



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: Murray Arnold Greenberg and Katrina Anne Powell

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 800 - 6th Avenue S.W., Suite 850, Calgary, Alberta on September 17, 2013 at 10:00 a.m. (Mountain), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Murray Arnold Greenberg (“Greenberg”) and Katrina Anne Powell (“Powell”) and collectively (the “Respondents”). The Hearing on the Merits will take place in Calgary, Alberta and time and venue to be announced.

DATED this 2nd day of July, 2013.

“Bernadette Devine”

Bernadette Devine
Assistant Corporate Secretary

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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between September 2005 and April 2009, Greenberg engaged in securities related business that was not carried on for the account and through the facilities of the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$13.45 million of investment products to at least 40 clients outside the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2: Between September 2005 and April 2009, Greenberg had and continued in another gainful occupation which was not disclosed to and approved by the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$13.45 million of investment products to at least 40 clients outside the Member, contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1.

Allegation #3: In or around July 2009, Greenberg failed to inform the Member of a complaint from client NH Ltd. concerning the sale of an investment outside the Member, contrary to s. 4.1 of MFDA Policy No 6.

Allegation #4: Between September 2005 and July 2009, Powell failed to fulfill her supervisory responsibilities as a branch manager by permitting, acquiescing in or facilitating the sale or referral of investment products by Greenberg outside the Member, contrary to MFDA Rule 2.5.3(b)², MFDA Policy No. 2 and MFDA Rule 2.1.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

¹ Effective February 22, 2011, the MFDA's Rules were amended. MFDA Rule 1.2.1(d) was re-numbered as current MFDA Rule 1.2.1(c). The wording of the section was not changed.

² Effective December 3, 2010, MFDA Rule 2.5.3(b) was replaced by MFDA Rule 2.5.5.

Registration History

Greenberg

1. From June 2011 to August 2011, Murray Arnold Greenberg (“Greenberg”) was registered in Alberta, British Columbia, Nova Scotia, Ontario and Saskatchewan as a dealing representative in the category of mutual fund dealer with IPC Investment Corporation (“IPC”), a Member of the MFDA.
2. From August 2004 to June 2011, which included the material time giving rise to the allegations in this Notice of Hearing, Greenberg was registered as a mutual fund salesperson with Partners In Planning Financial Services Ltd. (“PIP”), formerly a Member of the MFDA.³
3. Prior to August 2004, Greenberg had been registered as a mutual fund salesperson since 1993.
4. During the material time, Greenberg resided and carried on business in Calgary, Alberta.
5. On August 31, 2011, Greenberg was terminated by IPC as a result of the events described herein and is not currently registered in the securities industry in any capacity.

Powell

6. From June 2011 to August 2011, Katrina Anne Powell (“Powell”) was registered in Alberta with IPC as a dealing representative in the category of mutual fund dealer and was designated as a branch manager.
7. From August 2004 to June 2011, which included the material time giving rise to the allegations in this Notice of Hearing, Powell was registered as a mutual fund salesperson and branch manager with PIP, formerly a Member of the MFDA.⁴

³ In June 2011, IPC Investment Corporation and Partners In Planning Financial Services Ltd. amalgamated and continued business as IPC Investment Corporation.

⁴ See note 3.

8. During the material time, Powell resided and carried on business in Calgary.
9. On August 4, 2011, Powell was terminated by IPC as a result of the events described herein and is not currently registered in the securities industry in any capacity.

Overview

10. Greenberg and Powell have worked together since around 1997. At all material times, Greenberg employed Powell, initially as his administrative assistant and subsequently when she was the designated branch manager for the branch office from which Greenberg carried on business. While acting as the designated branch manager, Powell continued to provide administrative and other support services to Greenberg's clients and to act as a client contact person for the clients.

11. At all material times, Powell, in her capacity as the designated branch manager, was responsible for supervising trading activity at the branch and ensuring that any business conducted on behalf of PIP was in compliance with MFDA By-laws, Rules and Policies and applicable securities legislation.

12. During the material time, Greenberg and his spouse were the sole directors and equal owners of Financial Dynamics Inc. ("FDI") and Dootkey Powder Company Limited ("Dootkey"), two companies incorporated in Alberta.

13. At all material times, Greenberg was licensed in Alberta to sell insurance and he did so through FDI. Greenberg sought and obtained approval from PIP to sell insurance through FDI.

14. In July 2010, NH Ltd., by then a former client of PIP whose account had been serviced by Greenberg, commenced a legal proceeding in the Court of Queen's Bench of Alberta against PIP, Greenberg and FDI (the "Statement of Claim"). The Statement of Claim alleged, among other things, that in July 2006 NH Ltd. had invested \$500,000 in a land development project owned by Arcus Developments Inc. based upon negligent representations made by the defendants that were

inaccurate, misleading or untrue. According to the Statement of Claim, the land development project had not proceeded as represented and NH Ltd. had suffered losses as a result.

15. Upon being served with the Statement of Claim in August 2010, PIP notified the MFDA by filing a report on the MFDA's Member Event Tracking System ("METS"), in accordance with its obligations under MFDA Policy No. 6. Shortly thereafter, PIP and Staff of the MFDA ("Staff") commenced separate investigations into the Respondents' activities.

16. As set out in greater detail below, Staff's investigation determined that commencing in approximately September 2005, Greenberg began to engage in outside business activities not disclosed to PIP by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$13.45 million of investment products to at least 40 clients of PIP. Greenberg facilitated some of the sales and referrals through FDI and Dootkey pursuant to agreements with the issuers or vendors of the investment products signed by Greenberg's spouse on his behalf. At all material times, Powell was aware of and assisted with the processing and tracking of the sales of the investment products to the clients.

Allegation #1: Securities related business outside the Member

a) Westmount Mortgage Corporation

17. Westmount Mortgage Corporation ("Westmount") is a firm located in Calgary, Alberta.

18. In or around September 2005, Greenberg recommended, sold, facilitated the sale or made referrals in respect of the sale of at least \$2.8 million of mortgage investment products offered by Westmount to clients outside PIP. At the time of these sales or referrals, Westmount investment products were not approved by PIP for sale by its Approved Persons, including Greenberg. Greenberg did not seek or obtain approval from PIP with respect to his involvement in the sale of the Westmount investment products. None of the sales of the Westmount investment products were processed through the facilities or for the account of PIP.

19. Greenberg received approximately \$252,000 in commissions, fees or other compensation relating to the sale of the Westmount investment products pursuant to an agreement between

Dootkey and Westmount signed by Greenberg's spouse on behalf of Dootkey. (Neither Dootkey nor Greenberg's spouse were registered in any capacity.)

b) The CareVest Group

20. The CareVest Group of Companies ("CareVest") offered investment products relating to commercial, industrial and residential real estate. CareVest Capital Inc. ("CareVest Capital") and CVC Market Point Inc. ("CVC Market Point") are related companies to CareVest.

21. On or about June 7, 2006, Dootkey entered into a referral agreement with CareVest Capital. Greenberg's spouse signed the agreement on behalf of Dootkey. Under the terms of the referral agreement, Dootkey was entitled to receive referral fees for referring investments in the following issuers, among others (referred to collectively as the "Issuers"):

- a. Canadian Horizons (Naramata) Limited Partnership;
- b. Canadian Horizons (Sendero) Limited Partnership;
- c. Canadian Horizons First Mortgage Investment Corporation; and
- d. Canadian Horizons Blended Mortgage Investment Corporation.

22. Beginning in or around August 2006 and continuing until at least April 2009, Greenberg recommended, sold, facilitated the sale or made referrals in respect of the sale of at least \$8.48 million of investment products offered by the Issuers to approximately 35 clients. Dootkey was paid approximately \$616,256.35 in commissions or fees in relation to these sales or referrals.

23. On April 2, 2008, Dootkey entered into a second referral agreement, on this occasion with CVC Market Point. Greenberg's spouse signed the agreement on behalf of Dootkey. There is no evidence that Greenberg made any sales or referrals in relation to this second referral agreement.

24. Greenberg did not seek or obtain approval from PIP with respect to his involvement with CareVest, CareVest Capital, CVC Market Point or any of the Issuers. At the material time, PIP was not aware of Greenberg's outside business activities involving these entities. None of the sales of the investment products offered by the Issuers were processed through the facilities or for the account of PIP.

c) Arcus Developments Inc.

25. Arcus Developments Inc. (“Arcus”) is a real estate development company located in Calgary Alberta. On or around July 25, 2006, client NH Ltd. entered into an agreement (the “Arcus Agreement”) with Arcus based on a recommendation by Greenberg. As set out in the Arcus Agreement, NH Ltd. provided \$500,000 to Arcus for an unsecured interest in a condominium development project in Edmonton, Alberta. Greenberg received a commission of approximately \$25,000.

26. Greenberg did not seek or obtain approval from PIP with respect to his involvement with Arcus. At the material time, PIP was not aware of Greenberg’s outside business activities involving Arcus. NH Ltd.’s investment or participation in the Arcus development was not processed through the facilities or for the account of PIP.

d) Quadrex Asset Management Inc.

27. Quadrex Asset Management Inc. (“Quadrex”) is an exempt market dealer (formerly, a limited market dealer) based in Toronto, Ontario.⁵

28. From around July 2007 to August 2008, Greenberg sold or referred approximately \$2.35 million of the following investment products offered for sale by Quadrex to approximately 27 clients of PIP:

- a. HFI Limited Partnership;
- b. Property Values Income & Common Shares LP; and
- c. Diversified Assets Limited Partnership.

29. Dootkey received approximately \$166,750 in commissions, fees or other compensation in relation to these sales.

⁵ On February 19, 2013, the Ontario Securities Commission suspended Quadrex’s registration as an Exempt Market Dealer for a matter unrelated to this Notice of Hearing.

30. By letter dated February 14, 2012, Quadrex advised the Alberta Securities Commission that there were no referral agreements in place between Quadrex and Greenberg, Dootkey or FDI. Quadrex stated that it understood that the sales agent in respect of such sales was Greenberg's spouse. At all material times, Greenberg's spouse was not registered in the securities industry in any capacity.

31. Greenberg did not seek or obtain approval from PIP with respect to his involvement with Quadrex. At the material time, PIP was not aware of Greenberg's outside business activities in relation to Quadrex. None of the sales or referrals of the investment products offered for sale by Quadrex were processed through the facilities or for the account of PIP.

32. On or about August 28, 2008, Quadrex purchased Greenberg's insurance and exempt market business by purchasing all of the shares of FDI, at which time Greenberg ceased his involvement in the sale of products offered for sale by Quadrex outside PIP. Greenberg continued to sell CareVest investment products until at least April 2009.

Staff's Investigation

33. On March 7, 2012, Staff interviewed Greenberg during the course of its investigation. During the interview, Greenberg made the following admissions, among others:

- a. that he had engaged in undisclosed securities related business outside of PIP for which he did not seek or obtain PIP's approval; and
- b. that his spouse had signed the referral agreements entered into on his behalf by Dootkey in part for tax reasons and in part to avoid possible detection and scrutiny of his activities.

PIP's Policies and Procedures and Investigation

34. PIP required all of its Approved Persons, including Greenberg, to periodically sign an Acknowledgement form confirming that they understood and agreed to comply fully with PIP's policies and procedures and all applicable securities laws, rules and regulations.

35. At all material times, PIP's policies and procedures, consistent with MFDA requirements, required all Approved Persons to report in writing all outside business activities to PIP and to obtain PIP's prior approval before commencing any outside business activities.

36. In August 2010, after being served with the Statement of Claim, PIP commenced an investigation of the Respondents' activities, which included a surprise examination of the Respondents' branch office.

37. On October 12, 2010, PIP placed both Greenberg and Powell on "close supervision" which required, among other things, that all trades processed by Greenberg in clients' accounts be approved by PIP's head office in advance.

38. On or about August 31, 2011, Greenberg and Powell resigned at the request of IPC (PIP had since amalgamated with IPC and the combined entity carried on business under the name IPC – see footnote #3 above).

39. On October 19, 2011, IPC completed its investigation of the Respondents' activities and determined, among other things, that Greenberg had been selling and referring various investment products outside the accounts and facilities of PIP without PIP's knowledge and approval.

Summary

40. In summary, from September 2005 until at least April 2009 Greenberg sold, recommended, referred or facilitated the sale of approximately \$13.45 million of investment products offered by the following issuers or companies to over 40 clients of PIP:

- a. Westmount;
- b. CareVest;
- c. Arcus; and
- d. Quadrex.

41. In total, Greenberg received sales commissions, referral fees or other compensation, either paid to him directly or indirectly to FDI, Dootkey or his spouse, in the amount of approximately \$1.06 million in relation to these sales and referrals.

42. By engaging in the conduct described above, Greenberg engaged in securities related business that was not carried on for the account and through the facilities of PIP, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2: Undisclosed dual occupations

43. To the extent any of the activity described in Allegation #1 above did not constitute securities related business, then Greenberg had and continued in another gainful occupation that was not disclosed to and approved by PIP, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

Allegation #3: The Complaint

44. On or about July 14, 2009, NH Ltd.'s counsel sent a letter to Greenberg outlining concerns his client had with the Arcus Agreement. The concerns included but were not limited to the fact that:

- a. the Arcus Agreement did not allow NH Ltd. to take a secured interest in the lands to be developed;
- b. a different legal entity other than Arcus owned the condominium project;
- c. the Arcus Agreement did not disclose a legal address for the lands to be developed; and
- d. the Arcus Agreement provided a municipal address in the city of Edmonton which did not exist.

45. Greenberg referred the letter to his lawyer, who dealt directly with NH Ltd.'s lawyer. Greenberg failed to inform PIP of NH Ltd.'s letter, which letter constituted a complaint in writing under section 4.1(a) of MFDA Policy No. 6.

46. In July 2010, one year later after NH Ltd.'s lawyer had sent the letter to Greenberg, NH Ltd. commenced the Statement of Claim against PIP, Greenberg and FDI.

47. In an email dated November 29, 2010 sent from Powell to the Chief Compliance Officer of PIP during the course of PIP's investigation, Greenberg stated: "I did not report the complaint to [PIP] because my lawyer handled it and I considered the matter to be concluded and irrelevant."

48. By engaging in the conduct described above, Greenberg failed to inform PIP of a complaint in writing received from client NH Ltd., contrary to s. 4.1(a) of MFDA Policy No 6.

Allegation #4: Branch Manager Supervision

49. At all material times, Powell was the designated branch manager of PIP responsible for supervising trading activity at the branch and ensuring that any business conducted on behalf of PIP was in compliance with PIP's policies and procedures, MFDA By-laws, Rules and Policies and applicable securities legislation.

50. On May 31, 2012, Powell attended an interview requested by Staff during the course of its investigation. At the interview, Powell admitted, among other things, that she:

- a. processed the paperwork and performed other administrative tasks associated with the sale and referral of the unauthorized investment products by Greenberg to clients outside the Member;
- b. maintained a list of the outside investment products owned by clients in order to track the clients' holdings and assist Greenberg in reporting to the clients;
- c. was aware that Greenberg attended client meetings to discuss the sale of investment products that were not approved for sale by PIP;
- d. never questioned or challenged Greenberg regarding the sale or referral of the unapproved investment products or required that he cease engaging in the activity; and
- e. never reported Greenberg's unauthorized outside business activities to PIP.

51. During Greenberg's interview with Staff, Greenberg stated that Powell was aware of all of his outside business activities as she processed most of the documents relating to the purchases or referrals of the investments, was responsible for sending the documents to the issuers or

companies selling the investments, and verified with the issuers or companies whether the commissions, fees or other compensation to which Greenberg was entitled had been paid.

52. By engaging in the conduct described above, Powell failed to fulfill her supervisory responsibilities as the designated branch manager by permitting, acquiescing in or facilitating the sale or referral of investment products by Greenberg outside the Member, contrary to MFDA Rule 2.5.3(b), MFDA Policy No. 2 and MFDA Rule 2.1.1.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- (a) has failed to carry out any agreement with the MFDA;
- (b) has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- (c) has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- (d) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- (e) is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - i. \$5,000,000.00 per offence; and
 - ii. an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation.
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: H. C. Clement Wai
Fax: 416-361-9073
Email: cwai@mfd.ca

A **Reply** shall be **filed** by:

- a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

- i.) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

- ii.) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a. to **serve** and **file** a **Reply**; or
- b. attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

End.

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