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: Ellen Grace Batac, Hazel Gaminde, Dandy Macareag, Cesar Martin and Lilibeth Ocampo

Heard: July 10 and 12, 2013 in Toronto, Ontario
Decision and Reasons: June 24, 2014

DECISION AND REASONS
(Penalty)

Hearing Panel of the Central Regional Council:

Kathleen J. Kelly	Chair
Guenther Kleberg	Industry Representative
Nick Pallotta	Industry Representative

Appearances:

H. C. Clement Wai	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada (the "MFDA")
John Gallimore	)	MFDA Investigator
Ellen Bessner	)	Counsel for Lilibeth Ocampo, Respondent
Amy Ohler	)	Counsel for Ellen Grace Batac, Respondent
Hazel Gaminde	)	Respondent
Dandy Macareag	)	Respondent
Cesar Martin	)	Respondent

BACKGROUND – RECAP OF FACTS – HEARING ON THE MERITS

1. By Notice of Hearing dated December 22, 2011, the Mutual Fund Dealers Association of Canada ("MFDA") issued a formal Notice, pursuant to sections 20 and 24 of MFDA By-law No. 1, that a disciplinary proceeding had been commenced against Ellen Grace Batac ("Batac"), Hazel Gaminde ("Gaminde"), Dandy Macaraeg ("Macaraeg"), Cesar Martin ("Martin") and Lilibeth Ocampo ("Ocampo")(collectively the "Respondents").

2. The MFDA alleged the following violations of the By-laws, Rules or Policies of the MFDA:

> Allegation #1: From at least September 2005 to 2008, the Respondents engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling or facilitating the sale of investments in a hedge fund to members of the public, contrary to MFDA Rules 1.1.1(a) and 2.1.1 and the Member's policies and procedures.
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> Allegation #2: From at least September 2005 to 2008, the Respondents had and continued in another gainful occupation that was not disclosed to and approved by the Member by selling or facilitating the sale of a hedge fund to members of the public, contrary to MFDA Rules 1.2.1(d)[1] and 2.1.1 and the Member's policies and procedures.
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> Allegation #3: Commencing in 2009, Batac, Macaraeg, Martin, and Ocampo have failed or refused to provide documents and information to MFDA Staff and/or to attend an interview requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-Law No. 1.[2]

3. In addition to containing the Allegations against the five Respondents, the Notice of Hearing also contained the particulars in support of the allegations. The particulars were

[1] MFDA Rule 1.2.1(d) has since been renumbered as MFDA Rule 1.2.1(c).
[2] MFDA Staff advises that Respondent Gaminde attended an interview with MFDA Staff on November 3, 2009 and has otherwise cooperated with MFDA Staff's investigation.

expanded on by Mr. Gallimore, the MFDA Investigator assigned to this matter, in his Affidavit, filed as an exhibit at the hearing, as well as in his sworn testimony during the hearing.

4. The Respondents were served with a copy of the Notice of Hearing in accordance with Rules 4.2(1)(b) and 4.2(1)(c) of the MFDA *Rules of Procedure.* The hearing of this matter on its merits took place before the Hearing Panel in July 2012. The penalty phase was held on June 10 and 12, 2013. Both hearings were held at the MFDA offices located at 121 King Street West, Suite 1000, Toronto, Ontario.

5. For reasons articulated in the Decision and Reasons (Misconduct) dated March 22, 2013, the Panel found that the Allegations, as stated as against each of the Respondents were proved by Staff of the MFDA.

6. At the penalty hearing, all Respondents, with the exception of Batac attended in person. Ms. Batac was represented by, and appeared through, her lawyer, Ms. Ohler. In addition to appearing in person, Ms. Ocampo was represented by her lawyer, Ms. Bessner. The other Respondents appeared on their own, without counsel.

SUBMISSIONS OF STAFF OF THE MFDA ON PENALTY

Proposed Sanctions

Batac

7. The MFDA seeks the following three penalties against Batac:

a) A permanent prohibition on the authority of Batac to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1.
b) A fine in the amount of $700,000.00, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, and
c) Costs attributable to conducting the investigation and hearing of this matter in the

amount of $10,000.00, pursuant to s. 24.2 of MFDA By-law No. 1.

Gaminde

8. The MFDA seeks the following three penalties against Gaminde:

a) A prohibition on the authority of Gaminde to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, for a period of seven (7) years, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1.
b) A fine in the amount of $5,000.00, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, and
c) Costs attributable to conducting the investigation and hearing of this matter in the amount of $5,000.00, pursuant to s. 24.2 of MFDA By-law No. 1.

Macaraeg

9. The MFDA seeks the following three penalties against Macaraeg:

a) A permanent prohibition on the authority of Macaraeg to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1.
b) A fine in the amount of $150,000.00, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, and
c) Costs attributable to conducting the investigation and hearing of this matter in the amount of $10,000.00, pursuant to s. 24.2 of MFDA By-law No. 1.

Martin

10. The MFDA seeks the following three penalties against Martin:

a) A permanent prohibition on the authority of Martin to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1.
b) A fine in the amount of $150,000.00, pursuant to s. 24.1.1(b) of MFDA By-law No.

1, and

c) Costs attributable to conducting the investigation and hearing of this matter in the amount of $10,000.00, pursuant to s. 24.2 of MFDA By-law No. 1.

Ocampo

11. The MFDA seeks the following three penalties against Ocampo:

a) A permanent prohibition on the authority of Ocampo to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1.
b) A fine in the amount of $250,000.00, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, and
c) Costs attributable to conducting the investigation and hearing of this matter in the amount of $10,000.00, pursuant to s. 24.2 of MFDA By-law No. 1.

Factors Concerning the Appropriateness of the Penalty

12. Staff of the MFDA submits that the primary goal of securities regulation is the protection of the investor. The MFDA relies on *Pezim v. British Columbia (Superintendent of Brokers)*, [1994], S.C.J. 58, Iacobucci, J. at paras. 59 and 68.

13. Staff of the MFDA submits that when determining the appropriate sanctions to impose, a Hearing Panel should consider:

a) the protection of the investing public;
b) the integrity of the securities markets;
c) specific and general deterrence;
d) the protection of the MFDA's membership; and
e) the protection of the integrity of the MFDA's enforcement processes.

In the Matter of Arnold Tonnies, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005 *("Tonnies (Re)")*, page 22.

14. Staff of the MFDA submits that factors that Hearing Panels frequently consider, when determining whether a penalty is appropriate, include the following:

a) the seriousness of the allegations proved against the Respondent;
b) the Respondent's past conduct, including prior sanctions;
c) the Respondent's experience and level of activity in the capital markets;
d) whether the Respondent recognizes the seriousness of the improper activity;
e) the harm suffered by investors as a result of the Respondent's activities;
f) the benefits received by the Respondent as a result of the improper activity;
g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
k) previous decisions made in similar circumstances.

Tonnies, Supra at page 23.

15. Staff of the MFDA submits that an additional source that may be taken into account when determining the appropriate penalties are the MFDA Penalty Guidelines. The Penalty Guidelines are intended to assist Hearing Panels, MFDA Staff, and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. The introduction to the Penalty Guidelines state as their purpose:

Range is Guideline Only

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not bonding on a Hearing Panel.

16. The MFDA Penalty Guidelines recommend the following penalties and considerations for Outside Business Activity:

OUTSIDE BUSINESS ACTIVITY

"Outside business activity" means any business carried on by an Approved Person other than business done on behalf of the Approved Person's Member. Outside business activity may involve business activity that is securities related or non-securities related.

Securities related business. MFDA Rule 1.1.1 requires that all "securities related business" must be conducted through the Member, with exceptions for the sale of deposit instruments not on account of the Member and the activities of bank employees conducted in accordance with the Bank Act. "Securities related business" is defined in By-law No. 1 to mean any business or activity that constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada. This includes securities sold pursuant to exemptions under applicable securities legislation.

Apart from the specific exceptions in Rule 1.1.1, Approved Persons are prohibited from selling or advising on any investments that would be considered securities under applicable legislation through any entity other than the Member (often referred to as "selling away" or "off book trading").

Non-securities related business. Pursuant to MFDA Rule 1.2.1(d) an Approved Person can only be gainfully employed in a dual occupation provided that:

- the Approved Person is permitted by legislation to devote less than his or her full time to the business of the Member for which he or she acts on behalf of;
- the activity is not prohibited by a securities commission in the jurisdiction in which the Approved Person carries on business;
- the Member is aware of and has approved the outside activity;
- the Member has appropriate procedures to ensure continuous service to clients and to address potential conflicts of interest;
- the activity does not bring the MFDA, its Members, or the mutual fund industry into disrepute;
- clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member.

See also the section in these Guidelines for Conflicts of Interest generally.

SPECIFIC FACTORS TO CONSIDER	PENALTY TYPES & RANGES
1. Magnitude (in size and value) of outside business activity. 2. Number of clients affected. 3. Magnitude of client losses. 4. Suitability of outside business activity if involving securities. 5. Compensation received by the Respondent. 6. Any personal interest of the Respondent in outside business activity. 7. Whether the Respondent had honest but mistaken belief that proper approval obtained. 8. Legality of outside activity. 9. Whether outside activity resulted directly or indirectly in injury to clients of the Member and, if so, the nature and extent of the injury. 10. Whether the marketing and sale of the product or service could have created the impression that the Member had approved the product or service. 11. Whether the Respondent misled the Member about the existence of the outside activity or otherwise concealed the activity from the Member.	• Fine: Minimum of $10,000. • Write or rewrite an appropriate industry course (e.g. Canadian Investment Funds Course). • Period of increased supervision. • Suspension. • Permanent prohibition in egregious cases (e.g. undisclosed activity resulting in client loss).

17. The MFDA Penalty Guidelines recommend the following penalties and considerations for failing to cooperate:

FAILURE TO COOPERATE

Section 22.1 of By-law No. 1 provides that for the purpose of an examination or investigation conducted by the MFDA, a Member, Approved Person or other person under the jurisdiction of the MFDA may be required to:

1. submit a report concerning the matters under investigation;
2. to produce relevant books records and accounts;
3. to attend and give information respecting the matter under investigation; and
4. to make the above available through any directors, officers, employees, agents and other persons under the jurisdiction of the MFDA.

Failure to cooperate with an MFDA investigation, whether by a Member or an Approved Person, is serious misconduct because it subverts the MFDA's ability to perform its regulatory function. This category of misconduct is broad enough to include the following:

• failure to cooperate or respond in a timely manner; • failure to respond truthfully; • failure to cooperate or respond completely; and • misleading the MFDA during an investigation.	
SPECIFIC FACTORS TO CONSIDER	**PENALTY TYPES & RANGES**
1. Whether the contravention was intentional or inadvertent. 2. Whether there was complete or only partial non-compliance. 3. The impact that the non-compliance had on the investigation. 4. Whether the Respondent can demonstrate that the refusal to cooperate was based on reasonable reliance on competent legal advice.	• Fine: Minimum of $50,000. • Termination of Member or permanent prohibition of an Approved Person. • Interim order pursuant to s. 24.3 of MFDA By-law No. 1.

Considerations in the Present Case

18. Staff of the MFDA, through MFDA Counsel, submits that the penalties sought in the present case are appropriate for three reasons:

a) Seriousness of the misconduct;
b) Investor harm;
c) The Respondents' recognition of the seriousness of their misconduct.

19. None of the Respondents challenged either the appropriate sanctions to impose, or the factors that Hearing Panels frequently consider when determining whether a penalty is appropriate. In fact, Ms. Bessner agreed to and reiterated the sanctions and factors in her written submissions. In her submissions on behalf of Batac, Ms. Ohler also agreed to the five elements of protection enunciated in the *Tonnies* case, and that the factors identified in the *Tonnies* case should be taken into consideration when determining the appropriate penalty.

Batac

20. In seeking a lesser penalty than that proposed by Staff, Counsel for Batac made the following submissions on behalf of her client:

a) Batac did not contest the allegations made against her by the MFDA;
b) Batac did not provide evidence in her defence at the Hearing on the merits; and
c) Batac consents to a permanent prohibition on her ability to conduct securities related business. This consent was first made by Batac to the MFDA in May 2010.

21. Counsel for Batac made it clear however, that Batac does not consent to a fine of $700,000.00. Further, she submitted that a costs order of $10,000.00 is excessive, given Batac's repeated communications to the MFDA that she would not contest the allegations against her.

22. Counsel for Batac submitted that the willingness of Batac to not contest any of the allegations against her, and for her to not attend and provide evidence at the Hearing should be taken as benefits to the MFDA investigation and hearing process. Much as if Batac was doing the MFDA a favour as her counsel submitted, because the MFDA did not have to expend resources to establish and prove the allegations against Batac; she simply and efficiently conceded to all of the allegations against her.

23. Counsel for Batac reviewed and acknowledged that the primary goal of securities regulation is the protection of the investing public.

24. At the same time, counsel for Batac submitted that the following should be considered as positive factors, that the Hearing Panel should consider with regard to the penalty imposed:

a) Batac has not previously been subject to a discipline hearing by the MFDA; and
b) Batac's consent, combined with her decision not to contest the allegations against her, **demonstrates her recognition of the seriousness of her conduct [emphasis added].**

25. Counsel for Batac argued that initially her client was willing to comply with her obligations under section 22.1 of MFDA By-law No .1. However, Batac reversed her position and indicated that she would not cooperate with the MFDA investigation after being informed,

by the MFDA, that under its regulatory mandate it may need to share information obtained with the York Regional Police and Toronto Police Services, both of whom were investigating Batac for alleged criminal activities.

26. Subsequently, Batac indicated that she would consent to an order permanently prohibiting her from conducting securities related business. Such consent, Batac's counsel submits, expressed at that time, and throughout this Hearing "would obviate the need" for the MFDA to investigate the matter or conduct a contested hearing.

27. It is clear, from all of the evidence, and submissions, that Batac's consent was fueled only by a self-preservation motive, rather than an altruistic desire to assist the MFDA by "obviating the need" for the MFDA to investigate the matter, or conduct a contested hearing.

28. As it was, the lack of cooperation from Batac, combined with the fear that she and her business practices instilled in the other respondents, should they break their imposed secrecy, garnered a similar lack of cooperation from all but Respondent Gaminde. When the public's right to protection is factored in, this all but frustrated the MFDA's ability to conduct any sort of a meaningful or even adequate investigation.

29. For the very reasons MFDA Counsel submits, it is serious misconduct for an Approved Person to conduct securities related business or outside business activity without the approval or knowledge of the Member. Investors place a lot of trust in persons who hold themselves out as Approved Persons; they place their investment capital into the hands and control of these Approved Persons; they assume that their capital will be used to purchase investments that are not only suitable, but that are also legitimate.

30. Investors who conduct business with an Approved Person have every right to believe that the transactions are supervised and are assessed for suitability by the Member to whom the Approved Person reports. When transactions are carried out without the knowledge of the Member, the Member, the entire mutual fund industry, and more importantly, the investor stand to be harmed.

31. It is viewed as serious misconduct when an Approved Person does not cooperate with an MFDA investigation and/or fails to comply with a request made by Staff pursuant to s. 22.1 of By-Law No. 1. This is because it sabotages the ability of the MFDA to perform its regulatory function of fully investigating a matter and determining all of the relevant facts, including the full extent and implications of the underlying events. The failure to provide information requested in an investigation undermines the integrity of the self-regulatory system and the effectiveness of its operation.

32. The Ontario Divisional Court in *Artinian v. College of Physicians and Surgeons of Ontario*[3] stated that, fundamentally, every professional has an obligation to co-operate with his self-governing body. That decision applies as much to persons in the investment industry as it does to physicians.

33. The Panel accepts that Batac recruited the other Respondents. It also accepts that Batac was the driving force, using fear of the loss of their investments to prevent the other Respondents from disclosing material information and facts regarding their investment activities relating to Havaway, to their employers, and to the MFDA. This particular tactic of Batac is responsible for arresting the information gathering that was needed to conduct a full investigation: to uncover or discover the extent of the harm to the public.

34. The Panel finds and accepts that the penalties requested by the MFDA are both reasonable and necessary, with the exception of the fine which the Panel sets at $2,000,000.

35. Accordingly, the Panel Orders that effective June 12, 2013:

a) Batac is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to section 24.1.1(f) of MFDA By-law No. 1;
b) Batac shall pay a fine of $2,000,000, pursuant to section 24.1.1(b) of MFDA By-law

[3] *Artinian v. College of Physicians and Surgeons of Ontario* (1990), 73 O.R. (2d) 704 (Div. Ct.).

No. 1; and

c) Batac shall pay costs in the amount of $10,000, pursuant to section 24.2 of MFDA By-law No. 1.

Ocampo

36. Counsel for Ocampo, Ms. Bessner, while being aware that the Hearing on the Merits was concluded and that findings and a Disposition were made with respect to her client, reminded the Panel that her client did not have the benefit of counsel for that Hearing.

37. Ms. Bessner submitted that although Ocampo admitted to the majority of the facts introduced and proven by the MFDA, at the Hearing on the Merits, she could not agree to the penalty being sought. This she submitted is because, contrary to the assumptions of MFDA Staff, while Ocampo may have personally benefited from the events, because the manner in which her bank account was used as a conduit of cash from the Canadian Havaway accounts to accounts in the Philippines, at the direction of and to the benefit of Batac, Ocampo received little if any actual benefit. Instead, it is submitted that she "has paid a huge price, financially and personally". A Schedule of financial activity, derived from evidence at the Hearing on the Merits with respect to Havaway activity, suggests that Ocampo, alone, at best, may have benefited in an amount no greater than $35,000, but that she likely derived little if any financial benefit at all. In addition, Ocampo's partner also invested in Havaway. Her losses appear to be in the range of $60,000.

38. Instead of the penalty as proposed by the MFDA, Ms. Bessner suggested that the following is more appropriate in the circumstances of Ocampo's involvement and the harm she has already endured:

a) Rewrite the Mutual fund course;
b) Pay a penalty of $15,481 over time, on the condition that Ms. Ocampo is not permanently prohibited from being an Approved Person as this will impact whether she can maintain her insurance license to pay this penalty.

39. The MFDA was not able to determine either the global losses to investors, attributable to the activity of the Respondents collectively, or the losses caused by each individual respondent to investors. It did however, from the information it was able to gather from its investigation, estimate that the global losses may be in the range of $20,000,000.

40. As an approved person, Ocampo had a gatekeeper role to protect the investing public. It did not matter that many of the investors were members of her family and friends; the duty of an MFDA Approved Person still prevails. Her counsel claims that "she was manipulated by trusting people close to her, in her community, and as a result she hurt others". Although, as her counsel submits, Ocampo "believed that the investments were real and beneficial", her belief did not relieve or insulate her from her obligations to protect the investing public by using her due diligence, as an Approved Person, to assess the suitability of the Havaway product.

41. Ocampo's representative submitted that the MFDA assumption that Ocampo's actions "were advertant and intended to hurt others, when indeed she was a victim of fraud and a victim of a pyramid/Ponzi scheme herself". In support of her submissions, and in stating that she is not trying to reargue the merits of the findings against Ocampo Ms. Bessner submits that the Panel impose a lesser penalty that the MFDA is seeking for the following reasons:

a) Ocampo had virtually no mutual fund clients and virtually none of the Havaway investors were mutual fund clients;
b) there is no evidence on the issue of suitability of outside business activity;
c) Ocampo was not aware that the Havaway business was illegal and had no reason to suspect that those she trusted would use her for their financial benefit and to her personal detriment;
d) neither the MFDA nor the MFDA Members that Ocampo was registered with were named in any lawsuits or thought to be tied to Ocampo;
e) Ocampo received poor advice from her previous legal advisor, a paralegal , and she should not be punished for following his advice; and lastly
f) Ocampo could not; she was not permitted, by her agreement with Batac and Batac's mother to disclose the Havaway business to the Members she worked with.

42. In her submissions to the Panel Ocampo submitted that she is remorseful and "deeply regretful" for the harm she caused to her family, her friends, her partner, and herself. The Panel accepts these submissions. Ocampo asks for a second chance to prove herself; she says she has learned that she should not do again what she did with Havaway.

43. Ocampo took the courses required and was successful in her examinations/tests to become a registered and licensed MFDA Approved Person. She was trained to spot and identify transactions and investment activity that fit the definition and description of fraudulent, pyramid and Ponzi patterns. Part of her training involved an understanding that there is no such thing as a guaranteed safe investment or an investment with a guaranteed rate of return. Claims by Batac that Havaway was such a "safe" product should have triggered to Ocampo that what sounded too good to be true, could not be true. She was not only expected to, she was required to protect the investing public by using her due diligence to assess the suitability of the Havaway product. She failed to use her education, training, and experience, for the benefit of her clients, but did use it to lend a sense of legitimacy to the Havaway product. She stated in her testimony, not directly, but by inference, that she trusted and believed Batac and chose to follow the instructions and directions of Batac over her obligations to the public, to the Members she was an Approved Person with, and to the MFDA.

44. Ocampo knowingly sold a product with a purported guaranteed rate of return of 20% per quarter; she acted as a conduit in violation of anti-money laundering (AML) regulations by using her own bank account to transfer funds to third parties; she characterized her solicitation of clients [friends and family] as a referral agent only; and, she admits ignorance of the MFDA Rules.

45. On the issue of non-cooperation, Ocampo's representative submits that Ocampo honestly thought that her previous legal advisor forwarded documents to the MFDA that she provided to him in response to her promise to the MFDA that she would provide certain documents, including a list of clients she recruited as investors in Havaway.

46. It was Ocampo's evidence, and the submission of her legal counsel, that the clients were Ocampo's friends and family members. Yet, when asked to provide a list of clients, Ocampo told the MFDA investigator that she could not provide a list of her clients because she had given that list to her representative. The Panel does not accept that Ocampo could not provide the names of her clients, if, as she states and gave evidence of, they were indeed her family and friends. Although Ocampo committed to provide information in addition to the client list, not doing so makes it difficult for the Panel to accept that Ocampo takes responsibility for the harm she has caused.

47. The investors were not a random group of otherwise unknown persons, by her own evidence they were intimately known to Ocampo. That Ocampo maintains this position throughout the entire MFDA process, including the investigation, her interview with the MFDA, her failure to provide such answers to the undertakings/promises to produce a list of her clients to the MFDA, her testimony at the Hearing on the Merits; and now, in her submissions during this Penalty Hearing makes it difficult for this Panel to conclude that she should be given a second chance. During each of the several steps of this entire MFDA process, Ocampo was given a chance to cooperate with the MFDA investigation and to demonstrate that she deserved to be given an opportunity to return to the MFDA as a Registered Person. She failed on each and every account. Her actions while with Havaway caused serious and irreversible harm to the persons she persuaded to invest in the Havaway.

48. Ms. Bessner cited several decisions in support of her submissions that Ocampo should receive a lesser penalty than that proposed by MFDA Staff. We have considered the submissions made and the previous decisions cited, by Ocampo’s experienced and very able counsel.

49. The Panel does not accept that Ocampo was unaware of the serious nature of the activities that she was engaged in, or that she did not know that she was in contravention of her duties as an Approved Person. Of all of the Respondents, next to Batac, Ocampo was closest to the centre of the activity and knowledge regarding Havaway. She was in an excellent position to assist the MFDA but she chose not to cooperate in any meaningful way. She, in essence, stonewalled the investigation process as much as did Batac, and in doing so assisted Batac by

keeping the results of their activities regarding Havaway confidential and secret.

50. The Panel is not persuaded that permitting Ocampo to rewrite the Mutual Fund course is in the best interests of the investing public. The Panel is not persuaded that ordering anything less than a permanent prohibition is in the best interest of the investing public, or consistent with the regulatory obligations and functions of the MFDA.

51. Accordingly, the Panel Orders that effective June 12, 2013:

a) Ocampo is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to section 24.1.1(f) of MFDA By-law No. 1;
b) Ocampo shall pay a fine of $250,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
c) Ocampo shall pay costs in the amount of $10,000, pursuant to section 24.2 of MFDA By-law No. 1.

Macaraeg

52. With regard to the penalties that MFDA Staff is seeking for Mr. Macaraeg, Macaraeg responds that he does not think that a permanent prohibition is necessary. His reasoning is:

a) this is his first misconduct;
b) the outside business activity was more of an unintentional activity on his part;
c) he was only licensed for less than a year, 11 months in fact;
d) most of the money flowed through him from Havaway, with the intention, per instructions from Batac, that it was to be spent on taking care of clients including providing trips, so that they would remain with, and loyal to, Havaway; and
e) most of the investors were not mutual fund investors at that time nor were they his life insurance clients.

53. Macaraeg stated that he would like this matter to be concluded as soon as possible. He

wants the Panel to understand that he takes this matter very seriously.

54. He also made submissions with respect to the set fines under the guidelines, which he felt are unreasonable in his circumstance. First, he was not the perpetrator who made the company; second, he was and should be considered as an investor as well. He felt he was scammed and he is already in financial hardship.

55. He told the Panel that he suffered enough emotionally and financially from Havaway throughout the period. He submitted that his financial situation is such that he is living paycheck to paycheck, is living on debts, and is being garnished by other institutions. He told the Panel that his family will suffer and that he would be more than crippled if he has to pay a set fine.

56. Macaraeg also told the Panel that although he was not practicing in any financial institution, right now, he is afraid that if his name is connected with respect to a permanent prohibition that it will affect his intent to get a license in his current career of engineering. No evidence was led to support this submission.

57. Macaraeg told the Panel that he did not benefit financially, as much as it would seem that he did, through his involvement with Havaway. He said that Batac told him to spend the money that he received from Havaway (approximately $110,430) on the investors and to take them on trips because she wanted those clients to be happy and she wanted them to keep their investments with Havaway. We have Macaraeg's submissions and his testimony that he did not benefit to the extent of the $110,430 in commissions that were identified by the MFDA investigator, however other than that, he provided no additional information that would assist the Panel in concluding that he did not benefit from the commissions attributed as payable and that were paid to him. Accordingly, the Panel accepts the submissions of MFDA Staff, who relied on Macaraeg's banking records, over the version of events provided by Macaraeg, and finds that Macaraeg received the benefits as established by the MFDA.

58. Macaraeg gave evidence that unlike some of the other Respondents, he studied for and successfully passed the examination to obtain his mutual fund qualifications. That being so, he

had to have known that neither investments nor a rate of return could be guaranteed to investors. In addition, he had to have known that he could not carry on outside business activities without the knowledge and permission of the registered Member he worked with; and, that he was required to cooperate with any investigation that might be required by the MFDA.

59. If Macaraeg was not clear about whether his involvement with Havaway was considered to be an outside business activity he could have asked the Member that he was an Approved Person with about it and whether or not his activities were considered securities related business. However, he did not need to do that; because of his training, he should have known that it was an outside business activity not only because he was earning commissions from Havaway, not the MFDA Member with whom he worked.

60. Macaraeg knew about the concept of suitability of product, but instead of relying on his own training he ignored a fundamental principle as an investment advisor and he left it to someone else, in this case Batac, to explain to him whether the product was suitable for the respective clients to whom he sold the product.

61. Macaraeg knew about the duty to cooperate with the MFDA in the event of an investigation. Instead, he again ignored his training and he succumbed to and relentlessly adhered to the advice of someone else, again Batac. He held up, as a shield, against the MFDA Investigator, his agreement with Batac to keep all matters relating to Havaway confidential. Having said that, he did partially cooperate; he attended an interview with the MFDA. However, he did not provide Staff with the documentation relating to his involvement with Havaway, as requested, and he failed to fulfill the undertakings (promises to the MFDA) given at his interview. His cooperation would likely have assisted the MFDA in conducting its investigation in a more thorough, timely and cost-efficient manner.

62. In the usual course, being untruthful and dishonest with the regulator results in a permanent prohibition. Macaraeg was registered only eleven months, from February 2007 to January 2008. He left mutual fund member WFG to join Havaway. Of the seventeen clients he had in total, eight were referrals from WFG, and nine were Havaway direct clients. In the

particular circumstances of this case the Panel finds Macaraeg was not in the mutual fund business long enough to justify a lifelong suspension. He was however licensed as an Approved Person and members of the public have every right to expect to be able to trust that Approved Persons will be accountable to and will adhere to the Rules and By-laws that the MFDA has in place to govern the profession and to protect the public.

63. Each case is decided on its own merits and turns on its own facts. On a non-precedential basis, the Panel orders that effective June 12, 2013:

a) Macaraeg is prohibited from conducting securities related business in any capacity while in the employ of, or associated with any MFDA Member, for a period of seven (7) years, commencing June 12, 2013, pursuant to section 24.1.1(f) of MFDA By-law No. 1. Should he wish to rejoin the industry, after seven years, he will have to establish that he is a suitable candidate for registration;
b) If Macaraeg becomes re-registered with an MFDA Member, he is subject to strict supervision by that Member for a period of one (1) year from the date of re-registration, pursuant to section 24.1.1(f) of MFDA By-law No. 1. The Member must review and preapprove all mutual fund transactions for Macaraeg;
c) Macaraeg shall pay a fine of $150,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
d) Macaraeg shall pay costs in the amount of $10,000, pursuant to section 24.2 of MFDA By-law No. 1.

Martin

64. The allegations against Martin were proved by the MFDA. With regard to the failure to cooperate, Martin also failed to give the MFDA Investigator access to his sub-branch office location. This location, he submitted was in the basement of the home of his parents-in-law. This failure to cooperate is distinct to Martin. This decision will not reiterate the information contained in the Decision and Reasons (Misconduct), other than to repeat some of it to provide the context for our further findings and Order.

65. Martin was registered as a mutual fund salesperson from February 2005 to July 2009, first with WFG then with WH Stuart. His apparent ignorance about industry standards and regulations is incredulous and unacceptable. Martin knew he was obliged to disclose outside business activities because he disclosed his life insurance and mortgage activities to his employer. He conveniently used the confidentiality agreement that he signed with Batac as the reason why he couldn't tell his employer about Havaway. As with the other Respondents, Martin also claims that threats by Batac prevented him from disclosing information about Havaway.

66. While the Panel understands the reason for non-disclosure and the resulting reason for failing to cooperate with the MFDA, the reasons do not insulate Martin, or any of the other Respondents from being assessed penalties, fines, and costs. The penalty guidelines recognize the seriousness of failure to cooperate by setting minimum fines. While they are guidelines and not mandatory rules or policies, only in the most exceptional of cases, and for good reasons, would they not be applied. The MFDA was put through a lengthy, and in many respects frustrated investigation that could have been conducted more efficiently had Mr. Martin cooperated more fully with the MFDA investigation.

67. The factors to be considered by hearing panels, as articulated above and agreed to by both counsel at this Hearing, have influenced and guided this Panel's deliberations. We have weighed the harm done by all of the Respondents and by Batac to the remaining Respondents. We have no doubt Batac was the ring leader and Ocampo, compared to the remaining Respondents, was her willing deputy. This is the first misconduct proceeding against Martin and while it is a factor to consider, his failure to use his training and better judgment to avoid the troubles he got himself into is not an acceptable or valid reason for this Hearing Panel to show leniency with regard to the fine or costs sought.

68. As with Macaraeg, and due to the circumstances of this case, the Panel finds that a permanent prohibition, as sought by the MFDA, is not warranted. This is not to say that in future cases with similar facts a permanent prohibition would not be warranted.

69. The Panel orders that effective June 12, 2013:

a) Martin is prohibited from conducting securities related business in any capacity while in the employ of, or associated with any MFDA Member, for a period of seven (7) years, commencing June 12, 2013, pursuant to section 24.1.1(f) of MFDA By-law No. 1. Should he wish to rejoin the industry, after seven years, he will have to establish that he is a suitable candidate for registration;
b) If Martin becomes re-registered with an MFDA Member, he is subject to strict supervision by that Member for a period of one (1) year from the date of re-registration, pursuant to section 24.1.1(f) of MFDA By-law No. 1. The Member must review and preapprove all mutual fund transactions for Martin;
c) Martin shall pay a fine of $150,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
d) Martin shall pay costs in the amount of $10,000, pursuant to section 24.2 of MFDA By-law No. 1.

Gaminde

70. The failure to cooperate allegation is the most serious of the three allegations against the other Respondents. Ms. Gaminde was the only respondent who cooperated, immediately and fully, with the MFDA investigation. She did not hide behind the confidentiality agreement Batac had her sign. Gaminde understood her obligation to cooperate with her regulator and she acted upon it.

71. Gaminde gained the least and may well have lost the most of all of the Respondents.

72. Early on in the discipline process, Gaminde expressed remorse and contrition for her misconduct.

73. She represented herself (as did Martin and Macaraeg) at both the Misconduct and Penalty Hearings. In addition, she prepared submissions and presented them to the Panel, supported by copies of official court documents, to substantiate her previous testimony and the impact she claimed that this matter has had on her and her young daughter.

74. She made an assignment for bankruptcy on April 26, 2010, and was discharged on December 13, 2011. The Panel found that Gaminde presented her evidence and made her submissions in a forthright manner.

75. The Panel, in a previous Order, dated June 10, 2013 ordered:

a) Gaminde is prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member unless she has successfully completed an industry course satisfactory to the MFDA within one (1) year from the date of the Order dated June 10, 2013, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
b) If Gaminde becomes re-registered with an MFDA Member, she shall be subject to strict supervision by that Member for a period of one (1) year from the date of re-registration, pursuant to section 24.1.1(f) of MFDA By-law No. 1. The Member must review and preapprove all mutual fund transactions for Gaminde;
c) Gaminde shall pay costs in the amount of $5,000, pursuant to section 24.2 of MFDA By-law No. 1. The payments must be made at a minimum of $1,000 every six (6) months and must be completely paid within thirty (30) months of June 10, 2013; and
d) Failure to make the minimum payment when required will result in immediate cancellation of her registration.

76. The sanctions and Orders imposed by this Panel reflect the seriousness with which it regards the Respondents' misconduct. The Panel is of the view that they are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.

77. While future conduct cannot be guaranteed, the Panel is of the view that the sanctions and Orders imposed should prevent future misconduct by the Respondents, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry

participants, and foster public confidence in the securities industry.

78. Orders made by a discipline panel are usually effective on the date that the Order is made. In circumstances where an unexpected delay has occurred in the making of an order, such as in this case, the Panel may specify the date that an order is effective. The decision with respect to effective dates in this matter is not intended or to be treated as a precedent for future panels.

DATED this 24th day of June, 2014.

"Kathleen J. Kelly"
Kathleen J. Kelly
Chair

"Guenther Kleberg"
Guenther Kleberg
Industry Representative

"Nick Pallotta"
Nick Pallotta
Industry Representative

DM#383849