



**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 (“MFDA”)**

**Re: Anthony McPhail**

Hearing Panel:       The Hon. Fred Kaufman, C.M., Q.C., Chair  
                              Richard E. Austin  
                              Selwyn B. Kossuth

Date of Hearing:       June 9, 2005

MFDA Counsel:       Shelly Feld

The Respondent did not appear and was not represented by counsel.

**DECISION**

As set out in the Notice of Hearing, the Respondent, Anthony McPhail, was charged as follows:

1. That, commencing March 16, 2004, he failed to produce for inspection and provide copies of documents requested by the MFDA for the purpose of an investigation of his conduct, contrary to section 22,1(b) of By-law No. 1, and
2. That, commencing August 24, 2004, he failed to attend at the offices of the MFDA to give information respecting the matters under investigation, contrary to section 22.1(c) of By-law No. 1.

Enforcement counsel demonstrated to the satisfaction of the panel that the two violations alleged did, in fact, occur, and we point in particular to the affidavits of Lara Slomczewski, an investigator in the Enforcement Department of the MFDA, the first of which established the panel's jurisdiction, and the second of which, with the attached exhibits, established the two violations.

The violations having been proven, enforcement counsel was invited to move to the penalty phase, and he proposed that the panel order a permanent prohibition on the Respondent from conducting "securities related business," a fine of \$50,000, and costs in the amount of \$10,000, each of which is provided for in the By-laws of the MFDA.

It is important to note that the phrase "securities related business," as used by enforcement counsel, is defined in section 1 of By-law No. 1 to mean "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."

After deliberating on the matter, the panel decided that the prohibition sought was too broad, and that any prohibition order made should be within the scope of the MFDA's jurisdiction alone. The proposed prohibition seemingly was intended to apply to other securities regulatory bodies, such as provincial and territorial securities regulators, stock exchanges and the Investment Dealers Association of Canada. Each of these bodies has its own rules and procedures, and it would be presumptuous for a Hearing Panel of a Regional Council of the MFDA to purport to bind such other bodies.

We also wish to stress that in reaching its conclusion, the panel did not consider the facts which gave rise to the requests for the Respondent's cooperation which, by virtue of By-law 1, he is bound to give. What was before us were two charges of failure to comply with legitimate requests for information, and the penalties imposed are for those violations and for nothing else.

It is for these reasons that the panel decided to impose a permanent prohibition on the Respondent from engaging in any securities related business while in the employ of, or sponsored by, any MFDA member. The panel also ordered the Respondent to pay a fine of \$50,000, and costs in the amount of \$10,000, and it was so announced at the conclusion of the hearing, with written reasons to follow and these are the reasons.

Given in Toronto, Ontario, on June 15, 2005.

Per: “The Hon. Fred Kaufman”  
The Hon. Fred Kaufman, Chair

Per” “Richard Austin”  
Richard Austin

Per: “Selwyn Kossuth”  
Selwyn Kossuth