

of the Member and other individuals in an investment scheme that was contrary to Ontario securities law (the "Lech Investment") without the knowledge or approval of the Member, contrary to MFDA Rule 1.1.1.

Allegation #2: Between May 2002 and December 2002, Van Der Velden facilitated the participation of clients of the Member and other individuals in the Lech Investment and in the course of doing so, accepted and failed to return or otherwise account for approximately \$2.15 million, contrary to MFDA Rule 2.1.1.

Allegation #3: Between May 2002 and January 2003, Stokman facilitated the participation of clients of the Member in the Lech Investment by soliciting approximately \$1 million for them (including \$500,000 of the \$2.15 million referred to in Allegation #2) for investment through Van Der Velden, all of which remains owing and otherwise unaccounted for, contrary to MFDA Rule 2.1.1.

Allegation #4: Between May 2002 and January 2003, the Respondents preferred their own interests to those of the clients of the Member and failed to exercise responsible business judgment influenced only by the best interests of the clients of the Member by recommending to the clients of the Member that they participate in the Lech Investment in the expectation that the Respondents would receive substantial compensation as a result of the participation of such clients in the Lech Investment and by failing to provide such clients or the Member with written disclosure of the nature or amount of the compensation that the Respondents were paid as a result of the participation of such clients in the Lech Investment, contrary to MFDA Rules 2.1.1 and 2.1.4.

The allegations were the result of an extensive investigation carried out by the investigators of the MFDA. In general, the documents put into evidence disclosed that both respondents were involved in persuading persons to invest in a plan which was known as the "Lech Investment". The documentary evidence was contained in three volumes introduced as exhibits which were reviewed at the hearing by Lara Slomczewski, an investigator from the MFDA.

Under the plan, the investors contributed money for which they received a promissory note providing for a high rate of interest over a short term period. When the note became due, the investor could either take payment or roll the amount over into a similar investment.

The plan was conceived and promoted by Lech who operated through intermediaries. The respondent Van Der Velden started off by operating through an intermediary but he eventually became an intermediary himself and dealt directly with Lech. The respondent Stokman was never an intermediary but he was involved in persuading clients to invest in the scheme through Van Der Velden.

It would not be inaccurate to describe the plan as a "ponzi scheme". Those schemes have an inevitable ending and that is what occurred here. As a result, a number of investors lost a considerable amount of money.

The participation of the respondents in the Lech Investment was not disclosed to the Member with whom both respondents were associated. In many cases, the respondents received a substantial return from the investments which they did not disclose to the investors whom they had persuaded to invest. This put the respondents in a conflict of interest position which they also did not report to the Member.

Both respondents admitted their involvement in the Lech Investment and did not dispute any of the facts disclosed by the documents. They acknowledged that they had made a serious mistake and should not have done what they did. They both expressed regret and a desire to reimburse those who had lost money if they were able to do so.

The allegations are set out above as they appeared in the Notice of Hearing. In general, they alleged a failure to comply with the rules of the MFDA.

Allegation #1 deals with Rule 1.1.1 and the evidence establishes that in participating in the Lech Investment, each of the respondents engaged in a securities related business that was not carried on for the account of the Member through the facilities of the Member and was an investment that was contrary to Ontario Securities law. They did this without the knowledge or approval of the Member. There was, accordingly, a violation of Rule 1.1.1.

Under Rule 2.1.1., the respondents were required to deal fairly, honestly and in good faith with their clients; to observe high standards of ethics and conduct in the transaction of business; and not engage in any business, conduct or practice which

was unbecoming or detrimental to the public interest. In facilitating clients of the Member and other individuals to participate in the Lech Investment and in the course of doing so accepting and failing to return or otherwise account for monies received, the respondents did not comply with Rule 2.1.1 as alleged in allegation #2 and allegation #3.

The evidence also shows that the respondents, in certain cases, preferred their own interest to those of clients of the Member and failed to exercise responsible business judgment in the best interests of those clients in that they recommended that the clients participate in the Lech Investment in the expectation that the respondents would receive substantial compensation as a result of that participation. They also failed to provide such clients or the Member with written disclosure of the nature or amount of the compensation that they were paid as a result of the participation of the clients. These actions also amount to non-compliance with Rule 2.1.1.

In our view, it is not necessary to make a finding that there was non-compliance with Rule 2.1.4. That rule is directed primarily to the Member but the existence of the conflict of interest and the failure to disclose that conflict as already indicated was a violation by the respondents of Rule 2.1.1.

There is, accordingly, a finding of misconduct on the part of both respondents in the terms of the allegations 1, 2, 3 and 4 set out in the Notice of Hearing.

In considering what is to be done, given the finding of misconduct, there are two basic principles to bear in mind. The first is that the individuals must be deterred from repeating their activity or similar activities. Regrettably, history shows that there are some individuals who cannot engage in financial transactions without getting into difficulty. Second and equally important is the general deterrent, that is, the message that has to be sent to those in the industry that certain conduct will not be tolerated.

In this particular case, there were serious breaches of the requirements of the MFDA. The Lech Investments were manifestly improper and both respondents should have known that and, in fact, did know that. The breaches are particularly serious because Van Der Velden was a branch manager who had responsibility for

the supervision of a number of people engaged in the industry. Stokman was a certified financial advisor and therefore had the credentials that would inspire confidence in those he did business with. Taking all this into account we would agree with the submissions by the MFDA that there should be a permanent restriction and an order will be made to that effect.

We considered very carefully what monetary fines should be imposed and we decided that because of his position as a branch manager and his leadership in the scheme that the penalty for Van Der Velden should be the sum of \$500,000.00. In the case of Stokman, he was less involved and we are prepared to fix his penalty at \$75,000.00. We will not impose the additional penalty of having the respondents pay the costs of process. We consider that element to be captured in the quantum of the fines.

By-law 24.5 provides for the publication of notice of penalties. As noted above, history shows that there are some individuals who cannot engage in financial transactions without getting into difficulty. These two are those kind of individuals. Pursuant to paragraph 25.5.3(d), we deem it advisable that notice should be given to the Financial Services Commission of Ontario, the Office of the Superintendent of Financial Institutions in Ottawa and the equivalent body, if any, in the Province of Alberta so they might take steps to ensure these two do not have the opportunity to be involved in any type of financial transaction.

Date: October 14, 2005

"Edward Saunders"
The Hon. Edward Saunders, Chair

"John Armstrong"
John Armstrong

"Ian Moorhouse"
Ian Moorhouse