



Contact: Hugh Corbett
Director of Litigation
Phone: 416-943-4685
Email: hcorbett@mfd.ca

CASE SUMMARY # 200804
April 3, 2009

MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

Hearing Panel imposes Permanent Prohibition, Fines over \$1,000,000 and Costs and on *Gerard & Mavis Brake*

Nature of Proceeding

A Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has imposed disciplinary penalties on Gerard and Mavis Brake (collectively, the “Respondents”), former Approved Persons of the MFDA.

By-Laws, Rules, Policies Violated

On December 3, 2008, the Hearing Panel unanimously concluded:

1. Between November 2003 and August 2006, the Respondents had or continued in occupations that were not disclosed to or approved by the Member, contrary to MFDA Rule 1.2.1(d);
2. Between November 2003 and August 2006, the Respondents engaged in securities related business outside the Member by selling more than \$1 million in shares of corporations that they owned and operated to 24 clients, which sales were not carried on for the account of the Member or through the facilities of the Member, contrary to MFDA Rule 1.1.1(a);
3. Between November 2003 and August 2006, the Respondents sold more than \$1 million in shares of corporations that the Respondents owned and operated to 24 clients, thereby giving rise to a conflict of interest which the Respondents failed to disclose to the clients and to the Member and which the Respondents failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to

MFDA Rules 2.1.4 and 2.1.1;

4. Between November 2003 and August 2006, the Respondents solicited and accepted more than \$1 million from 24 clients to be invested on their behalf in corporations that the Respondents owned and operated and have failed to return or otherwise account for the monies, contrary to MFDA Rule 2.1.1;

5. Between November 2003 and August 2006, the Respondent Mavis Brake failed to fulfill her obligations as a Branch Manager by intentionally concealing from the Member conduct and outside business activities that the Respondents were engaging in that contravened the Member's policies and procedures and MFDA regulatory requirements, contrary to MFDA Rule 2.5.3(b) and 2.1.1; and

6. Commencing May 30, 2006, the Respondents refused to produce for inspection and provide copies of documents and records requested by the MFDA during the course of an investigation, contrary to section 22.1(b) of MFDA By-law No. 1.

Penalty

On February 19, 2009, the Hearing Panel ordered the following:

1. Gerard and Mavis Brake are permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24. 1.1(e) of MFDA By-law No. 1;

2. Gerard and Mavis Brake shall together pay a fine in the amount of \$1,222,966 with respect to their failure to comply with MFDA Rules 1.2.1(d), 1.1.1(a), 2.1.4, and 2.1.1, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which fine may be paid jointly and severally;

3. Gerard Brake shall pay a fine in the amount of \$50,000 with respect to his failure to cooperate with an MFDA investigation contrary to s. section 22.1(b) of MFDA By-law No. 1, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

4. Mavis Brake shall pay a fine in the amount of \$50,000 with respect to her failure to cooperate with an MFDA investigation contrary to s. section 22.1(b) of MFDA By-law No. 1, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

5. Mavis Brake shall pay a fine in the amount of \$75,000 with respect to her failure as the designated Branch Manager to comply with MFDA Rules 2.5.3(b) and 2.1.1, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

6. Gerard Brake shall pay costs in the amount of \$10,000 attributable to the investigation and prosecution of this proceeding, pursuant to s. 24.2 of MFDA By-law No. 1; and

7. Mavis Brake shall pay costs in the amount of \$10,000 attributable to the investigation and prosecution of this proceeding, pursuant to s. 24.2 of MFDA By-law No. 1.

**Summary of
Facts**

Between November 2003 and August 2006, the Respondents Gerard Brake and Mavis Brake (collectively, the “Respondents”), then Approved Persons with FundEX Investments Inc. (“FundEx”), sold more than \$1 million in shares of corporations owned and operated by them to 24 FundEx clients. The corporations owned and operated by the Respondents were known as “Pride”, “Pride II”, “LNU Leasing” and “5199230 Manitoba”. This conduct gave rise to the following violations of MFDA Rules, By-laws and Policies. First, the Respondents’ involvement with these corporations constituted outside business activities which were not disclosed to or approved by FundEx. Second, the sale of shares to FundEx clients constituted securities related business which was not carried on for the account or through the facilities of FundEx. Third, the sale of shares in corporations owned and operated by the Respondents created a conflict of interest which was not disclosed to FundEx or its clients, or addressed by the Respondents in accordance with the best interests of the clients. Fourth, the Respondents solicited and accepted monies in excess of \$1 million from FundEx clients, but have failed to return or account for these funds. Fifth, Mavis Brake failed to fulfill her obligations as Branch Manager by failing to report and intentionally concealing the Respondents’ activities and other misconduct from FundEx. Sixth, the Respondents subsequently failed to cooperate with an MFDA investigation into their conduct.

For greater detail, see the Decision and Reasons, dated December 3, 2008 and February 26, 2009, posted on the MFDA’s website in the “Enforcement” section under “Completed Cases”.