



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

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: James Andrew Phillips**

Heard: July 24, 2019 in Halifax, Nova Scotia  
Decision: July 24, 2019  
Reasons for Decision: March 16, 2020

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC  
Ann C. Etter  
Barbara Ann Leighton

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
James Andrew Phillips	)	Respondent, by teleconference
	)	
	)	

## I. INTRODUCTION

1. By Notice of Hearing, dated December 14, 2018, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following Allegations against James Andrew Phillips (“Respondent”):

**Allegation #1:** Commencing in January 2015, the Respondent engaged in personal financial dealings with client RB that gave rise to an actual or potential conflict of interest that the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1.

**Allegation #2:** In the alternative, commencing in January 2015, the Respondent solicited or arranged for client RB to invest monies in a non-arm’s length corporation outside the Member, thereby engaging in securities related business that was not carried on for the account and through the facilities of the Member, contrary to MFDA Rules 1.1.1, 2.1.4 and 2.1.1.

2. On the 17<sup>th</sup> day of June 2019, the Respondent entered into a Settlement Agreement with Staff of the MFDA, in which the Respondent admitted that:

Commencing in January 2015, the Respondent engaged in personal financial dealings with client RB that gave rise to an actual or potential conflict of interest by borrowing approximately \$50,000 from a client and the Respondent failed to disclose the conflict of interest to the Member or otherwise ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1.

3. On July 3, 2019, the MFDA announced that a Settlement Agreement had been entered into between Staff of the MFDA (“Staff”) and the Respondent and gave notice of the date, time and place of the Settlement Hearing. This Notice complied with section 15.2(1) of the MFDA Rules of Procedure.

4. At the commencement of the Settlement Hearing, on July 24, 2019, the Hearing Panel granted the joint request of the parties to move the proceedings “in camera” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA *Rules of Procedure*.

5. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

6. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on July 24, 2019. At that time, we advised that written Reasons would follow. These are those Reasons.

## **II. THE SETTLEMENT AGREEMENT**

7. The salient portions of the Settlement Agreement are as follows:

### **“II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

### **IV. AGREED FACTS**

#### **Registration**

6. The Respondent was registered in Manitoba from July 1, 1994 to January 3, 2008, in Nova Scotia from July 20, 2005 to March 4, 2014, and in Ontario from May 25, 2007 to January 3, 2008 as a mutual fund salesperson (now known as a dealing representative)<sup>1</sup> with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”). On January 11, 2002, the Respondent became an Approved Person of Sun Life when Sun Life became a Member of the MFDA.

7. From May 30, 2014 to October 21, 2015, the Respondent was registered in Nova Scotia as a dealing representative with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.

8. At all material times, the Respondent conducted business from a branch office located in Windsor, Nova Scotia. The Respondent now resides in Winnipeg, Manitoba.

---

<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

## **Investia's Policies And Procedures**

9. At all material times, the policies and procedures of Investia:
  - a) required its Approved Persons to:
    - (i) disclose any conflict of interest to their designated Branch Manager and to Head Office, Compliance in order to enable Investia to ensure that the conflict is addressed in the best interests of the client(s); and
    - (ii) provide written disclosure about the conflict of interest to all individuals (including clients) affected by the conflict; and
  - b) prohibited its Approved Persons from borrowing money from clients.

## **The Respondent's Personal Financial Dealings With Client RB**

10. In March 2014, the Respondent and a business partner, TH, incorporated Presidio Financial Planning Group Inc. ("Presidio"). The Respondent was the President and a Director of Presidio. The Respondent informed Investia that Presidio had been incorporated and obtained approval to operate his insurance business through Presidio.

11. Between March and May 2014 (before the Respondent became an Approved Person with Investia), the Respondent's business partner referred client RB to the Respondent for investment advice. Client RB's employment had recently been terminated and the client was seeking advice about how to deal with his existing savings, his pension entitlements from his former employer and any severance compensation that he received from his former employer. At the time, client RB was 59 years old.

12. The Respondent introduced client RB to MC who was the branch manager of the Investia branch where the Respondent intended to work at when his application for registration with Investia was processed.

13. On or about May 22, 2014, client RB met with MC and the Respondent, explained his financial circumstances and opened investment accounts at Investia into which client RB subsequently arranged to transfer his existing investments and his commuted pension.

14. MC was identified as the Approved Person of record responsible for servicing client RB's accounts. However, the Respondent expected that he would become the Approved Person of record responsible for servicing client RB's account once he became registered with Investia.

15. MC arranged to pay to the Respondent 50% of the commissions earned from trades processed in client RB's new investment accounts at Investia.

16. On May 30, 2014, the Respondent became registered as a dealing representative with Investia.

17. After the Respondent became registered with Investia, the Respondent received a payment of \$9,000 from MC in respect of client RB's investment accounts at Investia, which MC had promised to pay the Respondent.
18. In January 2015, the Respondent arranged for a loan from client RB to finance the business operations of Presidio. In addition, the Respondent offered client RB employment with Presidio as a Logistics Manager.
19. Client RB signed an employment contract with Presidio agreeing to work at the company for a period of 5 years. It was contemplated that client RB would be paid a salary of approximately \$1,000 per month.
20. On January 16, 2015, the Respondent provided client RB with a promissory note which stated that Presidio had borrowed \$50,000 from client RB and agreed to pay client RB principal and 7% interest per year, through monthly instalments of \$990.80, over a 5 year term. The Respondent signed the promissory note on behalf of Presidio.
21. On January 19, 2015, client RB cashed in an insurance policy and delivered the proceeds to the Respondent by obtaining a bank draft in the amount of \$47,935.78 payable to Presidio.
22. The Respondent states that he did not recommend that Client RB cash in an insurance policy to generate the monies for the loan.
23. Client RB was not repaid the principal and interest on the loan as required under the terms of the loan agreement.
24. Client RB was not paid full compensation in respect of the client's employment with Presidio.
25. The Respondent did not disclose to his branch manager or to Investia's Head Office, Compliance that he had arranged for a loan from client RB to fund the operations of Presidio. He also did not disclose to his branch manager or to Investia's Head Office, Compliance that Presidio had entered into an employment contract with client RB.
26. At no time did the Respondent disclose to client RB in writing that the loan agreement and the employment contract with Presidio gave rise to a conflict or potential conflict of interest.
27. The Respondent failed to ensure that any conflict or potential conflict of interest arising from client RB's involvement with Presidio was addressed by the exercise of responsible business judgment influenced only by the best interests of the client.
28. On October 20, 2015, the Respondent resigned from Investia.
29. On November 18, 2015, the Respondent made a voluntary assignment in bankruptcy. Client RB was listed as a creditor in the bankruptcy and the outstanding loan of \$50,000 was listed as a liability in the bankruptcy proceeding.

## **Additional Factors**

30. Following the events described above, the Respondent's business partner, TH, was charged under the Criminal Code (R.S.C., 1985, c. C-46) with three counts of theft over \$5,000 relating to his dealings with client RB and other unrelated parties. TH received a conditional discharge relating to the charges and a restitution order was made requiring TH to repay the \$47,935.78 that had been loaned from client RB to Presidio. To date, client RB has received partial payment of the amount ordered. Additional repayment dates under the restitution order will occur on June 30, 2019, December 30, 2019 and June 30, 2020.

31. The Respondent states that he was unaware that TH was engaging in any criminal conduct.

32. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

33. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing on the allegations.

## **V. CONTRAVENTIONS**

34. The Respondent admits that commencing in January 2015, the Respondent engaged in personal financial dealings with client RB that gave rise to an actual or potential conflict of interest by borrowing approximately \$50,000 from a client and the Respondent failed to disclose the conflict of interest to the Member or otherwise ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1.

## **VI. TERMS OF SETTLEMENT**

35. The Respondent agrees to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 5 years commencing from the date of the final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:
  - (i) \$2,500 in certified funds, payable on the date that the Settlement Agreement is accepted by the Hearing Panel; and
  - (ii) \$1,250 payable on the first day of each month commencing on September 1, 2019 and ending on February 1, 2020;

- c) the Respondent shall pay costs in the amount of \$5,000 in certified funds payable on the date that the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1; and
- d) the Respondent will attend the Settlement Hearing by teleconference, on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

36. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.”

## **III. THE LAW**

8. In both its written and oral submissions, Staff provided the Hearing Panel with a fulsome outline of the relevant law and authorities, for which we are grateful.

### **(a) Conflicts of Interest**

9. MFDA Rule 2.1.4 prescribes the duties of Approved Persons when dealing with conflicts of interest. The Rule provides as follows:

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved

Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

10. MFDA Rule 2.1.4(d) requires each Member to develop and maintain written policies and procedures to ensure compliance with Rule 2.1.4(a) to (c). Paragraph 9 of the Settlement Agreement (*supra*) describes the relevant policies and procedures of the Respondent's Member.

11. Previous MFDA Hearing Panels have determined that a conflict of interest within the meaning of MFDA Rule 2.1.4 arises where an Approved Person borrows money from a client, as occurred here. See for example: *In the Matter of Arnold Tonnies* [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005 at p.14.

12. Previous MFDA hearing panels have also determined that a conflict of interest arises when an Approved Person borrows from a client where the borrowing was undertaken through a corporation which was held or controlled by the Approved Person.

*In the Matter of Grant Manning*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201513, Hearing Panel Decision dated January 25, 2016.

*In the Matter of Peter Harald Brauns*, Decision on Misconduct, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201203, Hearing Panel Decision dated October 15, 2013 ("*Brauns*").

13. Specifically, MFDA Panels have held that:

“where an Approved Person borrows money from a client, or arranges investments by clients in companies in which the Approved Person has a personal interest, such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the client. It is patently obvious that facilitating investments by a client in your company, or borrowing money from a client is not the exercise of responsible business judgment in the best interests of clients”

*In the Matter of Conrad Arthur Nunweiler*, [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201030, Hearing Panel Decision dated May 28, 2012 at para. 17.

14. The MFDA has previously released two Staff Notices that clarify the obligations of Members and Approved Persons regarding personal financial dealings with clients.

MFDA Notice #MSN-0047 dated October 3, 2005.

MFDA Notice MSN-0054 dated June 22, 2006 (updated March 4, 2013).

15. MFDA Staff Notice #MSN-0047 sets out the MFDA's position on borrowing from clients as follows:

“[b]orrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client. . . . MFDA staff are unaware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with.”

MFDA Notice #MSN-0047, *supra*.

16. MFDA Panels have also held that borrowing from clients creates a conflict of interest that is:

“so profound that [an Approved Person] could not conceivably exercise responsible business judgment influenced only by [the client's] best interests. This was the classic situation in which the conflict could only be resolved by an absolute prohibition on obtaining monies from [the client], whether their relationship is described as a partnership or as one of lender-borrower, while [the Approved Person] was her mutual fund advisor.”

*Brauns, supra*, at para 58.

17. In the Settlement Agreement, the Respondent admits that he engaged in a conflict of interest with his client and failed to disclose this conflict to his Member or otherwise ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client as required by MFDA Rule 2.1.4.

**(b) Compliance with Member Policies and Procedures**

18. MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules

and Policies. On the evidence before the Hearing Panel, it would appear that the Member complied with the Rule.

19. MFDA Rule 1.1.2 places a corresponding obligation on Approved Persons to comply with the applicable By-laws and Rules.

20. In the Settlement Agreement, the Respondent admits that he acted contrary to the Member's policies and procedures, as well as MFDA Rules 2.1.1 and 1.1.2.

21. As was stated by the Hearing Panel in the Michael Franco Decision:

“The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system . . . . When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.”

*In the Matter of Michael Franco*, [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Hearing Panel Decision dated May 6, 2011 at para. 38.

**(c) Standard of Conduct**

22. In paragraph 34 of the Settlement Agreement (*supra*), the Respondent admitted that he acted contrary to MFDA Rule 2.1.1.

23. MFDA Rule 2.1.1 requires Approved Persons to uphold a standard of conduct applicable to all registrants in the mutual fund industry. The Rule requires, among other things, that:

“Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

24. MFDA Panels have repeatedly held that an Approved Person who engages in personal financial dealings or fails to take appropriate action to disclose and address a conflict of interest with a client (by, for example, borrowing money from the client) has engaged in conduct that is contrary to MFDA Rule 2.1.1.

*In the Matter of Lisa Hua Deng Huang*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201538, Hearing Panel Decision dated October 21, 2016 (“*Huang*”).

*In the Matter of Keith Lorne Davis*, [2016] Hearing Panel of the Prairie Regional Council, MFDA File No. 201615, Hearing Panel Decision dated November 15, 2016 (“*Davis*”).

*In the Matter of Mervin Evans Visneskie*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201553, Hearing Panel Decision dated October 30, 2017 (“*Visneskie*”).

25. MFDA Panels have further held that an Approved Person who breaches the Member’s Policies and Procedures also has engaged in conduct that is contrary to MFDA Rule 2.1.1.

*In the Matter of Jose Luis Bautista*, [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201143, Hearing Panel decision Dated July 24, 2012.

*Davis, supra*, at para 39.

*Tonnies, supra*.

#### **IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS**

26. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

27. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- (i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;

- (ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- (iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- (iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- (v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- (vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- (vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Re: *Investors Group Financial Services (Re)*, [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated December 16, 2004 at pages 2-3.

Re: *Professional Investments (Kingston) Inc. (Re)*, [2009] Central Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009, page 9, para. 14.

28. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. 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.

*Re: In the Matter of Robert Roy Parkinson (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.*

*Re: Tonnies, supra, at page 23.*

## **V. CONSIDERATIONS IN THE PRESENT CASE**

### **(a) Nature of Misconduct**

29. We agree with Staff's submission that the Respondent's conduct is serious. The evidence is clear that the Respondent abused the trust between himself and his client in a very fundamental fashion. He made recommendations that resulted in a financial benefit to himself while placing his client's money at risk. He withheld mandatory disclosure of the conflict from his Member, which thereby deprived the Member of the ability to either prevent or address the conflict of interest.

### **(b) Recognition of the Seriousness of the Misconduct**

30. However, by entering into the Settlement Agreement and making the admissions contained therein, the Respondent has recognized the seriousness of his misconduct. The Settlement Agreement has also enabled Staff to avoid the time and expense of conducting a lengthy hearing.

### **(c) Harm Suffered by Investors**

31. As detailed in the Settlement Agreement, the Respondent arranged for a loan from a client in the approximate amount of \$50,000.00. This loan amount was then misappropriated by the

Respondent's business partner. The position of the Respondent is that he was unaware of this criminal conduct (see paragraph 31 of the Settlement Agreement, *supra*).

32. The Respondent has not personally repaid to the client any of the misappropriated funds. However, the Respondent's business partner received a conditional discharge relating to the criminal charges that were laid against him. The Court made a restitution order requiring the business partner to repay the amount of the loan in full.

33. The client also suffered a loss of the investment returns and/or the use of the funds misappropriated during the period of the misappropriation.

**(d) Benefits Received by the Respondent**

34. The Respondent benefited from his misconduct by obtaining access to capital through the loan agreement with his client, thereby avoiding the typical costs (eg. loan interest) and other burdens that would likely have been applicable if he had solicited the loan from a sophisticated lender.

**(e) Respondent's Past Conduct, including Prior Sanctions**

35. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

**(f) Specific and General Deterrence**

36. We agree with Staff's submissions that the proposed penalties will deter the Respondent from engaging in similar conduct in the mutual fund industry should he choose to re-enter the industry after his prohibition.

37. We have also considered the nature of these proceedings, the fact that they are public and the effect that this has had and will have on the Respondent.

38. We further agree with the submission of Staff that the proposed penalties will deter other licensed individuals from engaging in similar conduct.

**(g) Previous Decisions Made in Similar Cases**

39. Staff provided the Hearing Panel with a chart which showed that the proposed penalties are consistent with the penalties imposed by MFDA Hearing Panels in previous cases, in similar circumstances. The following examples were provided:

- a) *Smiechowski (Re)*, [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 201007, Panel Decision dated December 31, 2010.
- b) *Mihajlovic (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201783, Panel Decision dated December 8, 2017.
- c) *Lipovetsky (Re)*, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201252, Panel Decision dated July 25, 2013.
- d) *Okopny (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201512, Panel Decision dated August 31, 2016.
- e) *Brauns (Re)*, Decision on Penalty, [2014] Hearing Panel of the Prairie Regional Council, MFDA File No. 201203, Panel Decision dated February 4, 2014.

**(h) Sanction Guidelines**

40. Staff also referred the Hearing Panel to the Sanction Guidelines, which came into effect on November 15, 2018. These Guidelines are not binding on the Panel, but provide a useful summary of the key factors upon which we can exercise our discretion.

**(i) Nature of Settlement Agreement Proceedings**

41. We have, finally, considered that this was a Settlement Agreement that was reached after, apparently, significant discussion and negotiation. It represents what the parties, with their knowledge and experience, feel is an appropriate resolution.

**VI. DECISION**

42. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

## VII. ORDER

43. After accepting the Settlement Agreement, we made the following Order:

- a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 5 years commencing from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:
  - i) \$2,500 payable in certified funds on the date of this Order;
  - ii) \$1,250 payable on the first day of each month from September 1, 2019 to February 1, 2020;
- c) The Respondent shall pay costs in the amount of \$5,000 in certified funds on the date of this Order, pursuant to s. 24.2 of MFDA By-law No. 1; and
- d) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

**DATED** this 16<sup>th</sup> day of March, 2020.

“Thomas J. Lockwood”

---

Thomas J. Lockwood, QC  
Chair

“Ann C. Etter”

---

Ann C. Etter  
Industry Representative

“Barbara Ann Leighton”

---

Barbara Ann Leighton  
Industry Representative

DM 724658