



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: Gary Alan Price

Panel Decision: December 8, 2010

DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.
Gary Legault
Robert Guilday

Chair
Industry Representative
Industry Representative

1. The Hearing on the Merits in this matter commenced on Monday, October 18, 2010, in Toronto.
2. On Friday, October 15, 2010, the Respondent, Gary Alan Price, forwarded an e-mail to both Jason Bennett, MFDA Corporate Secretary & Director, Regional Councils, and Marco Wynnyckyj, Hearings Co-ordinator, advising that he would “not be attending in person” at the Hearing on the Merits.
3. The full text of the e-mail, which was subsequently marked as part of Exhibit 14 at the Hearing on the Merits, is as follows:

“Hello Jason and Marco:

Would you please inform all of the parties involved that I will not be attending in person at the Second Hearing set for next week (Oct. 18-22) in Toronto. I believe my reasons are obvious.

Beyond these reasons, however, there are also some highly personal reasons. Although I am not prepared to divulge them generally, I would be willing to discuss them in confidence with Mr. Lockwood if it is appropriate to do so.

I understand that I still have an obligation to present a defence and I intend to fulfill that obligation. Given the unprecedented circumstances of my case—and given my current personal circumstances—the most effective defence I can offer at this point is the same defence I put forward at the first Hearing on the Merits almost a year-and-a-half ago. Therefore, I choose to submit the transcript of May 11-12, 2009 as my complete, total and entire defence.

To that end, I respectfully request and you and your office provide the new panel members with that transcript and inform them of my wishes.

Thank you in advance for your consideration and efforts in this matter.

Sincerely,

Gary Alan Price”

4. On October 18, 2010, the Hearing Panel requested that certain information be conveyed to Mr. Price. This information included the fact that the Chair of the Hearing Panel declined the invitation, extended by Mr. Price, to discuss with him, in confidence, the personal reasons why he would not be attending the Hearing on the Merits.

5. Mr. Price was, however, to be advised that, under Rule 1.8(2) of the MFDA Rules of Procedure, it was within the power of the Hearing Panel, in appropriate circumstances, to order that part of the Hearing on the Merits could be held *in camera* to receive information of an intimate personal nature and that this information could be received either in person or by telephone.

6. Mr. Price was to be further advised that the Hearing on the Merits would resume on October 19, 2010, at 10:00 a.m. and that he, if he so chose, could appear in person or by way of telephone.

7. On October 18, 2010, Mr. Bennett sent the following e-mail to Mr. Price:

“Mr. Price,

The Hearing Panel met earlier today and asked me to relay the following information to you:

- with respect to your personal reasons for not attending the Hearing on Merits which commenced today, Mr. Lockwood has declined your invitation to discuss the matter with you in confidence;

- however, the Hearing Panel would like to advise you that, under Rule 1.8(2) of the Rules of Procedure, it is within the Panel’s power to hold a private discussion with you *in camera* if you would like to discuss your reasons for not attending the Hearing on Merits (via telephone if required); and

- the Hearing on the Merits will resume tomorrow morning, October 19, 2010 at 10:00 a.m. (Eastern).

Please notify me at your earliest opportunity if you would like an *in camera* audience with the Hearing Panel tomorrow (in person or via phone).

Regards,

Jason D. Bennett, LL.B.”

8. Mr. Price responded as follows, also on October 18, 2010:

“Hi Jason:

While I appreciate the opportunity, I see no reason to share my personal life with the panel members if there is no legal obligation to do so.

Thank you again!

Gary Alan Price”

9. The Hearing on the Merits continued on October 19 and 20, 2010, at which time the Hearing Panel reserved its Decision. The Decision is still under reserve.

10. Mr. Price did not appear on October 19 or 20, 2010, either in person or by way of telephone. However, a copy of the transcript of Mr. Price’s evidence at the original Hearing on

the Merits in May of 2009 was marked as Exhibit 11 at the current Hearing on the Merits and is before the Hearing Panel for consideration.

11. The Respondent recently questioned Jason Bennett as to whether Mr. Bennett, or anyone in his office, had notified him that the Hearing Panel was prepared to give the Respondent the opportunity to take part in the Hearing on the Merits by way of telephone.

12. In an e-mail, dated December 3, 2010, Mr. Bennett responded, in part, as follows:

“As you can see in the attached message, on October 18, 2010 I advised you that the Hearing Panel was willing to hold an *in camera* appearance with you by telephone if you wished, however I inadvertently did not do the same with respect to the Hearing on the Merits which was set to resume at 10:00 am on October 19, 2010. It is my understanding that neither Mr. Wynnyckyj nor Ms. Pong communicated that to you either.”

13. It is clear that the Respondent was aware of the time and place of the Hearing on the Merits and chose not to attend. The transcript, which he requested be submitted as his “complete, total and entire defence”, was so submitted.

14. The Respondent, however, was, inadvertently, not advised of his ability to participate at the Hearing on the Merits by way of telephone.

15. The Respondent has a copy of the transcript of the proceedings on October 18, 19 and 20, 2010. He either has, or can easily obtain, copies of all of the Exhibits.

16. Thus, the Respondent either is aware, or can quickly make himself aware, of the totality of the evidence, which the Hearing Panel is currently considering.

17. What we do not have, at the moment, are any submissions from the Respondent as to how this evidence should be viewed by the Hearing Panel. The Respondent, as was his right, chose not to attend in person and make those submissions.

18. As the Respondent was, inadvertently, not advised of the offer of the Hearing Panel to allow him to participate by way of telephone, we are prepared to provide an opportunity for the Respondent to make submissions to us.

19. The Hearing Panel is prepared to receive and consider any written submissions, which the Respondent sees fit to make on the admissible evidence and applicable law, so long as the submissions are received by the Hearings Co-ordinator, on or before December 31, 2010.

20. Should the Respondent choose to file written submissions, MFDA Staff will have the right to make any written Reply Submissions, on or before January 7, 2011.

21. In addition, or in the alternative, the Hearing Panel is prepared to hear oral submissions by telephone from the Respondent on January 14, 2011. Should the Respondent seek to avail himself of this opportunity, MFDA Staff will be afforded an oral right of reply by telephone.

22. We would request that the Respondent notify the MFDA by no later than 4:00 p.m. (Eastern) on December 17, 2010, as to whether he wishes to avail himself of the opportunity to make written and/or oral submissions. By that time and date, Mr. Price should specify which, if any, of the options he wishes to follow.

23. Should the Respondent not notify the MFDA of his wishes, on or before 4:00 p.m. (Eastern) on December 17, 2010, the Hearing Panel will assume that the Respondent does not wish to make any submissions and we will conclude our deliberations.

DATED this 8th day of December, 2010.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.,
Chair

“Gary Legault”

Gary Legault,
Industry Representative

“Robert Guilday”

Robert Guilday,
Industry Representative