candid admissions, as follows:

(a) With respect to Allegation No. 1, the Respondent stated, in part, that “In conclusion, I admit that I facilitate the business transaction between LC and David Braganza.” [sic]

(b) With respect to Allegation No. 2, the Respondent replied, in part, as follows: “After all, I admit I failed to observe high standards of ethics [sic] and conduct in the transaction of business by facilitating the participation of my client, LC and David Braganza.” [sic]

(c) With respect to Allegation No. 3, the Respondent replied, in part, as follows: “I think it is my entire fault for not replying on time. But I had no intention at all for not cooperate with MFDA and FSCO [Financial Services Commission of Ontario]. Maybe I just overworked and felt totally exhausted. I apologized for any inconvenience this may cause.” [sic]

#### 4. HEARING ON THE MERITS

The Hearing on the Merits proceeded on March 3, 2006. The Respondent appeared in person.

Enforcement Counsel sought to present evidence to the Hearing Panel in the form of an Affidavit of Victor Gorys, which was sworn on January 4, 2006, and an Affidavit of Ian Smith, which was sworn on December 21, 2005. Counsel sought to present this evidence to the Hearing Panel relying on Rule 1.6(1) of the *MFDA Rules of Procedure*, which provides, in part, as follows:

“ . . . , 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.”

The Respondent consented to the filing of the Affidavit of Mr. Gorys but indicated that he wished to cross-examine Mr. Smith with respect to certain matters raised in his Affidavit. He had no objection to the Affidavit being filed as evidence so long as he was granted the right of cross-examination. The Hearing Panel granted him that right. The Respondent cross-examined Mr. Smith.

The parties thereupon consented to the filing of a Hearing Record, which was marked as Exhibit 1 and formed evidence before the Hearing Panel. The Hearing Record consisted of the following documents:

- (a) The Notice of Hearing;
- (b) The Reply of the Respondent;
- (c) The Affidavit of Victor Gorys; and
- (d) The Affidavit of Ian Smith.

The Respondent testified on his own behalf. His oral testimony dealt mainly with the matters raised in Allegation No. 3. He caused to be filed, as Exhibit 2, a letter dated August 17, 2005, forwarded to him by the Financial Services Commission of Ontario (“FSCO”). Enclosed with that letter was a document entitled “Depositor Questionnaire re: David Braganza, Financial Link, Financial Traders, Capital Traders Plus”. The Respondent attached a completed copy of the Depositor’s Questionnaire to Exhibit 2 and identified the response as being in his handwriting.

The Respondent also caused to be marked as Exhibit 3 a customer receipt from Canada Post which he identified as the registration slip showing that the questionnaire had been sent to FSCO by registered mail on September 29, 2005. Enforcement Counsel took no objection to the entering of Exhibits 2 and 3.

## 5. THE EVIDENCE

There was little dispute with respect to the evidence. The Respondent’s main contention related to his intentions concerning Allegation No. 3.

We find the evidence as follows:

From November 1996 to December 9, 2004, the Respondent was registered in Ontario as a mutual fund salesperson with PFSL Investments Canada Ltd. (“PFSL”), a Member of the MFDA.

David Braganza (“Braganza”) held a Level II life insurance agent’s licence with FSCO. On January 12, 2004, Braganza’s licence was revoked by FSCO. The Respondent met Braganza in December of 2003. Braganza told the Respondent that he was the owner of “Capital Traders Plus”, “Financial Traders” and “Financial Link”. Braganza told the Respondent that he was in the business of receiving funds for investment. The Braganza Investment scheme operated as follows:

- (a) The investor provided funds to Braganza in the name of one of his business styles;
- (b) Braganza, on the letterhead of one of his business styles, provided a receipt to the investor;
- (c) The receipt acknowledged receipt of the funds and stated that the funds would earn a substantial rate of interest over a short term (a few weeks or months);
- (d) The investment monies were allegedly invested in “bridge financing deals that involved funding for margin calls, primarily in Europe.”

The Respondent initially invested \$40,000.00 of his own money with Braganza. During the months of February and March, 2004, he received “interest” payments totaling several thousand dollars from Braganza. He then invested an additional \$15,000.00 to \$20,000.00 of his own money with Braganza.

At or about the same time, the Respondent introduced three mutual fund clients of PFSL to Braganza. The Respondent brought his clients to a pre-arranged meeting with Braganza at a McDonald’s restaurant. There would be other potential investors at the meeting in addition to the Respondent’s clients. At the meeting, Braganza explained the investment program and answered questions from the prospective clients.

One of these clients was LC. In or about March of 2004, the Respondent recommended to LC that she invest in the Braganza investment. He arranged for LC to meet with Braganza, as above described, and acted as an intermediary between Braganza and LC.

LC made an investment of \$10,000.00 in the Braganza Investment. LC provided to the Respondent a cheque, dated March 24, 2004, in the amount of \$10,000.00. The cheque was made payable to "Financial Traders". The Respondent delivered the cheque to Braganza. The Respondent then delivered to LC a receipt from Braganza on the letterhead of "Financial Link". The document acknowledged receipt of the sum of \$10,000.00 from LC "representing a 9 week deposit to earn a rate of return of 11%." The receipt was allegedly signed by Braganza. Braganza made no payments to LC on the receipt.

In April of 2004, Braganza also defaulted on payments to the Respondent. Braganza told the Respondent that the delays in payment resulted from "delays in the maturity of bridge financing". Braganza provided additional "receipts" to the Respondent for the purpose of extending his investment period by 3 months. There was no evidence before the Hearing Panel as to whether the Respondent advised LC of the default in payments on his personal investments with Braganza and the alleged reasons therefor.

The original "investment", which LC had with Braganza, was due to expire on May 31, 2004. On May 29, 2004, LC apparently extended her investment with Braganza for an additional 3 months to be payable on August 29, 2004, with interest accruing at the rate of 10%.

On August 29, 2004, Braganza defaulted on the payment to LC. In September of 2004, Braganza advised the Respondent that he anticipated that payments would be forthcoming in mid to late November of 2004.

On October 27, 2004, LC caused a Plaintiff's Claim to be issued out of the Toronto Small Claims Court against the Respondent, PFSL, Braganza, Capital Traders Plus, Financial Traders and Financial Link. The Plaintiff's Claim sought a judgment of \$10,000.00 for the investment, \$2,000.00 for interest, plus costs. It

alleged both a breach of fiduciary duty and misrepresentation on the part of the Respondent.

PFSL received the Plaintiff's Claim on November 3, 2004. It met with the Respondent on November 5, 2004, and suspended him pending completion of a review and investigation of the matter. The Respondent, subsequently, obtained \$12,000.00 from Braganza, delivered it to LC who, on November 30, 2004, provided a Full and Final Release to the Respondent and PFSL.

On December 9, 2004, PFSL terminated the Respondent for cause. The Respondent is not currently registered in the securities industry in any capacity. The Respondent has received no return of the principal amount which he invested with Braganza.

The investments promoted and sold by Braganza were not known to or approved for sale by PFSL. None of Braganza, Capital Traders Plus, Financial Traders or Financial Link have ever been registered with the Ontario Securities Commission in any capacity or otherwise qualified to sell securities in Ontario with a prospectus or exemption from a prospectus.

On August 23, 2005, the MFDA sent a registered letter to the Respondent requesting a written response providing full details of all of his dealings with Braganza. The letter requested a written response by no later than September 6, 2005. The letter advised the Respondent that he was required to co-operate in the MFDA investigation in accordance with his obligations as an Approved Person as set out in Section 22.1 of MFDA By-Law No. 1. The letter pointed out that, notwithstanding the fact that he was no longer an Approved Person of PFSL, his obligations continued for a period of 5 years following his termination, in accordance with Section 24.1.4 of MFDA By-Law No. 1.

The letter of August 23, 2005, was delivered to and received by the Respondent on August 24, 2005, as evidenced by documentation provided by Canada Post. In his Reply, as well as in his oral evidence before the Hearing Panel, the Respondent acknowledged receipt of the letter from the MFDA. He indicated that he was busy at work and forgot to reply. He stated that he did not realize the seriousness of not replying.

When no response was received by the MFDA from the Respondent by the requested date of September 6, 2005, a second letter, dated September 23, 2005, was sent to the Respondent. This letter advised the Respondent that he had failed to reply to the letter of August 23, 2005. It reiterated his obligation to respond in accordance with Sections 22.1 and 24.1.4 of MFDA By-Law No. 1. The letter required a response by no later than October 7, 2005. It indicated that should the Respondent fail to respond as requested, the MFDA might consider initiating disciplinary proceedings against him for his failure to co-operate.

The letter of September 23, 2005, was delivered to and received by the Respondent on September 29, 2005, as confirmed by documentation provided by Canada Post. The MFDA had received no response from the Respondent when the Notice of Hearing was issued on December 7, 2005, nor when Ian Smith swore his Affidavit on December 21, 2005.

In his Reply, dated January 3, 2006, the Respondent acknowledged receipt of the second letter from the MFDA and indicated that he replied "right away by sending the Depositor's Questionnaire back to FSCO." During the course of his oral testimony before the Hearing Panel, the Respondent produced documentation showing that, in fact, on September 29, 2005, he returned the Depositor's Questionnaire to FSCO. This was the questionnaire which he had received from FSCO with its letter to the Respondent of August 17, 2005. The Respondent's position at the Hearing was that by returning the questionnaire to FSCO he thought that he was responding to the MFDA.

## 6. APPLICABLE RULES

Allegation No. 1, in the Notice of Hearing, alleges a breach of MFDA Rule 1.1.1. MFDA counsel restricted his argument to a consideration of Rule 1.1.1(a), which provides as follows:

“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:
  - (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
  - (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.”

It was contended that neither of the enumerated exceptions apply in this case.

Section 1 of MFDA By-Law No. 1 defines “securities related business” as:

“any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation;”

Allegation No. 2, in the Notice of Hearing, alleges a breach of MFDA Rule 2.1.1(b). This Rule states:

“Each Member and each Approved Person of a Member shall:

- (b) observe high standards of ethics and conduct in the transaction of business; . . .”

Allegation No. 3, in the Notice of Hearing, alleges a breach of Section 22.1 of MFDA By-Law No. 1. This section states:

“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 matter 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.”

An “Approved Person” is defined in Section 1 of MFDA By-Law No. 1 as follows:

“**Approved Person**” means, in respect of a Member, an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who conducts or participates in the dealer business of the Member and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the securities commission having jurisdiction, and (ii) is designated and qualified as such in accordance with the Rules, or (iii) is otherwise subject to the jurisdiction of the Corporation;”

Section 24.1.4 of MFDA By-Law No. 1, which was referred to in the two letters to the Respondent, dated August 23, 2005, and September 23, 2005, respectively, provides as follows:

“24.1.4 *Jurisdiction*

- (a) *Former Members.* For the purposes of Sections 20 to 24 inclusive, any Member, Approved Person or other person subject to the jurisdiction of the Corporation shall remain subject to the jurisdiction of the Corporation notwithstanding that such Member has ceased to be a Member, Approved Person or other person subject to the jurisdiction of the Corporation.
- (b) *Limitation.* No proceedings shall be commenced pursuant to Section 20.1 against a former Member or person referred to in Section 24.1.4(a) unless a Notice of Hearing has been served upon such Member or person no later than five years from the date upon which such Member or person ceased to be a Member or held the relevant position with the Member, respectively.”

7. ANALYSIS AND DECISION

(a) Allegation No. 1

In our view, the evidence is clear that, commencing in March of 2004, the Respondent did engage in securities related business outside of the accounts and facilities of PFSL by facilitating the participation of his client, LC, in the Braganza Investment. In his Reply of January 3, 2006, the Respondent admitted that he facilitated the business transaction between LC and Braganza. The evidence is also clear that the “investments” with Braganza and his companies were not known to or approved for sale by PFSL. The monies, totaling \$10,000.00, received by the Respondent from LC, on behalf of Braganza, were not in any way recorded on the books or accounts of PFSL.

Accordingly, we are, unanimously, of the view that Allegation No. 1 has been established.

(b) Allegation No. 2

In his Reply, the Respondent conceded that he had failed to observe high standards of ethics and conduct in the transaction of business by facilitating the investment of his client, LC, in the Braganza Investment.

The Respondent facilitated an investment by his client, LC, with Braganza and acted as an intermediary with respect to this investment. He did so at a time when he knew or ought to have known that Braganza had not been registered with the Ontario Securities Commission in any capacity or was otherwise qualified to sell securities in Ontario with a prospectus or an exemption from a prospectus. He knew that the “investment” products promoted and sold by Braganza were not known to or approved by PFSL. He also knew that the investments which he facilitated were made outside of the books, records and facilities of PFSL.

In his written submissions, Enforcement Counsel referred us to the following authorities:

1. *Wong (Re)*, (1994), 3 ASCS 1574
2. *Thomson (Re)*, [2004] I.D.A.C.D. No. 49.
3. *In the Matter of Joseph Van Der Velden and Andrew Stokman*, MFDA Hearing Panel, Reasons for Decision dated October 14, 2005, MFDA Case No. 200507

While we found these cases to be useful, we had no difficulty in concluding that the conduct engaged in by the Respondent was a serious breach of the acceptable standard of conduct expected of a mutual funds salesperson in Canada.

Accordingly, we are, unanimously, of the view that Allegation No. 2 has been established.

(c) Allegation No. 3

At the Hearing on the Merits, the Respondent submitted evidence and made submissions with respect to Allegation No. 3. While he took responsibility for not replying on time, he submitted that by, mistakenly, replying to FSCO as he did, he displayed an intention to co-operate with the MFDA and that, consequently, Allegation No. 3 was not established. On the facts as found, we are unable to agree with that submission.

On August 24, 2005, the Respondent received a letter, dated August 23, 2005, from the MFDA. The Respondent acknowledged receipt of that letter and confirmed that he did not reply to same. His position was that the letter did not fully set out the consequences to him of not responding. We do not accept that as a justification for not responding.

The Respondent had been an Approved Person. As pointed out in the August 23, 2005 letter, his obligations as an Approved Person continued in accordance with Section 24.1.4 of MFDA By-Law No. 1. As an Approved Person or a former Approved Person, the Respondent knew or should have known of his obligation to respond. He failed to fulfill that obligation.

On September 29, 2005, the Respondent received a second letter from the MFDA. This one was dated September 23, 2005. In his Reply and in his oral testimony, the Respondent stated that he took immediate action. He did. He responded on the same day (i.e. September 29, 2005) by completing and mailing to FSCO a questionnaire which had been sent to him by letter dated August 17, 2005. He did not, however, respond to the MFDA and did not, for example, even send a copy of the response questionnaire to the MFDA. He stated that he was confused and thought that a response to FSCO was a response to the MFDA. In our view, as an Approved Person or a former Approved Person, there should have been no such confusion.

We also note that the letter of August 17, 2005, from FSCO was written to the Respondent in his capacity as a depositor. The MFDA was writing to the Respondent in his capacity as an Approved Person or former Approved Person. On September 29, 2005, the Respondent replied in his capacity as a depositor. There was no evidence that he ever, at any time, responded in his capacity as an Approved Person or former Approved Person.

Consequently, we are unanimously of the view that Allegation No. 3 has been established.

8. PENALTY

Enforcement Counsel, in his written and oral submissions, sought the following sanctions:

- (a) a permanent prohibition on the authority of the Respondent to conduct securities related business;
- (b) a fine in the amount of \$10,000.00 to be applied concurrently for the contravention of MFDA Rules 1.1.1 and 2.1.1(b);
- (c) a fine in the amount of \$25,000.00 for contravention of Section 22.1 of MFDA By-Law No. 1; and
- (d) costs in the amount of \$2,000.00

In his submissions as to penalty, the Respondent stated that he was “willing to take” a permanent prohibition on his authority to conduct securities related business. With respect to the fines, he said that while he agreed with the “reason for the fine”, he had no current ability to pay the fines.

9. FACTORS TO BE CONSIDERED

The Supreme Court of Canada, in the case of Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paragraph 59, held that the primary goal of securities regulation is the protection of the investor. The Supreme Court also found that other goals included:

“ . . . ensuring public confidence in the system.”

The Pezim Decision was recently cited with approval in two MFDA Decisions, namely Robert Roy Parkinson and Arnold Tonnies.

*In the Matter of Robert Roy Parkinson* (2005), 28 OSCB 4324 (Ontario Regional Council), MFDA File No. 200501, at page 20.

*In the Matter of Arnold Tonnies*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, at page 21.

In our view, any sanctions which we impose should be preventative, protective and prospective in nature. One of the main objectives of securities regulation is to prevent harm to investors and the capital markets. In this regard, the Supreme Court of Canada recently found that the role of the OSC, under its public interest jurisdiction, is:

“ . . . to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.”

*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2. S.C.R. 132.

*In the Matter of Mithras Management Ltd. et al* (1990), 13 O.S.C.B. 1600.

*Parkinson, supra*, at page 13.

*Tonnies, supra*, at page 22.

We believe that, in the circumstances of this case, this succinctly reflects the role of this Hearing Panel.

We believe that the Parkinson and Tonnies Decisions correctly found that in determining the appropriate sanctions, this Hearing Panel should, *inter alia*, take into account the following considerations;

- (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.

*Parkinson, supra*, at page 14.

*Tonnies, supra*, at page 22.

In the Cartaway Resources Corp. Decision, the Supreme Court of Canada has held that it is appropriate for a Hearing Panel to include general deterrence amongst the factors that it takes into account when determining an appropriate penalty. The Supreme Court of Canada stated, at paragraph 61 of that Decision, that:

“A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction . . . The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged . . .”

*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 61.

*Tonnies, supra*, at page 22.

Previous Hearing Panels and Tribunals have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

- (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 deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- (l) Previous decisions made in similar circumstances.

*Parkinson, supra*, at pages 14 and 15.

*Tonnies, supra*, at page 23.

MFDA Rule 1.1.1(a) clearly prohibits an Approved Person from engaging in securities related business in any form that is not carried on for the account of the Member, through the facilities of the Member and in accordance with the MFDA By-Law and Rules. This Rule is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the mutual fund industry in Canada. It creates a regime whereby an Approved Person is only permitted to sell investment products that have been first

approved for sale by the Member and which are also sold through the facilities of that Member.

In our view, the Respondent was clearly aware that the provision of funds by his client, LC, for “investment” in “bridge financing deals that involved funding for margin calls, primarily in Europe” was not an investment product that had been approved for sale by PFSL. He either knew or could easily have ascertained that none of Braganza, Capital Traders Plus, Financial Traders or Financial Link had ever been registered with the Ontario Securities Commission in any capacity. He, likewise, knew or ought to have known that none of them were qualified to sell securities in Ontario with either a prospectus or an exemption from a prospectus.

He knew that his client, LC, was relying on his advice. She had made inquiries of him as to his personal investments at which time he recommended the Braganza Investment. He knew that, when he took LC to a pre-arranged meeting with Braganza at a McDonald’s restaurant, he was engaging in securities related business outside of the accounts and facilities of PFSL. He brought none of this to the attention of PFSL until LC commenced legal action in October of 2004.

In April of 2004, the Respondent was aware that Braganza had defaulted on payments with respect to his own personal investments. He knew, or ought to have known, that his client LC received no return whatsoever on her initial “investment” dated March 24, 2004. Yet, he took no apparent steps to either prevent her from extending her investment in May of 2004 or bringing this situation to the attention of PFSL.

In our view, it is incumbent upon this Hearing Panel to communicate to the Respondent, to the public and to the mutual fund industry as a whole that serious consequences will befall those who are engaged in activities similar to those of

the Respondent in the case before us. In our view, this message can only be delivered by a permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity and we so order.

10. FINES

(a) Allegations No. 1 and No. 2

We have set out above our views as to the principles which should guide us in imposing fines upon the Respondent. Included amongst the factors to be considered are mitigating circumstances.

In this case, there are three major mitigating factors:

1. The Respondent has no disciplinary history.
2. The Respondent was instrumental in ensuring that LC received a return of her principal plus interest, albeit after she had commenced legal proceedings against, *inter alia*, the Respondent.
3. Both in his Reply and in his evidence and submissions before the Hearing Panel, the Respondent made candid admissions, particularly with respect to Allegations No. 1 and No. 2.

On the other hand, we believe that it is necessary for a strong general deterrent message to be sent to the Canadian mutual fund industry with respect to the misconduct found in Allegations No. 1 and No. 2.

After a consideration of all of the above factors, we agree with the submission of Enforcement Counsel that the appropriate fine to be applied concurrently with respect to both Allegations No. 1 and No. 2, would be \$10,000.00.

(b) Allegation No. 3

While we did not accept the explanation proffered by the Respondent in our determination as to whether Allegation No. 3 was established, we do believe that we could consider it as a mitigating factor when it comes to the imposition of a fine. A failure to co-operate by an Approved Person or a former Approved Person is serious misconduct because it compromises the ability of the MFDA to perform its regulatory function.

There are a number of previous Decisions which indicate that the “usual” penalty, in the absence of mitigating factors, is a fine in the amount of \$50,000.00. However, as stated, we find that in the case before us there are mitigating factors, including the co-operation of the Respondent subsequent to the issuance of the Notice of Hearing. We also do give some weight to the Respondent’s apparent mistaken belief that by responding to FSCO he was responding to the MFDA.

Under all of the circumstances, we agree with the submission of Enforcement Counsel that a fine in the amount of \$25,000.00 is appropriate with respect to the conduct found in Allegation No. 3 and we so order.

11. COSTS

Section 24.2 of By-Law No. 1 provides that:

“A Hearing Panel may in any case in its discretion require that the . . . Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel and any investigations relating thereto.”

Enforcement Counsel requested that an Order for Costs be made against the Respondent in the amount of \$2,000.00. He characterized this as a nominal

amount indicating that, in his view, the proceedings had been somewhat simplified by the forthright admissions made by the Respondent.

We agree with the submissions of Enforcement Counsel and, accordingly, order that costs be fixed in the amount of \$2,000.00.

12. PENALTIES IMPOSED

1. A permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity;
2. A fine in the amount of \$10,000.00 to be applied concurrently with respect to Allegations No. 1 and No. 2;
3. A fine in the amount of \$25,000.00 with respect to Allegation No. 3; and
4. Costs in the amount of \$2,000.00.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.  
Chair

“Guenther Kleberg”

Guenther Kleberg  
Panel Member

“Kenneth Mann”

Kenneth Mann  
Panel Member