



**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: Paul Anthony Henry**

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**NOTICE OF HEARING**

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**NOTICE** is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on October 1, 2009 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Paul Anthony Henry (the “Respondent”).

**DATED:** June 25th, 2009

“Jason D. Bennett”

Jason D. Bennett  
Corporate Secretary

Mutual Fund Dealers Association of Canada  
121 King St. West  
Suite 1000  
Toronto, Ontario  
M5H 3T9  
Telephone: 416-943-7431  
Fax: 416-361-9781  
E-mail: [jbennett@mfd.ca](mailto:jbennett@mfd.ca)

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

**Allegation #1:** Between June 6, 2006 and July 6, 2007, the Respondent accepted \$6,440 for investment from client LG, of which amount he failed to invest, return or otherwise account for \$2,440, thereby misappropriating those monies and failing to deal fairly, honestly and in good faith with client LG, contrary to MFDA Rules 2.1.1.

**Allegation #2:** On or about November 2, 2006, the Respondent fabricated and mailed an “Investment Statement” to client LG that was untrue, misleading and detrimental to the interests of client LG, contrary to MFDA Rules 2.8.2(a) and (c) and Rule 2.1.1.

**Allegation #3:** On or about June 8, 2007, the Respondent received a written complaint from client LG which he failed to report to the Member, contrary to MFDA Policy 6, section 4.1(b)(ii) and MFDA Rules 1.1.2 and 2.11.

### **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:

#### **Registration History**

1. The Respondent has been registered in Ontario in various capacities since 1991 and most recently was registered as a mutual fund salesperson with Dundee Private Investors Inc. (“Dundee”) from June 2, 2004 to February 1, 2008.
2. The Respondent is not currently registered in the securities industry in any capacity.
3. Dundee became a Member of the MFDA on February 8, 2002.

#### **Allegation #1 – Misappropriation**

4. Between June 6, 2006 and July 6, 2007, client LG provided the Respondent with four cheques totaling \$6,200 made payable to BSAM Investment Corp. (“BSAM”), a

company incorporated by the Respondent. LG also provided the Respondent with \$240 in cash during this period. LG provided all of the monies, totaling \$6,440, to the Respondent to invest on his behalf.

5. The Respondent deposited LG’s cheques in BSAM’s bank account and kept the \$240 cash he received from LG in his office.

6. Of the total amount of \$6,440 the Respondent received from LG, he invested only \$4,000 on LG’s behalf by purchasing units of the CI Global Science & Technology fund for LG’s account. The Respondent used the remaining \$2,440 he had received from LG to pay personal expenses, thereby misappropriating those monies.

7. The following chart sets out the dates and amounts of the transactions carried out by the Respondent with respect to LG’s monies:

<b>Date</b>	<b>Paid To BSAM</b>	<b>Invested On LG’s Behalf</b>
June 6, 2006	\$1,000	
July 16, 2006	\$1,000	
August 18, 2006	\$3,200	
Sept 11, 2006	-	\$1,000
January 16, 2007	-	\$1,000
March 21, 2007	-	\$1,000
June 8, 2007	\$1,000	
July 6, 2007	-	\$1,000
(unknown)	\$240 cash	
<b>TOTAL</b>	<b>\$6,440</b>	<b>\$4,000</b>

8. By misappropriating \$2,440 from LG, the Respondent failed to deal fairly, honestly and in good faith with LG, contrary to MFDA Rule 2.1.1.

**Allegation #2 – False and Misleading Client Communications**

9. On or about November 2, 2006, the Respondent fabricated an “Investment Statement” on Dundee’s letterhead and mailed it to LG.

10. The fabricated account statement falsely represented that LG held \$3,200 in cash and \$2,215.29 in the CI Global Science & Technology fund in his account, for a total account balance of \$5,415.29.<sup>1</sup> The true value of LG's account as stated on the books and records of Dundee was \$1,000.

11. By creating and sending a false and misleading account statement to LG, the Respondent acted contrary to MFDA Rules 2.8.2(a) and (c) and Rule 2.1.1.

### **Allegation #3 – Failure to Report Client Complaint**

12. On June 8, 2007, LG sent a letter to the Respondent complaining about the rate of return on his investments and inquiring as to why he had only received confirmation for a single investment of \$1,000.

13. The Respondent received LG's complaint but did not report it to Dundee, contrary to Dundee's policies and procedures and the requirements of MFDA Policy 6, section 4.1(b)(ii). Instead, the Respondent called LG to discuss the performance of his investments.

14. Shortly thereafter, LG moved from Ontario to Vancouver, British Columbia. On October 15, 2007, Dundee first learned of the complaint when LG met with JB, the Dundee mutual fund salesperson in Vancouver responsible for servicing his account, and raised his concerns. LG informed JB that he had given cash and cheques to his previous Dundee mutual fund salesperson, the Respondent, and that he was unsure what had happened to the funds.

15. That same day, JB sent an email to his branch manager to report his concerns about his meeting with LG.

16. On October 16, 2007, JB's branch manager forwarded the email to Dundee's Chief Compliance Officer, who directed an immediate review of the Respondent's files. By November 1, 2007, Dundee's compliance staff had completed a review of every client file assigned to the Respondent.

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<sup>1</sup> By November 2006, LG had provided the Respondent with \$5,200 to invest on his behalf, see paragraph 10.

17. On November 21, 2007, LG redeemed his investments and closed his account.

18. During the course of Dundee's investigation, the Respondent disclosed his use of the BSAM bank account to conduct securities related business. On February 1, 2008, the Respondent was terminated by Dundee.

19. On February 4, 2008, Dundee compensated LG for the monies the Respondent misappropriated from him and the decline in the value of his account (had the monies been invested as contemplated).

20. By failing to report LG's complaint to Dundee, the Respondent prevented Dundee from dealing with LG's complaint promptly.

21. By engaging in the conduct described above, the Respondent failed to comply with MFDA Policy 6, section 4.1(b)(ii) and MFDA Rules 1.1.2 and 2.11.

**NOTICE** is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

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

- has failed to carry out any agreement with the MFDA;
- 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;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

- 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, ON M5H 3T9  
Attention: Maria Abate, Enforcement Counsel  
Fax: 416-361-9073  
Email: mabate@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:

The Mutual Fund Dealers Association of Canada  
121 King Street West  
Suite 1000  
Toronto, ON 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:

- (a) 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
- (b) 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.