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: Blair Stonewall Jackson Roche

Heard: October 2, 2014, in Calgary, Alberta
Reasons for Decision: November 17, 2014

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Alan V. M. Beattie, Q.C.	Chair
Marc Albert	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

David Babin	)	For the Mutual Fund Dealers Association of Canada
Craig Leggatt	)	Counsel for the Respondent
Blair Stonewall Jackson Roche	)	Respondent

1. INTRODUCTION

1. This Hearing Panel ("the Panel") was convened pursuant to a Notice of Hearing dated July 14, 2014, to consider whether alleged violations by Blair Stonewall Jackson Roche ("the Respondent") of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA") are proven and, if so, the appropriate penalties to be imposed on the Respondent for the violations.

2. The first appearance in this matter, by teleconference, took place on August 20, 2014, before the Chair of the Panel. The Respondent's Counsel participated in the first appearance. The hearing of this matter on its merits was scheduled to take place on October 2, 2014. The Respondent and the MFDA entered into a settlement agreement dated September 30, 2014 (the "Settlement Agreement") and the hearing scheduled for October 2, 2014 was convened to consider whether, pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Panel should accept the Settlement Agreement.

3. At the commencement of the hearing, the Panel granted a motion by Staff Enforcement Counsel, consented to by Counsel for the Respondent, to abridge the ten day notice period required under Rule 15 of the MFDA Rules of Procedure and Section 24.4.3 of MFDA By-law No. 1 for giving notice of the Settlement Hearing. We were referred to MFDA Rules of Procedure 1.5(b), 2.2 and 1.3 as authority for abridging the time requirement. We agreed that the time should be abridged and so ordered.

4. The Panel also granted a joint motion by Counsel to move the proceedings "in camera". Upon acceptance by the Panel of the Settlement Agreement the "in camera" order would be lifted.

5. The Panel members had, prior to the hearing, reviewed the Settlement Agreement, written Submissions of Staff and Staff's Book of Authorities. All quoted passages herein from the Settlement Agreement and the Submissions of Staff contain the paragraph numbers from those documents.

2. SETTLEMENT AGREEMENT

6. The Settlement Agreement includes the following:

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 By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

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AGREED FACTS

Registration History

6. From December 2003 to June 1, 2011, the Respondent was registered in Alberta as a mutual fund dealing representative[1] with Partners in Planning Financial Services Ltd. ("PIP"), a Member of the MFDA.

7. Effective June 1, 2011, the Respondent became a mutual fund dealing representative with IPC Investment Corporation (the "Member") as a result of PIP amalgamating with the Member.

[1] Formerly referred to as a mutual fund salesperson.

8. The Respondent was terminated by the Member as a result of the events described herein, on April 4, 2013.

9. The Respondent is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted business in Calgary, Alberta.

Background

11. Prior to April 2011, the Respondent operated out of the Member's location at 6327 Bowness Road in Calgary, Alberta. He serviced approximately 100 client accounts.

12. In April, 2011, the Respondent moved to the Member's sub-branch located at 1529 - 20th Avenue N.W. in Calgary, Alberta, and began to share office space with TS and KW (the "20th Avenue Sub-Branch").

13. TS and KW had previously been registered with the Member. KW left the Member in October 2010 and TS left the Member in April 2011. Both subsequently joined Privest Wealth Management ("Privest"), an Exempt Market Dealer, as exempt market dealing representatives.

14. In April 2011, the Respondent entered into an agreement with TS to purchase TS's mutual fund book of business which consisted of approximately 400 clients. TS had previously acquired a portion of his book of business from KW in October 2010.

15. On August 22, 2012, the Member conducted a review of the 20th Avenue Sub-Branch. The review uncovered a number of deficiencies, and the Respondent was consequently suspended by the Member on December 19, 2012, pending the outcome of a full investigation by the Member.

16. On December 21, 2012, the Member sent letters to all of the clients whose accounts were serviced by the Respondent, advising them of the Respondent's suspension and its investigation into certain of his business practices.

17. On February 6, 2013, as part of the Member's supervisory investigation of the Respondent's activities, the Member issued letters to 47 clients who had received portfolio summaries prepared by the Respondent without the knowledge or approval of the Member. On March 18, 2013, the Member sent a further 50 such letters to a random sample of the Respondent's clients.

18. On March 4, 2013, the Member lifted the Respondent's suspension and placed him on close supervision. He left the 20th Avenue Sub-Branch and moved to the Member's location at 7015 McLeod Trail South in Calgary, Alberta. The Member subsequently terminated the Respondent on April 4th, 2013.

Contravention #1 - Non-Approved Persons Allowed to Conduct Securities Related Business

19. Following the Member's branch review on August 22, 2012, the Member sent a total of 391 letters to clients whose accounts were serviced by the Respondent.

20. The letters generated 133 responses, of which seven were determined to be instances where the Respondent had permitted non-Approved Persons TS and KW to conduct securities related business with clients for the account and through the facilities of the Member.

21. In each case, the client had telephoned, or met with, TS or KW to request a transaction in their account. TS or KW passed the request on to the Respondent. The Respondent then processed the requested transactions in the client's account, without

communicating directly with the client. At the time of each of the transactions, neither TS nor KW were registered as mutual fund dealing representatives.

22. (*Eight transactions, involving seven clients, between April 20, 2011 and December 13, 2012, totalling $41,473.49 are set out.*)

23. During the course of Staff's investigation, the Respondent confirmed that he did not meet with clients DG, TR, or CC to process the above listed transactions. DG, TR, and CC either had telephone calls or meetings with TS or KW in the absence of the Respondent to request their transactions. The respondent states that he was either unaware of, or was unable to attend, the telephone calls or meetings. During these meetings and telephone calls, the necessary account service documentation was generated by the Respondent's assistant, and passed on to the Respondent for review and processing.

24. Client WH confirmed to the Member that he had dealt with TS when requesting the transaction to be made in his account, and would meet with TS in person at the 20th Avenue Sub-Branch. The Respondent states that he subsequently reviewed the above-noted transaction at the time and considered it appropriate prior to submitting it for processing, but did not directly communicate with the client.

25. Client AW also informed the Member that she only dealt with TS, both in person and on the telephone. The Respondent states that he also reviewed the above noted transaction and considered it appropriate prior to submitting it for processing. The Respondent states that he may not have met or spoken with AW in connection with this transaction.

26. Client KH contacted KW for the above noted RDSP purchase. KW forwarded the request to the Respondent, who determined that a redemption was required and recommended the mutual funds required. The Respondent communicated that advice to KW who informed KH. The Respondent did not speak directly with KH and informed

Staff that, due to the nature of the transaction, he did not feel it was necessary to communicate directly with the client.

27. Client BR contacted KW to request the above noted redemption. KW in turn contacted the Respondent and requested that he facilitate the transaction. The Respondent's assistant emailed the redemption form to the client, who signed it and sent it back to the Respondent in a reply email. The Respondent signed the redemption form, and the trade was processed the next day. In a written statement to Staff, the Respondent stated that he did not communicate directly with BR regarding the redemption.

Contravention #2 - Unauthorized Portfolio Summaries

28. The Member's branch review on August 22, 2012 revealed that the Respondent had prepared and delivered at least 45 portfolio summaries to 80 clients (the "Portfolio Summaries"). The Portfolio Summaries were prepared between June 2011 and December 30, 2012, on a quarterly or semi-annual basis, and were supplemental to the Member's official account statements. The Portfolio Summaries did not, however, display any disclaimer stating that they were not official account statements.

29. (*45 Portfolio Summaries for the period from December 31, 2011 to September 30, 2012 are set out.*)

30. At all material times, section H1 of the Member's Policies and Procedures Manual (the "PPM") stated that:

(a) the Member and its representatives may provide consolidated account summaries to clients in addition to, but not in place of the Member's official dealer statements;
(b) the production and provision of such summaries was conditional on the summaries being produced from the Member's back office system;

(c) the Member's Head Office Compliance staff was responsible for ensuring that any summaries produced from the Member's back office data complied with the guidance provided by the MFDA in respect of the preparation and distribution of Portfolio Summaries; and

(d) any independent or unauthorized statements produced by an Approved Person were prohibited.

31. The Member was not aware that the Respondent was preparing and sending Portfolio Summaries to clients and, accordingly, the Member was unable to review the Portfolio Summaries before they were provided to clients.

32. The Portfolio Summaries listed each client's mutual fund holdings in their accounts at the Member as well as the exempt market investments the clients had purchased from Privest. The Portfolio Summaries did not identify which investments were held by the Member and which were held by Privest. Further, the Portfolio Summaries did not state that the MFDA's Investor Protection Corporation may not apply to all of the listed investments, or that the Member could not ensure the accuracy of the information regarding any investments held by Privest.

33. Where the Respondent produced Portfolio Summaries for clients who were spouses, the Portfolio Summaries disclosed each spouse's individual accounts, as well as any joint accounts held between the spouses, on the same Portfolio Summary. The clients had not provided their prior written consent to authorize the sharing of their individual account information to anyone.

34. At all material times, MFDA Rule 2.1.3 prohibited a Member or Approved Person from disclosing information relating to the business and affairs of a client to any other person without the prior written consent of the client, unless otherwise required by law or as reasonably required to provide a product or service that a client has requested.

Additional Factors

35. The Respondent has worked in the financial services industry for 10 years and has no prior disciplinary history with the MFDA.

36. There is no evidence no misappropriation, unauthorized trading, or client harm in this matter.

37. There were no client complaints in respect of the transactions processed by the Respondent on behalf of TS and KW or in respect of the Portfolio Summaries.

38. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which the Respondent would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

39. During the course of the Member's investigation and the corresponding inquiries from the MFDA, the Respondent cooperated fully and answered all questions from both the member and the MFDA. By agreeing to this settlement, the Respondent has avoided the necessity of a full hearing on the merits.

40. The Respondent has expressed remorse for this misconduct.

THE RESPONDENT'S POSITION

41. The Respondent states that at no time did he intend to mislead, hide or otherwise interfere with the Member's regulatory obligations.

42. The Respondent states that neither TS nor KW solicited any of the clients listed in paragraph 22 to make the transactions listed therein. None of the transactions noted in paragraph 22 involved either TS or KW providing investment advice to the above noted client.

43. The Respondent further states that he reviewed the documentation related to each transaction in paragraph 22 to ensure that such transaction met the Know-your-client investment objects and risk tolerances of the affected clients.

44. Finally, the Respondent states that all of the Portfolio Summaries used information generated from the Member's book of record.

CONTRAVENTIONS

45. Between April 2011 and April 2013, the Respondent permitted non-Approved Persons TS and KW to conduct securities related business with clients for the account and through the facilities of the Member, contrary to MFDA Rules 1.1.1(c), 1.1.2 and 2.1.1.

46. Between April 2011 and April 2013, the Respondent failed to comply with the policies and procedures of the Member by producing and distributing approximately 80 portfolio summaries to approximately 45 clients without the knowledge or involvement of the Member, thereby:

(a) Interfering with the ability of the Member to supervise the Respondent, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1; and
(b) failing to comply with MFDA Rule 2.1.3.

TERMS OF SETTLEMENT

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

(a) the Respondent shall pay a fine in the amount of $12,500 pursuant to section 24.1.1(b) of By-law No. 1;
(b) the Respondent shall pay costs in the amount of $2,500, pursuant to section 24.2 of By-law No. 1;

(c) 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 three months, commencing from the date of the Hearing Panel's Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

(d) in the future, the respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder, including MFDA Rules 1.1.2, 2.1.1, 2.1.3 and 2.5.1; and

(e) the Respondent will attend in person, on the date set for the Settlement Hearing.

STAFF COMMITMENT

48. 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 paras. 6-40) and the contraventions described in (para. 45 and 46) of this Settlement Agreement, subject to the provisions of Part X below (*not included in these Reasons*). 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… this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in (this Settlement Agreement), 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.

3. SUBMISSIONS OF STAFF OF THE MFDA

7. Staff Enforcement Counsel submitted written Submissions and a Book of Authorities. He referred to the facts as set out in the Agreed Facts (above) and to the admissions by the Respondent to the allegations of misconduct as also set out in the Settlement Agreement. The Submissions of Staff includes the following:

LAW

Applicable Provisions

2. The following sections of the MFDA By-law, Rules, Rules of Procedure and Member Regulation Notices are applicable to this matter:

MFDA Rule 1.1.1(c)	Relationship Between Member and Persons Conducting Securities Related Business on the Member's Behalf
MFDA Rule 1.1.2	Compliance By Approved Persons
MSN-0024	MFDA Staff Notice - Portfolio Summaries
MFDA Rule 2.5.1	Member Responsibilities
MFDA Rule 2.1.3	Confidential Information
MFDA Rule 2.1.1	Standard of Conduct
Section 24 of MFDA By-law No. 1 (the "By-law")	24.1.1 Power of Hearing Panels To Discipline Approved Persons 24.2 Costs 24.4 Settlement Agreements
Rules 14 and 15 of the MFDA Rules of Procedure	Settlement Agreements and Settlement Hearings

…

The Misconduct

6. The Respondent's admitted-to misconduct in the present case is serious.

…

Contravention #1

8. Non-compliance with Rules 1.1.1(c) and 1.1.2 is a serious matter. Rule 1.1.1(c), in conjunction with MFDA Rule 1.1.2, creates a closed system whereby securities related business may only be conducted by an Approved Person (registered as mutual fund dealing representative) with the permission, and under the supervision, of a Member. Rule 1.1.1(c) supports one of the fundamental pillars of the investor protection regime in that it ensures that only individuals who have met the necessary proficiency, good character and financial solvency requirements to be registered as a mutual fund dealing

representative, and who remain in good standing in that regard, are allowed to engage in securities related business with clients.

9. As a result, when an Approved Person such as the Respondent serves as an intermediary between a Member and an individual dealing with clients who is either not registered at all, or who (like TS and KW here) is registered in a capacity that does not require them to meet the proficiencies of a mutual fund dealing representative, the client is deprived of one of the fundamental protections afforded to clients. The client is left receiving investment advice from an individual who is not registered as a mutual fund dealing representative, who is not supervised by the Member and who has not agreed to abide by the Member's policies and procedures. The Member, unaware of the Approved Person's role as the intermediary, is misled into thinking that the client has at all times been dealing with a properly qualified Approved Person who is, among other things, complying with all applicable MFDA requirements and the Member's Policies and Procedure pertaining to, among other things, investment suitability and conflicts of interest. Lastly, the client, unaware of the nuances of the relationship between the Member, the intermediary Approved Person and the unregistered individual, is left believing that he or she has been receiving investment advice from a properly trained and supervised individual whose interests align with those of the Member. The client may also believe that other business they transact with the unregistered individual (in this case, purchases of exempt market products) is the business of the Member.

Contravention #2

10. At all material times, the Member's Policies and Procedures Manual (the "PPM") allowed for the production of consolidated portfolio summaries by its Approved Persons. As per section H1of the PPM, the Member's Head Office Compliance staff was responsible for ensuring that any consolidated portfolio summaries conformed to the standards set out in MFDA Staff Notice 0024.

11. In the case at hand, the Respondent created unauthorized portfolio summaries (the "Portfolio Summaries") without submitting them for review to Head Office Compliance, thereby violating the Member's policies and procedures and preventing the Member from exercising a vital supervisory function.

12. In addition, the delivery of the Portfolio Summaries resulted in confidential client information being disclosed to third parties (the spouses of the client) in circumstances where the affected clients had not given their express written consent for the disclosure of their information to their spouse. Where confidential client information is released without the client's consent, the client's privacy interests are irrevocably compromised in respect of that disclosure and the Member and the affected client cease to have control over where the client's confidential information resides, or may go next. Although in the present case the confidential information was released to spouses of clients who were themselves clients of the Member, in no cases had the clients whose privacy interests were compromised given the Member written consent to share their confidential client information with their spouses. Regardless of the nature of the relationship between two clients, or between a client and their spouse, the confidential information of a client cannot be disclosed to another client or the client's spouse without the express written consent of the affected client.

13. Staff submits that the Respondent's misconduct (Contraventions #1 and #2) also fell short of the high standards of ethics and business conduct that is expected of Approved Persons by their clients and the investing public. (MFDA Rule 2.1.1)

Factors Concerning Acceptance of a Settlement Agreement

14. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement jointly recommended by Staff and the Respondent. The Hearing Panel shall either accept the settlement agreement or reject it.

15. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing.

> *Sterling Mutuals Inc.* [2008] MFDA Central Regional Council, Decision and Reasons dated August 21, 2008, MFDA File No. 200820, at para. 37
>
> *Milewski* [1999] MFDA Ontario District Council, Decision dated July 28, 1999, IDACD No. 17 at p. 14

16. Settlements assist the MFDA in meeting its regulatory objective of protecting the public by proscribing activities that are harmful to the public and enabling flexible remedies tailored to the interests of both the MFDA and a respondent. The ability of the MFDA to enter into settlements is enhanced where Hearing Panels do not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness.

> *British Columbia Securities Commission v. Seifert* [2007] B.C.J. No. 2186 (B.C.C.A.) at para. 31

17. In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

(a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
(b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
(c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
(d) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
(e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;

(f) Whether the settlement agreement will foster confidence in the integrity of the MFDA;

(g) Whether the settlement agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc., supra, at para. 36, and the decisions cited therein

Appropriateness of the Proposed Penalty

18. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers) [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, 68

Kenneth Roy Breckenridge [2007] MFDA Central Council, Decision and Reasons dated November 14, 2007, MFDA File No. 200718, at para. 71

19. In addition to protection of the public, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry.

Pezim, supra at paras. 59, 68

20. Hearing Panels frequently consider the following factors when determining whether a penalty is appropriate:

(a) The seriousness of the allegations proved against the Respondent;

(b) The Respondent's past conduct, including prior sanctions;

(c) The Respondent's experience and level of activity in the capital markets;

(d) Whether the Respondent recognizes the seriousness of the improper activity;

(e) The harm suffered by investors as a result of the Respondent's activities;

(f) The benefits received by the Respondent as a result of the improper activity;

(g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

(h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

(i) 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;

(j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

(k) Previous decisions made in similar circumstances.

Breckenridge, supra, at para. 77 and the decisions cited therein

Application in the Present Case

21. Staff have taken the factors set out above into account in reaching the Settlement Agreement with the Respondent, as follows:

(A) Nature of the Misconduct

22. As described above in paragraphs 6 to 13, the Respondent's misconduct is serious.

(B) The Respondent's Past Conduct

23. The Respondent has never previously been the subject of a MFDA disciplinary proceeding.

(C) The Respondent's Experience in the Securities Industry

24. The Respondent worked in the securities industry from December 2003 to April 2013. During the material time, the Respondent was registered as a mutual fund dealing representative.

(D) The Respondent's Recognition of the Seriousness of his Misconduct

25. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing. The Respondent also cooperated with Staff's investigation of this matter.

(E) Client Harm and Benefits received by the Respondent

26. Staff's investigation did not reveal any evidence of unauthorized trades or client loss and there were no client complaints.

27. There is no evidence to suggest that the Respondent received a direct financial benefit from his conduct.

(F) Integrity of the Capital Markets

28. The Respondent allowed two non-Approved Persons to conduct redemptions, purchases and other transactions that had an aggregate value of $41,473.49. The clients for whom these transactions were processed never spoke to the Respondent, and dealt only with the two non-Approved Persons who were not registered with the Member

29. Staff submits that the Respondent's actions violated the trust placed in him by his clients. A client is entitled to trust that the individual advising him is a mutual fund dealing representative in good standing authorized to conduct securities related business on behalf of the Member, whose conduct is supervised by the Member, and whose conduct is at all times in compliance with all MFDA requirements and the Member's

policies and procedures. The Respondent disregarded the affected clients' trust and by doing so, he also undermined investor confidence in the mutual fund industry generally.

(G) Deterrence

30. The proposed penalty will serve the needs of both specific and general deterrence. The penalty will demonstrate to both the Respondent and other Approved Persons considering engaging in the same or similar misconduct that it has significant consequences.

31. A stiff penalty is warranted in cases of this nature since misconduct of the types addressed here is inherently difficult for Members and the MFDA to detect and prevent. On the surface, the Respondent's actions appear to a Member, to clients and to the MFDA to be in compliance with all applicable regulatory requirements. As a result, clients are unlikely to challenge (and hence file a complaint about) the accuracy or reliability of portfolio summaries that appear to have been sent by the Member, nor are they likely to challenge the registration status of an individual who appears to be acting on behalf of or in conjunction with an Approved Person. For its part, absent unusual circumstances, a Member has no reason to query transactions in client accounts that on their surface appear to have been the product of a recommendation by one of their Approved Persons and appear to be otherwise compliant.

(H) Previous Decisions in Similar Cases

32. [Counsel reviewed the pertinent circumstances and penalties assessed in each of the following cases, emphasizing that particular attention be paid to **Price** and **Nivet.**]

> *Gregory Dickson,* Central Regional Council, Decision dated October 18, 2011, MFDA File No. 201106
>
> *Donald James Cunningham*, Central Regional Council, Decision dated February 24, 2010, MFDA File No. 200906

Anu Bala Jain, Central Regional Council, Decision dated March 14, 2012, MFDA File No. 201130

Elizabeth Anne VandenBoomen, Central Regional Council, Decision dated October 30, 2013, MFDA File No. 201306

Summary

33. Having regard to all of the foregoing factors, Staff submits that the penalties proposed in the Settlement Agreement are reasonable and proportionate and are in keeping with the purpose of the MFDA to enhance investor protection and ensure high standards of conduct in the industry.

34. Furthermore, the agreed-to penalty will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry.

4. SUBMISSIONS OF THE RESPONDENT

8. Counsel for the Respondent, in recommending that the Settlement Agreement be accepted by the Panel, made several submissions on behalf of the Respondent. He pointed out that the financial effect on the Respondent of being out of the industry has been catastrophic not only from the loss from annual income but the opportunity lost of selling his substantial book of business. He has also incurred significant legal expenses in dealing with the MFDA investigation and hearing, the IPP investigation and attending interviews by the Alberta Securities Commission. He had an unblemished record with Members as well as with the Insurance Council of Alberta. The events have been a stress on the marriage and have resulted in his wife, who was retired, having to return to work. He is 60 years of age. He has been fully cooperative and transparent with every regulatory body starting with the Member.

5. REASONS FOR DECISION

9. In the Settlement Agreement the Respondent admits to the Contraventions set out at paras. 45 and 46 of the Settlement Agreement. The admitted misconduct by the Respondent was serious but less serious than the misconduct in *Dickson* and *Jain* in which there were a two year and one year prohibition respectively, and significantly less serious than the misconduct in *VandenBoomen* in which a permanent prohibition was imposed.

10. We accept and adopt the Submissions of Staff Enforcement Counsel.

11. A serious disciplinary response is required in this case having regard to the protection of the investing public, the integrity of the security markets, specific and general deterrence, the protection of the MFDA's membership and the protection of the integrity of the MFDA's enforcement processes. Several mitigating factors are to be considered including the fact that the Respondent had no previous disciplinary record and cooperated with the MFDA in its investigation and the Hearing, and that he is remorseful. As we expressed at the conclusion of the hearing, all indications lead us to the conclusion that the Respondent, having learned a painful lesson from these proceedings, on his return to the securities industry, should encounter no further disciplinary difficulties.

12. We view all aspects of the Settlement Agreement as being reasonable.

13. We confirm our decision as follows:

a) the Respondent shall pay a fine in the amount of $12,500 pursuant to section 24.1.1(b) of By-law No. 1;
b) the Respondent shall pay costs in the amount of $2,500, pursuant to section 24.2 of By-law No. 1;
c) 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 three (3) months, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

d) in the future, the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder, including MFDA Rules .1.1.2, 2.1.1, 2.1.3 and 2.5.1; and

14. At the conclusion of the hearing we signed an Order confirming the foregoing.

DATED this 17th day of November, 2014.

"Alan V. M. Beattie"

Alan V. M. Beattie, Q.C.
Chair

"Marc Albert"

Marc Albert
Industry Representative

"Greg Wiebe"

Greg Wiebe
Industry Representative

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