



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: Muchoki Fungai Simba

ORDER

WHEREAS on October 31, 2011, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 in respect of a disciplinary proceeding commenced against Muchoki Fungai Simba (the “Respondent”);

AND WHEREAS the Respondent was served with the Notice of Hearing on November 3, 2011 in accordance with Rule 4.2(1)(b) of the MFDA *Rules of Procedure*;

AND WHEREAS the Respondent did not serve a Reply on the MFDA;

AND WHEREAS a hearing on the merits of this matter was conducted on February 6, 2012 (the “Hearing”) in Toronto, Ontario before a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”);

AND WHEREAS the Respondent did not attend the Hearing; was not represented by counsel at the Hearing; and did not otherwise participate in the Hearing;

AND WHEREAS the Hearing Panel considered the evidence filed and the submissions of Staff of the MFDA (“MFDA Staff”);

AND WHEREAS the Hearing Panel finds that:

- (i) between February 14, 2006 and November 18, 2009, the Respondent engaged in personal financial dealings with client BS by borrowing a total of \$49,000 from client BS, of which amount the Respondent failed to repay or otherwise account for \$43,000, contrary to MFDA Rules 2.1.4 and 2.1.1;
- (ii) commencing on or about November 20, 2009, the Respondent failed to return all client files and property of the Member and its affiliates to the Member, thereby:
 - (a) failing to comply with MFDA Rules 1.1.5(f) and 2.1.1;
 - (b) failing to comply with the Member’s policies and procedures, contrary to MFDA Rules 2.5.1 and 2.1.1; and
 - (c) interfering with the Member’s ability to comply with the requirements of MFDA Rule 5.1 to keep such books, records and documents as are necessary for the proper recording of its business transactions, financial affairs and the transactions it executes on behalf of others, contrary to MFDA Rules 2.5.1 and 2.1.1; and
- (iii) commencing on or about September 24, 2010, the Respondent failed to provide information and produce documentation requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

IT IS HEREBY ORDERED THAT:

- 1) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- 2) The Respondent shall pay a fine in the amount of \$250,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- 3) The Respondent shall pay costs in the amount of \$7,500, pursuant to section 24.2 of

MFDA By-law No. 1;

- 4) If at any time a non-party to this proceeding requests production of or access to documents in this proceeding that contain intimate financial or personal information, then the MFDA Corporate Secretary shall not provide copies of or access to the requested documents without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this 20th day of February, 2012.

“Martin Friedland”

Martin L. Friedland, C.C., Q.C.,
Chair

“Guenther Kleberg”

Guenther W. K. Kleberg,
Industry Representative

“Robert Guilday”

Robert J. Guilday,
Industry Representative