



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: Peter Haralds Brauns

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the “Hearing Panel”) of the Central Regional Council 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 July 11, 2012 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 Peter Haralds Brauns (the “Respondent”).

DATED this 24th day of May, 2012.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
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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: Commencing March 8, 2002¹, the Respondent engaged in personal financial dealings with clients VK, LJ and SE in relation to:

- (a) approximately \$661,000 the Respondent received from client VK as loans to or investments in a company incorporated and controlled by the Respondent;
- (b) approximately \$10,000 that the Respondent borrowed from client LJ and failed to repay during LJ's life; and
- (c) approximately \$150,000 that the Respondent obtained from client SE in July 2008 which he failed to repay prior to the commencement of the MFDA investigation into his conduct.

Allegation #2: Between 2005 and December 2009, the Respondent conducted securities related business that was not carried on for the account and through the facilities of the Member by soliciting or otherwise facilitating the investment of approximately \$625,000 by LS, RF, JM and SE in a company incorporated and controlled by the Respondent and failing to repay approximately \$225,000 of that amount, contrary to MFDA Rules 1.1.1(a), 2.1.4 and 2.1.1.

Allegation #3: The Respondent failed to ensure that a conflict of interest between his interests and those of clients LJ and VK was addressed by the exercise of responsible business judgment influenced only by the best interests of the clients when the Respondent accepted and acted upon general powers of attorney or other similar authorizations from clients LJ and VK:

- (a) commencing on June 1, 2004, when the Respondent accepted an appointment as Estate Trustee with a will for the estate of client LJ; and
- (b) commencing on January 6, 2007, when the Respondent accepted a general power of attorney or other similar authorization for client VK; and
- (c) commencing on September 17, 2008, when the Respondent accepted an appointment as Estate Trustee with a will for the estate of client VK following the death of client VK;

contrary to MFDA Rules 2.1.4, 2.3.1(a),² and 2.1.1(b) and (c).

¹ The Respondent did not become subject to the jurisdiction of the MFDA until Professional Investments (Kingston) Inc. became a Member of the MFDA on March 8, 2002. As noted in the "Particulars" section below, it is alleged that the Respondent's personal financial dealings with client VK actually began in approximately August 1993.

² MFDA Rule 2.3.1(a) was amended effective December 8, 2008 but the amendment did not amend or affect the prohibition on accepting a general of power of attorney or other similar authorization.

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 as a mutual fund salesperson with Professional Investments (Kingston) Inc. (“PI Kingston”) since September 1, 1999. The Respondent was previously registered as a mutual fund salesperson with a different mutual fund dealer from September 20, 1971 to September 1999. He was a branch manager from 1971-1976.
2. PI Kingston has been registered as a mutual fund dealer in Ontario since April 8, 1986 and has been a Member of the MFDA since March 8, 2002.

Allegation #1 – Personal Financial Dealings

3. Between 1991 and 1993, following the decline of the Soviet Union and the Latvian declaration of independence in 1991, the Respondent began exploring the idea of building a hotel on land owned by a relative located near the airport in Riga, Latvia.

(a) Client VK

4. VK was born in January 1912. At all material times, she was a client of the mutual fund dealer at which the Respondent was registered. Her account was serviced by the Respondent from approximately 1976 until shortly before her death in 2008. She became a client of PI Kingston in September 1999 when the Respondent transferred his registration to PI Kingston.
5. In 1993, VK was an 81 year old widow who had no children.
6. Prior to August 1993, the investments that client VK had acquired based on advice from the Respondent consisted of mutual funds and guaranteed investment certificates (“GICs”).

7. On August 13, 1993, the Respondent incorporated an Ontario company called Cesis Holdings Inc. (“Cesis”) that he intended to hold shares of a Latvian company carrying on with the construction and operation of a hotel in Riga. The Respondent was the President and the sole initial shareholder, officer and director of Cesis.

8. The Respondent attempted to obtain financing for the Latvian hotel project from banks prior to approaching other individuals but he was not able to obtain financing for the project from Canadian banks.

9. In 1993, the Respondent solicited and obtained from client VK a loan to or investment in Cesis in the amount of approximately \$170,000. The loan or investment was evidenced by a promissory note from Cesis dated August 17, 1993 which was signed by the Respondent as “President” and referenced a \$170,000 “interest-free” loan.

10. Between 1993 and 1999, the Respondent solicited and obtained additional monies from client VK as loans to or investments in Cesis which increased her total stake in the company to approximately \$661,000, as set out below:

Date	Document	Amount
August 17, 1993	Promissory Note (Interest Free)	\$170,000
November 9, 1995 (renewed Sept 9, 1996)	Promissory Note (Annual interest of 10%)	\$250,000 (Renewal Amount \$275,000)
February 27, 1996	Promissory Note (Annual interest of 10%)	\$190,000
October 29, 1996	Promissory Note (Annual interest of 10%)	\$10,000
December 22, 1999	Promissory Note (from the Respondent personally) (Annual interest 0%)	\$41,000
	Total	\$661,000

11. The monies that client VK provided to the Respondent or Cesis was comprised substantially of the proceeds of redemptions of mutual funds held in her account.

12. Between 1996 and 1999, the Latvian hotel incurred approximately \$4 million in losses.³
13. In August and September 2000, resolutions of the board of directors of Cesis were passed that had the effect of converting the debt owed to VK into equity.
14. Client VK did not obtain independent legal advice, nor did the Respondent recommend that she do so, prior to providing any of the monies to the Respondent in respect of Cesis or prior to the conversion of the loans into equity.
15. Between March 2002, when PI Kingston became a Member of the MFDA, and May 26, 2008, when client VK passed away, neither the Respondent nor Cesis made any payments to client VK on account of the monies obtained from client VK.
16. Following the death of client VK, the Respondent persuaded an individual named JM to purchase all of the shares in Cesis that were owned by the estate of client VK for \$25,000.
17. On March 23, 2010, the beneficiaries and co-estate trustee of the estate of client VK commenced a lawsuit against the Respondent to recover amounts loaned to or invested by client VK in the Latvian hotel that had not been repaid. The plaintiffs allege, among other things, that the Respondent, by his conduct, breached his fiduciary duty to client VK.⁴

(b) Client LJ

18. At all material times, spouses LJ and TJ were clients of the mutual fund dealer at which the Respondent was registered. The Respondent had serviced their accounts since 1977. Client LJ was born August 2, 1936.
19. In April 2000, the husband, TJ, was very ill. The Respondent solicited and obtained an unsecured loan in the amount of \$10,000 from the wife, client LJ. The Respondent agreed to pay regular interest payments on the loan and to treat it as a demand loan that could be repaid

³ MFDA Staff was unable to independently verify any financial matters pertaining to the hotel. The figures stated in this Notice of Hearing are based on representations made by the Respondent during the course of MFDA Staff's investigation.

⁴The MFDA has not been informed of the outcome of this lawsuit.

immediately if a need arose.

20. Clients LJ and TJ did not obtain independent legal advice, nor did the Respondent recommend that they do so, prior to advancing any monies to the Respondent.

21. In May 2000, client TJ passed away.

22. On March 8, 2002, the Respondent became subject to the jurisdiction of the MFDA.

23. On February 26, 2004, client LJ passed away at the age of 67 years old.

24. Between March 8, 2002 and February 26, 2004, when client LJ passed away, the Respondent did not repay the outstanding \$10,000 principal loan amount to client LJ or take any steps to address the conflict of interest arising from the unsecured loan by the exercise of responsible business judgment influenced only by the best interests of client LJ.

25. On April 30, 2004, a relative of client LJ questioned PI Kingston about its policies regarding Approved Persons borrowing from clients. Following that inquiry, the Respondent acknowledged in correspondence to PI Kingston that he had borrowed \$10,000 from client LJ in April 2000.

26. On May 7, 2004, the Respondent repaid the estate of client LJ the sum of \$10,129.59 on account of the monies he had borrowed from clients TJ and LJ in April 2000.

(c) Client SE

27. In November 2004, after receiving correspondence questioning the Respondent's dealings with LJ, PI Kingston circulated a compliance notice to remind Approved Persons, including the Respondent, that borrowing from clients was prohibited.

28. In November 2005, PI Kingston held a compliance branch meeting concerning the prohibition on personal financial dealings with clients.

29. In July 2008, the Respondent solicited and accepted an investment in Cesis in the amount of \$150,000 from client SE. SE was provided with a promissory note promising her interest at the rate of 8% per year.

30. In July 2009, the Respondent issued a new promissory note from Cesis to client SE renewing the \$150,000 loan for another year at an interest rate of 8% per year.

31. In July 2010, the \$150,000 loan was renewed again for another year. According to the Respondent, client SE was aware that the Latvian economy was not performing well at the time and therefore proposed and agreed to reduce the interest rate payable on her investment in Cesis to 4% per year.

32. In August 2011, after the Respondent was interviewed by MFDA Staff during the investigation of his conduct, the Respondent arranged for Cesis to fully repay all amounts owed to client SE.

33. By engaging in the conduct described above, the Respondent engaged in personal financial dealings with clients VK, LJ and SE which gave rise to conflicts of interest between the interests of the Respondent and the interests of clients VK, LJ and SE that the Respondent 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.

Allegation #2: Securities Related Business Outside The Member

34. Pursuant to the terms of the Associate Agreement with PI Kingston that the Respondent signed on June 21, 2002, the Respondent agreed, among other things, “not to conduct securities related business with or in respect of any person other than [PI Kingston]”.

35. Investments in Cesis, whether in the form of debt or equity, were not investment products approved by PI Kingston for sale by its Approved Persons, including the Respondent.

Individual LS

36. In 2005, the Respondent solicited and obtained approximately \$250,000 from an individual named LS. This amount constituted an investment in Cesis that the Respondent arranged without the knowledge or authorization of PI Kingston.

37. In 1998, LS had previously invested approximately \$300,000 in Cesis which had been repaid to him.

38. As of May 2011, approximately \$150,000 remained owing to LS on account of the \$250,000 investment.

Individual RF

39. In August 2009, the Respondent solicited and obtained approximately \$50,000 from an individual, RF. This amount constituted an investment in Cesis that the Respondent arranged without the knowledge and authorization of PI Kingston.

40. As of May 2011, the full amount of the investment remained owing to RF.

Individual JM

41. In approximately 2002, an individual named JM invested \$150,000 in Cesis which was subsequently repaid to him.

42. As noted above, in approximately March 2010, following the death of client VK, the Respondent persuaded JM to purchase the shares of VK from the estate for \$25,000.

Client SE

43. As described in Allegation #1 above, in July 2008, the Respondent solicited and accepted an investment in Cesis in the amount of \$150,000 from client SE which was not repaid until after the Respondent attended an interview with MFDA Staff during an investigation into his conduct.

44. Prior to the commencement of the MFDA investigation into his conduct, the Respondent did not disclose to PI Kingston that he had solicited investments in Cesis. The investments in Cesis were not carried on for the account of PI Kingston or with the authorization of PI Kingston and the investments were not processed through the facilities of PI Kingston.

45. By soliciting and accepting monies for investment in Cesis in the manner described above, the Respondent engaged in securities related business that was not carried on for the account of PI Kingston or processed through the facilities of PI Kingston, contrary to MFDA Rules 1.1.1(a) and 2.1.1(b) and (c).

Allegation #3 – Conflict Of Interest and Power of Attorney or Similar Authorization

(a) Estate of client LJ

46. On October 30, 2002, client LJ made her last will and testament and selected the Respondent and a relative named LM to act as estate trustees of her estate.

47. Client LJ passed away on February 26, 2004.

48. On June 1, 2004, the Respondent and LM were appointed as the estate trustees with a will for deceased client LJ.

49. At the time, the policies and procedures manual of PI Kingston dated May 16, 2001 stated that:

No employee or officer of Professional Investments may accept or act upon a general power of attorney or other similar authorization from a client in favour of any employee or officer of Professional Investments.

50. MFDA Rule 2.3.1 also expressly prohibited an Approved Person from accepting or acting upon a power of attorney or other similar authorization from a client.

51. As referenced above, at the time of client LJ's death, the Respondent or his company Cesis had an outstanding loan owing to LJ in the amount of \$10,000.

52. These circumstances in which the Respondent accepted an appointment as estate trustee for client LJ's estate when he was a debtor owing money to the estate and when he was the mutual fund salesperson responsible for servicing the account of client LJ's estate, gave rise to an irreconcilable conflict of interest that could not be adequately addressed by the Respondent except by declining the appointment as estate trustee.

53. On April 30, 2004, LM, the other estate trustee of client LJ's estate complained to PI Kingston and alleged, among other things, that the Respondent intended to repay the outstanding loan from fees paid to him out of the estate for acting as estate trustee.

(b) and (c) Power Of Attorney And Estate Trustee For Client VK

54. On September 4, 1993, at the age of 81, client VK made a last will and testament that appointed her brother FR and the Respondent as co-estate trustees.

55. On August 27, 1999, client VK also appointed her brother FR as her attorney for personal care and she appointed the Respondent as her substitute attorney. On the same day, she signed a new last will and testament that again appointed her brother FR and the Respondent as co-estate trustees.

56. On June 9, 2004, client VK made another last will and testament and again appointed her brother FR and the Respondent as co-estate trustees.

57. On November 23, 2004, partially in response to the complaint by the co-estate trustee of the estate of LJ, PI Kingston issued a "Compliance Notice re Personal Financial Dealings" which stated that:

Prohibited activities include:

...

Acting as a trustee or executor, on a client account where you are the advisor of record. To clarify, while you are acting as either a trustee or an executor the client account(s) must be switched to another representative of the firm.⁵

58. Following the death of her brother FR, on September 21, 2005, client VK made a new last will and testament that appointed the Respondent and client VK's friend, GL as co-estate trustees.

59. On January 6, 2007, client VK appointed the Respondent and GL as her attorneys for property.

60. Following the appointment of the Respondent as her attorney for property, the Respondent transferred the account to another advisor at PI Kingston but client VK continued to be a client of the Member and the amounts that she had invested in Cesis (as described in Allegation #1(a) above) remained outstanding.

61. On May 26, 2008, client VK passed away.

62. Following the death of client VK, on September 17, 2008, the Respondent and GL were appointed as estate trustees with a will. The Respondent subsequently exercised his authority and carried out steps required to distribute the contents of client VK's estate to the beneficiaries.

63. As referenced above, throughout the period when the Respondent served as co-attorney for property and co-estate trustee for VK, VK was a client of PI Kingston and a substantial investor in Cesis. Of the \$661,000 invested in Cesis by VK, the Respondent was only able to recover \$25,000 from another investor for the benefit of the estate (as described in paragraphs 16 and 42 above).

64. By accepting and acting upon a power of attorney and by accepting his appointments as estate trustee for the estates of clients LJ and VK and acting on the resulting authority, the Respondent contravened MFDA Rules 2.3.1, 2.1.4 and 2.1.1(b) and (c) and failed to address a

⁵ According to Rule 2.3.1, it is prohibited to accept or act on a general power of attorney or similar authorization from a client even if the holder of the power of attorney ceases to be the Approved Person of record on the account unless the client is a spouse, parent or child of the Approved Person.

significant conflict of interest by the exercise of responsible business judgment influenced only by the best interests of the client.

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:

- (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) 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;
- e) revocation of the authority of such person to conduct securities related business;
- f) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

- g) 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: Shelly Feld, Senior Enforcement Counsel
Facsimile: 416-361-9073
Email: sfeld@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.

Doc 294631