THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: JACK GEORGE WLADYKA

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair	Mr. G.S. Posner
Panel Members	Mr. D.G. Murray
	Mr. G. J. Lillies

Appearances:

Mr. S. Gingera	)	Counsel for the Commission
Mr. M. Tadman	)	On behalf of the Respondent

<u>Preliminary Matters</u>

1. This matter had been scheduled for two weeks of hearing commencing March 25th through March 28th, 2008 and continuing April 14th through April 18th, 2008. On the morning of Tuesday, March 25th, Mr. Tadman, counsel for the respondent, Jack George Wladyka (Wladyka), after stating that he was invoking the protection of The Evidence Act on behalf of his client, advised that he would not be disputing the allegations of Commission staff. His preference was to forego the calling of evidence entirely and have the panel rely on the contents of the Statement of Allegations and argument in reaching a decision. Mr. Tadman stipulated that his client acknowledged the truth of the allegations. He also noted that despite this his client would not be in a position to enter into an Agreed Statement of Facts.

2. Mr. Gingera, Commission staff counsel, felt it was necessary to present the evidence of several witnesses in order to properly set out the facts of the situation. The panel elected to hear evidence.

3. Although evidence was called, Mr. Tadman elected to refrain from any detailed cross-examination. As such, the evidence adduced by staff counsel went in basically unquestioned, although the panel did make note of the limited cross-examination conducted. In addition, Mr. Tadman encouraged Mr. Gingera to lead

his witnesses in order to save time. As a result the time required to hear the evidence was, in the opinion of the panel, significantly reduced.

4. A total of five witnesses were called over three days. On Tuesday, March 25th the panel heard the evidence of Mrs. Rose Rudko, a client of Wladyka and Mr. Brian Esau, a former employee of Steinbach Credit Union (SCU) who, during the period in question, was the Chief Risk Officer for that organization.

5. On Wednesday, March 26th the panel received the testimony of Mr. David Hargrave, Senior Account Manager – Commercial Lending for SCU who has been in that position since July, 2002. In addition we heard from Mr. Alan Wingate who, together with his wife, Lynne, was another of Wladyka's clients.

6. On Thursday, March 27th the panel heard the testimony of Jason Roy, Senior Investigator at the Commission. After hearing from Mr. Roy the matter was adjourned until Friday, April 18th, 2008 for argument. The panel was also advised that we would on that date either hear evidence from a Denise Morris, an Ontario resident and Legal Counsel at Dundee Private Investors Inc. or receive a sworn affidavit from her.

7. During the course of the hearing 56 Exhibits were placed on the record by consent. Prior to argument an additional four Exhibits, including an affidavit of the said Denise Morris, were received, bringing the number of Exhibits filed to 60. It should be noted that in addition to Messrs. Gingera and Tadman, counsel for SCU, Mr. Jodoin, was present throughout the proceedings on a watching brief. Another counsel, Ms. Reid, was also present throughout, however she advised the panel she was not there in an official capacity.

Facts

8. As the evidence of staff counsel was mostly uncontested the facts of the case can be set out basically as received in direct evidence. It seemed to the panel that the month of September 2005 was a pivotal period in this matter and the facts, as found, are set out leading up to and following this period.

The situation as at September 2005.

9. As at September 2005 Wladyka was a Branch Manager with Dundee Private Investors Inc. (Dundee) and had been since April 2002. Prior to this time from January of 1997 until April of 2002 he had been registered as a Branch Manager with Balanced Planning Investments Corporation. His initial registration from October 1992 until January 1997 was as a salesperson. Wladyka has not been registered under the Act in any capacity since December 15, 2006. He continued to be registered through Dundee's insurance arm.

10. Sometime during Wladyka's tenure with Dundee, and at least by the end of September 2005, he set up accounts over which he had sole signing authority under the name of Dundee Wealth Management or under the combined names of

Dundee Wealth Management and Jack Wladyka at Winnipeg branches of both TD Canada Trust (TD) and SCU. Given that the "Dundee" brand is well known on a national basis it struck the panel as unusual that two financial institutions would allow accounts to be opened by an individual with sole signing authority while using that name. The panel didn't hear from anyone from TD Canada Trust, however, Mr. Esau testified that SCU relied upon a letter on joint letterhead of Dundee Private Investors Inc. and Dundee Wealth Management addressed to Jack Wladyka allowing him the use of the Dundee name in certain of his business requirements including "internal and external office signage, business cards and letterheads used in dealings with clients serviced by you in your capacity as a financial advisor with Dundee, sales communication and advertising you do in your capacity as a financial advisor with Dundee". (Exhibit 17)

11. It seemed to the panel that this type of limited authorization would not reasonably be seen to extend to the opening of bank or credit union accounts that would allow an individual to deposit funds made out to "Dundee" in some capacity into an account controlled solely by that individual. In her affidavit, Denise Morris stated that the letter was not intended for this purpose. Nonetheless, this is what occurred. Mr. Tadman in cross-examination raised this issue with Brian Esau who testified that he felt at the time that the letter gave rise to a reasonable inference on the part of SCU to allow the account to be opened, however, he did acknowledge that in hindsight it probably should not have been opened under that name. Whether SCU should have allowed an account to be opened under that name is not an issue for this hearing, however, in the opinion of the panel, the fact that Wladyka was able to open personally controlled accounts where he could deposit cheques made out to Dundee Wealth certainly assisted him in carrying out what was to follow.

12. In addition to the account opened in the name of Dundee, Wladyka operated several accounts and had a series of loans at the SCU. At the outset of September 2005 Wladyka had on deposit with SCU as security for his other obligations the sum of $1,128,533.76. His various loans, however, were significantly more than this sum and officials at the SCU were concerned. They wanted more and better security or collateral. In a letter to Wladyka (Exhibit 29) signed by Mr. Hargrave on behalf of SCU, it was confirmed that Wladyka was in default of the terms of his arrangement with SCU and that the default had been in existence for some time. The letter further advised that SCU would "provide a further period of forbearance to October 14, 2005 to allow you to make acceptable arrangements to eliminate the default that currently exists".

13. Also in September 2005 Wladyka had clients by the name of Alan and Lynne Wingate. He had been their representative for mutual fund transactions since 1998.

14. In September 2002 Wladyka received a loan from the Wingates in the amount of $500,000.00. He agreed to make interest payments on this sum, which he did,

and to repay the full principal by the end of September or beginning of October 2005.

15. The panel didn't hear evidence from Wladyka and as such are not aware as to how at the time he planned to repay $500,000.00. He certainly didn't have the credit facility at SCU for this amount. The Dundee account he operated at TD Bank had, in September 2005, a balance of less than $3,000.00.

16. In addition, in February 2005 Wladyka purported to sell to the Wingates a Manulife Guaranteed Investment Certificate (GIC) in the amount of $225,000.00. Mr. Wingate signed a cheque payable to Dundee Wealth Management and gave it to Wladyka. He did not sign or receive any documentation from Manulife or Dundee, however, he testified that this didn't concern him and that he trusted Wladyka.

17. The $225,000.00 did not go to Wladyka's dealer, Dundee, but instead was deposited into the Dundee Wealth account that Wladyka had set up at the TD Bank. No Manulife GIC was ever purchased on behalf of the Wingates. The panel did not receive any detailed evidence attempting to follow the path of the $225,000.00, however, suffice it to say that it did not stay in the TD account where it had been deposited as of February 2005.

18. As such, as September 2005 neared its close, Wladyka appeared to have serious financial problems:

> a) He had converted to his own use $225,000.00 provided by the Wingates for a GIC;
> b) He was due to repay the sum of $500,000.00 to the Wingates at the end of the month;
> c) He was over extended at the SCU and they were demanding better collateral.

19. Mr. Wladyka was in need of additional money. This is when he was introduced to Rose Rudko.

<u>The end of September 2005 and afterward</u>
20. At the time of the hearing Rose Rudko was 83 years of age. She is a widow with no children. During their married life Mrs. Rudko and her husband amassed considerable wealth and assets.

21. Mrs. Rudko was looking to consolidate some investments/deposits she had at three chartered banks into a single investment. Her Accountant, who happened to be Wladyka's sister, recommended him and according to Mrs. Rudko told her that he could get her a 4% GIC.

22. Mrs. Rudko met with Wladyka who recommended a GIC from SCU. He had her fill out a GIC application on a Dundee Private Investors Inc. form for a SCU GIC in the sum of $3,337,495.10. Interestingly, evidence showed that SCU did not even use the term "GIC" but referred to its deposit investments as "Term Deposits". This investment was to bear interest at 4% for a one year term expiring October 1, 2006 (Exhibit 3). The application was dated September 29, 2005. Exhibit 4 is three bank drafts made out by the three chartered banks in the sum of $1,000,000.00, $871,536.95 and $1,465,590.54. Each draft was made out to Dundee Wealth and was deposited by Wladyka, not with his dealer as required, but in the Dundee Wealth account he had opened at TD. Exhibit 49, being TD statements, shows that on September 29, 2005, Wladyka deposited Rose Rudko's $3,337,495.10 into his TD account. On the same day Wladyka caused a TD draft to be made out from these funds in the sum of $500,000.00 which he used to "repay" the loan which was due to the Wingates. Wladyka used Ms. Rose Rudko's money to repay his debt to the Wingates.

23. The Wingates, according to the testimony of Alan Wingate, decided immediately to reinvest the $500,000.00 through Wladyka into another Manulife GIC. Mr. Wingate believed this would bring their holdings in Manulife GICs up to $725,000.00. Lynne Wingate signed a cheque dated September 30, 2005 on their personal account for $500,000.00 made out, again, to Dundee Wealth (Exhibit 40). On that same day, September 30, 2005, Wladyka deposited this cheque back into his TD Dundee Wealth account, in effect reinstating the full amount of Rose Rudko's money in that account. As with the $225,000.00 earlier in the year, this additional $500,000.00 was not applied for its intended purposes of acquiring a Manulife GIC for the Wingates.

24. Also on September 30, 2005, on Wladyka's instructions, TD issued a bank draft made out to "Jack Wladyka" in the full sum of $3,337,495.10 (Exhibit 13). This was deposited with the SCU in Account No. 5121074 in the name of "Dundee Wealth Management - Jack Wladyka" (Exhibit 12). Rose Rudko's money was deposited at the SCU as she had anticipated but not in any investment in her name. Wladyka attempted to convince her otherwise as he forwarded to her a SCU statement which had been doctored to suggest that the money was in fact being held in Mrs. Rudko's name (Exhibit 7). For all intents and purposes, however, as of September 30, 2005, Rose Rudko's funds became Wladyka's money.

25. Wladyka already had on deposit with SCU, as collateral for loans, over $1,000,000.00. To this he added Rose Rudko's funds. According to the evidence of David Hargrave, the deposit of the new money cleared the way for Wladyka to draw on the amount on deposit. Again, on September 30, 2005, Wladyka wrote a $1,000,000.00 SCU cheque to himself which he deposited into his own account at TD Bank. (Exhibit 33)

26. There were a surprising number of financial transactions made September 29th and 30th by Wladyka between two financial institutions with or based on Rose Rudko's money. Nor did it end there. On October 3, 2005 Wladyka wrote another SCU cheque for himself in the sum of $600,000.00, also deposited at TD Bank. (Exhibit 33)

27. Wladyka completed a new set of written financial arrangements with SCU on October 4, 2005. An Agreement on that date (Exhibit 32) renewed existing lines of credit and provided additional available credit. In addition he signed an Assignment of Deposits (Exhibit 31) whereas security for a loan of up to $3,400,000.00 he deposited $3,400,000.00 as collateral. This was Rose Rudko's money that he had deposited. Wladyka had traded her money for his own and in so doing had tripled the deposit, covering existing loans and allowing him room to borrow much more against this deposit. And he did borrow much more. By March 2007 when this house of cards collapsed the amount owing by Wladyka to SCU had eclipsed Rose Rukdo's $3,337,495.10 by over $400,000.00.

28. A year later Rose Rukdo gave Wladyka yet more of her money. With the intent to round up her position with the SCU to an even $3,600,000.00 (by her calculations) on September 29, 2006 she gave Wladyka a cheque for $129,005.09 payable to Dundee Wealth. (Exhibit 9) She expected it to be added to the SCU GIC which she believed was coming due and which Wladyka told her he would reinvest in a new GIC at a higher rate of 5.5%. The money, instead, was deposited into Wladyka's account at TD Bank.

29. Under date October 2, 2006 Wladyka forwarded Ms. Rudko a letter, signed by his assistant, on Dundee Private Investors Inc. letterhead, which showed Wladyka as Branch Manager. The letter incorrectly stated that Ms. Rudko now had investments in the amount of $3,600,000.00 in a SCU GIC at 5.5%. The letter enclosed a statement on Dundee Insurance Agency Ltd. letterhead showing a balance in Rose Rudko's favour of $3,600,542.47 (Exhibit 10). This was a complete fabrication.

30. In addition to borrowing money against Rose Rudko's funds, Wladyka also took some of the money improperly deposited for his own use. Interest accrued on the deposit. On January 4, 2007 Wladyka wrote himself another cheque for $110,000.00 from this source in Account No. 5121074 at the SCU. (Exhibit 56) Interestingly, although this account was opened under both the names Dundee and Jack Wladyka, as of January, 2007, the SCU was printing cheques solely using the name "Dundee Wealth Management".

31. By early 2007 Rose Rudko was concerned. She had received no additional reports from Wladyka and no tax documentation such as a T5 from SCU for 2005 and 2006. When she called SCU to enquire, she believes in the first week of March, 2007, she was advised that there was no record of an investment or account in her name. She attended the SCU branch on McGillivray Blvd. in

Winnipeg, along with her records, and it was confirmed that there were no investments in her name.

32. Mrs. Rudko telephoned Wladyka's office after attending at SCU and left a message for him, which he returned the next day. She testified that Wladyka told her not to worry. He stated that the T5s for tax purposes would come to him and he would forward them to his sister for tax purposes. He also assured her the mistake was on the part of SCU and if they had no record of her investment it was because people are not names but numbers to big financial institutions.

33. Rose Rudko did not have any contact with Wladyka after that. About a week later, the SCU applied the deposit against the outstanding loans. Every nickel of Rose Rudko's money was applied to pay down Wladyka's debts.

34. By early March 2007, investigators of The Manitoba Securities Commission were involved. Jason Roy, Senior Investigator, testified that after reviewing subpoenaed banking records he determined that the sum of approximately $3.4 million put on deposit with SCU by Wladyka was, in fact, the money provided to him by Rose Rudko. He further testified that he advised SCU of this through a discussion with a Mr. Bylo at SCU. He advised Bylo that the MSC would obtain an order freezing the funds in order to protect Mrs. Rudko's position. It was after this discussion that the SCU applied the money on deposit to pay down Wladyka's debts.

35. The Wingates had not yet become concerned with their investment at the beginning of March 2007. The arrangement they had made with Wladyka was that the GICs would bear quarterly interest which would be paid into their bank account at the Royal Bank by direct deposit. Alan Wingate testified that in fact quarterly payments of just under $10,000.00 were deposited into their account with the last being early in 2007. The Wingates believed these funds were coming from Manulife but this was not the case. The Wingates began to be concerned when in March 2007 Mr. Wingate received a telephone call from Jason Roy, Senior Investigator at The Manitoba Securities Commission. Mr. Roy wanted to speak with Mr. Wingate about Wladyka and set up an appointment for that purpose. After he saw Mr. Roy he and Mrs. Wingate were very concerned.

36. Alan Wingate called Wladyka's office at a time when Wladyka was away and spoke to his assistant indicating he had a need to get his cash out of the Manulife investments. That same day he received a call from Wladyka who, he testified, advised him that there might be trouble getting the money out of Manulife as it might be locked in.

37. Wladyka attended at the Wingate home and provided him a document (Exhibit 45) dated March 23, 2007. Mr. Wingate believes it was about that time that the meeting took place. At the meeting Alan Wingate advised Wladyka that

they needed the cash that they had put into the Manulife GIC for the purpose of a business deal.

38. Exhibit 45 is a three page statement on Dundee Private Investors Inc. letterhead provided by Wladyka, purporting to show the holdings of Mr. & Mrs. Wingate. There was a section near the end titled "Assets & Liabilities not held with Dundee Wealth Management (Tracked Assets)" this showed a Manulife GIC of $775,000.00 with a maturity date of October 1, 2010.

39. Alan Wingate testified that in addition to the $725,000.00 provided to Wladyka for investment in a Manulife GIC, he was also entitled to a refund from mutual fund overcharges of $35,510.33. He directed Wladyka to collect that refund and apply it to his credit at the SCU. There is no evidence of what became of those funds, however, they certainly were not applied to the credit of the Wingates.

40. At that meeting on or about March 23, 2007, or shortly thereafter, Wladyka also had the Wingates sign a Direction, prepared by Wladyka addressed to Manulife Bank and dated March 27, 2007 directing the redemption of their GIC. The Wingates hadn't noticed it initially, however, the GIC account number that was inserted in this Direction was actually Mrs. Wingate's Social Insurance Number.

41. Wladyka advised that he would take the document to Manulife so that the GIC could be cashed in. He called back later and advised that apparently the Manulife GIC was "locked in" and could not be redeemed. Wladyka apologized and told Alan Wingate that he would buy the GIC from him but couldn't do it at that time.

42. About a week later Alan Wingate asked Wladyka for the Manulife T5s for income tax purposes. Wladyka initially said that the T5s went straight to Dundee and he didn't have them. He then indicated that the funds in fact were not actually in the Wingates' names but were pooled with funds from other investors. By this point Wladyka was clearly grasping at straws. The fact is there was no Manulife GIC and there never had been and all of the money provided to Wladyka by the Wingates was gone.

Wladyka's Employer

43. The evidence shows that not only did Wladyka deceive his clients, he also deceived his employer, Dundee Private Investors Inc. (DPII). The evidence from DPII was tendered through the Affidavit of Denise Morris (Exhibit 58). Ms. Morris' evidence tends to verify that DPII, in its capacity as a mutual fund dealer, deals with its employees registered to sell mutual funds according to industry norms. Mutual fund sales representatives are allowed to sell only those products authorized and all client transactions must be put through the dealer's account. "Off book" transactions such as those engineered by Wladyka with the funds of Rose Rudko and the Wingates are forbidden. Mutual fund sales representatives

also are not authorized to open their own accounts using the name of the dealer as Wladyka was allowed to do. Having the facility to operate as if he were in fact "Dundee Wealth" enabled Wladyka to easily enter into clandestine off book transactions and make unauthorized use of his clients' funds provided in good faith.

The eventual return of funds

44. Mrs. Rudko's evidence was that after her money was used to pay Wladyka's debts, she had to hire legal counsel and commence an action to attempt to recover her funds. The Wingates also retained legal counsel.

45. At the time of giving her evidence, in March 2008, Rose Rukdo testified that she had recently received a settlement whereby her funds were returned to her, according to her testimony, by the insurer for Wladyka's employer. Mrs. Rudko described the intervening period of loss and uncertainty as "a year of hell".

46. In cross examination, Alan Wingate advised that his counsel was engaged in settlement discussions. No further questions on the issue were allowed by the panel. During argument, in mid April 2008, Mr. Tadman intimated that the Wingates were also being made whole, not by Wladyka, but by third parties.

47. The panel members are pleased that Rose Rudko has eventually received the return of her funds, and is hopeful that the same is, or will be, true for the Wingates. Actions taken by someone in Wladyka's position to assist in the return of funds to victims of his wrongdoing can be considered as a factor in determining a sanction. The fact that the victims were not ultimately deprived of their money does not, however, serve to temper or lessen the seriousness of the improper acts that caused it to be lost to them in the first place.

Finding

48. At the outset there is no doubt that each and every allegation against Wladyka as set out in the Statement of Allegations has been proven. They are in fact, acknowledged by Wladyka. As alleged, it is clear that Wladyka traded outside of the securities authorized by his dealer, that he improperly set up accounts in the name of his dealer and conducted off book trades without his dealer's knowledge or consent. These in themselves are serious allegations, however, more importantly, Wladyka in dealing dishonestly with his clients and converting their funds to his own purposes clearly acted in a manner that was a breach of his duty of trust to them and contrary to the public interest.

Arguments on sanctions

49. Commission staff seek the following sanctions against Wladyka:

> a) An order under Section 19(5) of The Securities Act denying Wladyka access to the exemptions for an indefinite period;
> b) An administrative penalty against Wladyka in the maximum

amount assessable against an individual, being $100,000.00;
c) An order under Section 148.3(1) of The Securities Act prohibiting Wladyka from being a director or officer of any issuer; and
d) An order of costs in the sum of $15,000.00.

50. Commission staff counsel argued that Wladyka's conduct represents the worst type of a breach of fiduciary duty by someone in his position. This was not a case of negligent or unsuitable advice or discretionary trading of a client's position. This was a case of a registrant converting his client's money, in excess of $4,000,000.00 to his own use. The Wingate's money simply seems to have disappeared, while Rose Rudko's funds were used as security for loans, and due to Wladyka's conduct were used to pay his debts.

51. In seeking the most severe penalties that can be handed down in these circumstances, Mr. Gingera noted that registration is the cornerstone of public protection. Being registered is a privilege and not a right. It is essential to the public interest that those registered to market securities and give advice are properly educated, are of good character and operate honestly within the rules and guidelines set out by the legislation and the regulations. The proper operation of the capital markets depends on the proper conduct of those registered to be intermediaries in those markets.

52. The Alberta Securities Commission case Re: Lamoureux (2002 WL33686 (Alta Securities Com.)) makes note of the "special role of a registrant". The Decision quotes The Supreme Court of Canada as follows:

"The paramount object of The [Securities] Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities……." (para 16).

Public confidence in the integrity of the capital markets is jeopardized when a registrant fails to comply with securities regulations.

53. In Re: Johnson (2007 WL2727818 (B.C. Securities Com.)) a panel of the British Columbia Securities Commission (BCSC) noted that the system of regulation in Canada depends on the high standards of integrity on the part of all who are part of the regulated industry. The Decision quotes The Supreme Court of Canada as follows:

"The Securities Act is essentially a scheme of economic regulation which is designed to discourage detrimental forms of commercial behaviour……..the effective implementation of securities legislation depends on the willingness of

those who choose to engage in the securities trade to comply with the defined standards of conduct". (para 29)

54. The notion of "discouragement of detrimental forms of conduct" suggests that the concept of deterrence is a significant factor in determining appropriate sanctions. This is clear in the established law. The Cartaway Decision of The Supreme Court of Canada [2004] 1SCR672, notes:

"It may well be that the regulation of market behaviour only works effectively when securities commissions impose ex post sanctions that deter forward-looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving the confidence in our capital markets". (para 62)

55. The Cartaway Decision is relied upon by the Alberta Securities Commission in Re: Lavallee (2008 WL644781 (Alta. Securities Com.)) where the panel notes that sanctions are to be exercised prospectively, to protect and prevent rather than to punish and remedy. The panel goes on to note:

"The objective is to protect investors and the capital market from future harm. Achieving this objective may require deterrence from future market misconduct, whether by respondents themselves (specific deterrence) or by others (general deterrence)." (para 16)

The Decision also outlines several points that may be relevant to determining what sanctions may be applicable in a particular case as being:

- the seriousness of the allegations proved against the respondent,
- the respondent's past conduct, including prior sanctions,
- mitigating factors,
- the respondent's experience in the capital markets,
- the level of the respondent's activity in the capital markets,
- whether the respondent recognizes the seriousness of the improper activity,
- the harm suffered by investors as a result of the respondent's activities,
- the benefits received by the respondent as a result of the improper activity,
- the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in the capital markets in the jurisdiction,
- the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities,

- 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 or improper activity,
- the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets, and
- previous decisions made in similar circumstances.

56. Mr. Gingera argued that the seriousness of the allegations against Wladyka cannot be disputed. These allegations are now proven. He also argued that Wladyka was well experienced in the operation of the market and was aware of his duties to his clients and his dealer. The loss suffered by the investors deprived of their funds is as obvious as the fact that Mr. Wladyka benefited from the improper use of their funds. He stated that allowing Wladyka to continue to participate in the capital markets would harm their integrity in the eyes of the public. A message of deterrence needs to be sent.

57.As far as precedents for specific sanctions, Mr. Gingera provided the Slipetz case a 2000 Decision of The Ontario Securities Commission. This case bears considerable similarity to the matter at hand as it involved a breach of fiduciary relationship and was an instance of a securities sales representative converting money given to him for investment purposes for his own use. Slipetz converted funds from four investor clients in a total amount just under $20,000.00. This, obviously, is a fraction of the sum converted by Wladyka. The OSC panel noted that the actions of Slipetz were improper and required sanction.

“Mr. Slipetz’ actions were grossly abusive of these four investors. For us to indicate in any way that we did not regard them as being extremely serious could, in our view, diminish the confidence of investors in the capital markets of Ontario.”

The panel also went on to note:

> “Mr. Slipetz misappropriated these monies and used them for his own purposes. In our view, such an action goes to the very essence of the duties and responsibilities under The Securities Act. We can think of no more serious type of a failure to comply with his obligations under the act to his customers”.

The panel’s decision was to deny Slipetz access to participate in the capital markets in any manner on a permanent basis.

58. Mr. Tadman suggested an administrative penalty less than the maximum amount of $100,000.00. He also argued that any time limit set for denying Wladyka access to participation in the capital markets in Manitoba should not be indefinite but should be for a period of time between two and five years.

59. In seeking lesser penalties Mr. Tadman made the following arguments:

> a) The respondent has been embarrassed and humiliated and has expressed great remorse about his conduct;
> b) The respondent has taken steps to ensure that both Rose Rudko and the Wingates have been or will be made whole; and
> c) He referred to a large book of reference letters, filed as Exhibit 60, from people Wladyka has helped and organizations he has supported over a period of time, all of which tend to show that he has been a man who has done much good and has done it at no benefit to himself.

60. The fact that Wladyka has been embarrassed and humiliated is not an issue for mitigation of sanctions. Wladyka may have expressed great remorse about his conduct elsewhere, however he did not give evidence before the panel.

61. With respect to taking steps to assist in making Rose Rudko and the Wingates whole, Mr. Tadman referred to a letter which is part of Exhibit 60. This is a letter on the letterhead of Baker, Bertrand, Chasse & Goguen singed by Mr. Arthur Goguen. In this two paragraph letter Mr. Goguen acknowledges that his company represents the insurers of Dundee Wealth Management and they have had discussions with Jack Wladyka concerning details of the complaints. He confirms that Wladyka "has been cooperative with our enquiry and has agreed in principle to forfeit his assets as a form of restitution/contribution to any liability".

62. Most of the rest of the 113 letters in Exhibit 60 refer to support given by Wladyka, often in the way of tickets to sporting events, to needy individuals and worthwhile causes over the years.

63. On the issue of prospective application of sanctions under The Securities Act and the notion of public interest and deterrence, Mr. Tadman urged the panel to view the public interest broadly. He made the point that if this case resulted in the highest penalty, then what incentive would there be for anyone else in a similar situation to attempt to cooperate or rectify or assist in possible restitution. He noted that if one of the significant factors in setting a sanction was to send a message of deterrence then it would be tempting in all cases for Securities Commissions to issue the harshest penalties available to them. Mr. Tadman urged us to consider Mr. Wladyka's prior disciplinary record, or lack thereof, and suggested that there were mitigating factors that cried out for a reduced penalty. These mitigating factors included the fact that Wladyka did not fight this case and did not contest one single allegation. The panel quotes Mr. Tadman from his argument:

"You know from the evidence, Tab 1 in the book (Exhibit 60), that he has agreed to forfeit his assets. Where is the sense? Where is the sense in saying he has forfeited his assets, he can't make a living but we are going to prohibit for life

from becoming licenced and we are going to impose a penalty that is clearly impossible for him to pay? Because that is justice, Mr. Gingera would say, that is where justice lies. And I say that's not where justice lies. We are not a community without forgiveness. We are not a community without hope where we say you have transgressed therefore you shall languish for the rest of your life in ignominy and poverty".

Mr. Tadman suggested that the public interest would be served if some lenience were shown to Mr. Wladyka in the sanctions and costs ordered.

Decision

64. Wladyka's conduct was egregious. The breach of duty to his dealer aside, he converted over $4,000,000.00 belonging to three of his clients to his own use. Only he benefited from his actions. He knew what was required of him. He was not inexperienced. He was a branch manager. He breached the most basic fundamentals of the trust which his clients, as investors, placed in him. He deceived them and deprived them of their money. This is exacerbated by the fact that these acts can't be characterized as a one-time lapse of judgment, but are a series of improper transactions and elaborate cover ups taking place over a period of months.

65. This type of conduct harms not only the investors involved but tends to cause the public at large to lose confidence in the integrity of the investment markets. This point was made clearly by Alan Wingate in his testimony where he said that even more hurtful to him than the conversion of his money was the violation of his trust by Wladyka. He testified that he began to doubt his ability judge character as a result of Wladyka's actions.

66. Mr. Tadman argued that the "worst" penalties should be reserved for the "worst" offences. Quite frankly, the panel is at a loss to imagine what a securities sales representative could do to his clients that could be "worse" than what Wladyka did.

67. The panel acknowledges that Wladyka does not have a record of prior disciplinary proceedings with the Commission and that he cooperated with the insurer in resolving Rose Rudko's case. This is not enough. Even the fact that Rose Rudko and possibly the Wingates have been or will be made whole by third parties does not temper the fact that after their funds were converted they went through, what Mrs. Rudko characterized as "a year of hell". What Wladyka did can be very harmful to the capital markets and a clear message must be sent not only directly to Wladyka but generally to other intermediaries and to the investing public that this type of conduct will not be tolerated.

68. Wladyka has not been registered to operate in the securities industry in Manitoba for over two years, so there is no basis to suspend or cancel his registration. It does not exist. There are, however, other means by which a non-

registered individual can operate in the securities markets directly, by accessing the exemptions or more indirectly by being a director or officer of a company that issues securities to the public. The panel has determined that the public interest requires that Wladyka must be prevented from taking part in these activities indefinitely.

69. There is only one instance of record where a panel of MSC levied an administrative penalty against an individual in the maximum amount of $100,000.00. This was the Lewis case. In that matter Lewis was the perpetrator of a scheme to improperly convert the locked-in pension funds of numerous Manitobans. The fact situation is not particularly instructive for the case at hand. The panel, however, cannot see how a message of deterrence to the market can be sent that is fitting to these facts that is less than the maximum allowable.

70. The decision of the panel is as follows:

> a) Wladyka is denied access to the exemptions under the Act;
> b) Wladyka is prohibited from acting as an officer or director of an issuer;
> c) An administrative penalty is levied against Wladyka in the sum of $100,000.00.

Costs

71. There are a number of matters that go into the determination of costs, including time spent in investigation and case preparation as well as time spent at hearing. The amount claimed for costs by Commission counsel is $15,000.00. While the panel considered Wladyka's conduct in dealing with his dealer and his clients as not being worthy of consideration for reduced sanctions, it is acknowledged that the cooperation of Wladyka, through his counsel, greatly reduced the amount of time that would be required to be spent at hearing. With this consideration in mind the panel hereby sets costs at half the amount requested or $7,500.00.

"G.S. Posner"
G.S. Posner

"D. G. Murray"
D.G. Murray

"G.J. Lillies"
G.J. Lillies