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# MFDA Bulletin

## Enforcement

### For Distribution to Relevant Parties Within your Firm

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#### **MFDA imposes lifetime ban and \$350,000 fine on Arnold Tonnies**

**Nature of Proceeding** A Hearing Panel of the Mutual Fund Dealers Association (“MFDA”) Prairie Regional Council has imposed disciplinary penalties on Arnold Tonnies (“Tonnies”), a former Approved Person of the MFDA.

**By-Laws, Rules, Policies Violated** Following a hearing on May 16, 2005, the Hearing Panel found that Tonnies:

1. borrowed \$250,000 from two clients to finance his outside business activity as a cattle farmer, contrary to MFDA Rule 2.1.4
2. failed to abide by the policies and procedures set out by his Member firm, contrary to MFDA Rule 2.1.1 (b); and
3. failed to produce for inspection and provide copies of documents requested by the MFDA for the purpose of an investigation, contrary to s. 22.1 of MFDA By-Law No. 1.

MFDA Rule 2.1.4 states:

- (a) Each Member and Approved Person and other employee and agent of a Member shall be aware of the possibility of conflicts of interest arising in connection with business conducted by them for a client. In the event that such a conflict or potential conflict of interest arises, the Member 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(b) and (c).

- (b) Any conflict of interest that arises or can reasonably be expected to arise as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing by the Member to the client prior to the Member, or any person acting on its behalf in connection with its business, conducting business for the client.
- (c) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a) and (b).

MFDA Rule 2.1.1(b) states:

Each Member and each Approved Person of a Member shall:

- (b) observe high standards of ethics and conduct in the transaction of business;

Sections 22.1(b) of MFDA By-Law No. 1 states:

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;

**Penalty**

The Hearing Panel imposed the following penalties on Tonnie:

1. Permanent prohibition of the authority of Tonnie to conduct securities related business in any capacity;
2. A fine of \$250,000 for borrowing from his clients;
3. A fine of \$50,000 for failing to abide by the policies and procedures set out by the Member;
4. A fine of \$50,000 for failing to produce for inspection and provide copies of documents requested by the MFDA; and
5. Costs in the amount of \$7,500.00.

**Summary of Facts**

From 1986 to April 2003, Tonnie was registered in Saskatchewan as a mutual fund salesperson for TWC Financial Corporation (“TWC”). He worked at a branch office of TWC in Swift Current, Saskatchewan. Tonnie also owned and operated a cattle farming business. This business was disclosed to and approved by TWC in March 2002, in accordance with TWC’s Policies and Procedures Manual (the “PPM”) and MFDA Rule 1.2.1(d).

In July 2002, Tonnie approached two elderly clients and asked if he could borrow a total of \$250,000 from them. The clients were sisters and had been long-time clients of Tonnie. The first loan was for \$200,000 and was unsecured. The second loan was for \$50,000 and was also unsecured. Tonnie provided a promissory note to the client for the second loan but subsequently retrieved it. Neither of these loans was disclosed to TWC. Tonnie used the proceeds of the loans to repay an outstanding debt of the cattle farming business to the Bank of Montreal. Tonnie subsequently declared bankruptcy in April 2003 and the clients have been unable to recover their funds.

The Hearing Panel found that the borrowing placed Tonnie in a clear conflict of interest and that he had failed to exercise responsible business judgment influenced only by the best interest of his clients. Tonnie preyed on the clients' vulnerability, their age, and their lack of investment knowledge and sophistication. He placed his own personal financial interests before the interests of his clients.

The Hearing Panel noted that Approved Persons are required to exercise reasonable precautions to ensure that any transaction performed on behalf of a client is to the benefit of and in the best interests of the client. This goes to the very essence and nature of the Approved Person-client relationship.

The PPM specifically referenced MFDA Rule 2.1.4 and provided examples of conduct that would constitute a breach of the Rule, including asking a client to invest in a personal business. Tonnie had signed an acknowledgement indicating that he read the PPM and agreed to abide by it. The Hearing Panel noted that the standards set out in the PPM could be used as a standard of ethics and conduct against which the Hearing Panel could measure the activities of Tonnie.

The Hearing Panel also noted that a failure to cooperate with an MFDA investigation is serious misconduct. The responsibility to regulate mutual fund sales has been granted to the MFDA and that responsibility can only be carried out if the MFDA has the authority to investigate, which includes the ability to obtain relevant documentation from Members and Approved Persons.

For greater detail, see the Decision and Reasons posted on the MFDA website.