

**IN THE MATTER OF  
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("Act")**

**-AND-**

**IN THE MATTER OF TIMOTHY WADE MACDONALD  
(the "Respondent")**

Panel: Sandra MacPherson Duncan, Q.C., Commission Member

Decision Date: September 21<sup>st</sup>, 2015

**Introduction**

[1.] This decision concerns an application for an Enforcement Order under Section 134(1) and 134(1A) of the *Securities Act*, R.S.N.S. 1989, c. 418, as amended (the "Act") against the Respondent, Timothy Wade MacDonald.

[2.] By way of background, in February, 2010 Mr. MacDonald appeared in Nova Scotia Provincial Court and pleaded guilty to seven counts of fraud in excess of five thousand dollars contrary to s. 380 (1) (a) of the Criminal Code of Canada and one count of fraud not exceeding five thousand dollars contrary to s. 380 (1) (b) of the Criminal Code of Canada. The facts supporting the charges were read into the record by the Crown Attorney when the sentencing hearing convened in March 2010, and supplemented by written submissions. The facts were largely admitted by defence counsel on the record. Upon being satisfied that the facts supported the guilty pleas, the court entered convictions on the aforementioned eight charges in March 2010.

[3.] Judge Del Atwood, by decision on sentence dated April 12, 2010, found that the Respondent ran a small financial services business in Truro, Nova Scotia, called MB Capital Management Limited. MB Capital was affiliated with World Source Financial Limited. The Respondent was found to have solicited business from clients by promising to make profitable investments. The Respondent's crimes were concurrent and continued over an extended period of time. The Respondent's crimes represented an overwhelming and compelling case of financial services fraud. Accordingly, Mr. MacDonald was sentenced on April 12, 2010 to eight consecutive periods of incarceration totaling 30 months for the eight counts of fraud. There was also an order

for restitution made totaling \$200,000 in relation to various victims of Mr. MacDonald's fraud as described in the counts of the indictment.

[4.] The matter before this panel was commenced by a Notice of Application dated July 24, 2015. It stated that an application would be made in writing to a member of the Commission on July 24, 2015 or as soon thereafter as it could be made. It requested that an order be made in the public interest pursuant to sections 134(1) and 134(1A) of the Act against the Respondent. Specifically application has been made to the Commission for the following order:

1. pursuant to subsection 134(1)(b) of the Act, the Respondent shall cease trading in a specific security or in a class of securities;
2. pursuant to subsection 134(1)(c) of the Act, that any or all of the exemptions contained in Nova Scotia securities laws do not apply to the Respondent for such a period as specified in the order;
3. pursuant to subsection 134(1)(d)(ii) of the Act, that the Respondent be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
4. pursuant to subsection 134(1)(f) of the Act, that the registration of the Respondent be suspended, cancelled or restricted, as specified in the order; and
5. pursuant to subsection 134(1)(g) of the Act, that the Respondent prohibited from becoming or acting as a registrant, investment fund manager or promoter.

#### **Section 134(1A) of the *Securities Act***

[5.] Section 134(1A) of the Act provides as follows:

(1A) The Commission may, after providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) against a person or company if the person or company

- (a) has been convicted of a criminal offence arising from a transaction, business or course of action related to securities;

[6.] To grant the requested order, in addition to the criminal conviction, the Commission

must be satisfied that proper service has been effected upon the Respondent, that the principles of natural justice have been observed, that the Respondent has been given an opportunity to be heard, and that the order be in the public interest.

### **Service**

[7.] In an Affidavit of Service of Marlene E. Bucci, sworn on July 28, 2015, she swears that she sent copies of the Notice of Application, submissions of enforcement counsel, all supporting documentation, and a draft Order to the Respondent by regular mail, to two locations:

- a. 9 Sandy Lake Road, Beaverbank, Nova Scotia being the address listed for Timothy Wade (Wayde) MacDonald in the Nova Scotia Motor Vehicle Database; and
- b. 40 Island Lane, East Pennant Nova Scotia B3V 1L9 being the address noted on the Provincial Court Orders dated April 12, 2010.

[8.] Part 1 of the General Rules of Practice and Procedure of the Commission (Rule 15-501) provides for service of documents "by any means effective to deliver the Notice or document or copy thereof to the person or company being served" and further provides that "service shall be sufficiently effected if sent by pre-paid mail at the last address of the person or company appearing on the records of the Commission".

[9.] The Affidavit of Service of Marlene E. Bucci satisfies this panel that the requirements for service on the Respondent under the General Rules of Practice and Procedure with respect to this application have been duly satisfied.

### **Opportunity To Be Heard**

[10.] As previously indicated, to make an Order under Section 134(1A) I must be satisfied that the principles of natural justice have been observed. Included in this is the requirement that the Respondent must have been provided an opportunity to be heard. An opportunity to be heard does not require that an oral hearing take place, but rather provides a flexible procedure that satisfies natural justice proportional to the case being advanced against the Respondent. Enforcement counsel has submitted that the application in writing delivered to the Respondent with all supporting documentation and which contemplated an opportunity for the Respondent to be heard in writing provided a procedurally fair process and satisfied the requirement of natural justice. The Panel

agrees. Specifically, the opportunity given the Respondent to respond in writing by August 31, 2015 to the Notice of Application, submissions, and supporting documentation, provided the Respondent a procedurally fair opportunity to be heard.

### **Public Interest**

[11.] The principal purpose of securities regulation in Nova Scotia, as set out in Section 1(A) of the Act is the protection of investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. In the Commission's prior decision in *Tri Clean Enterprises Inc.* dated October 5, 2010, it was held that the Commission's jurisdiction to make an order under subsection 134(1A) required a finding that to do so was in the public interest and that it included actual or potential violations of Nova Scotia securities laws, or other sufficient reason relevant to Nova Scotia. In the present case the prohibitions and restrictions being sought by the Commission against the Respondent emanate from proven criminal conduct relating to the sale of securities by the Respondent in Nova Scotia. There is more than sufficient reason relevant to Nova Scotia. The requested order serves the broader public interest of protecting Nova Scotia investors and capital markets. It addresses considerations of both specific and general deterrence by ensuring the Respondent does not engage in similar conduct in the future and by discouraging others from similar deleterious conduct. Investors and capital markets in Nova Scotia will benefit from the protection afforded to them from the requested order.

### **Conclusion**

[12.] Accordingly, the Commission finds the Respondent has been adequately served, has been provided with an opportunity to be heard and has not responded, and that it is in the public interest that an Order be granted in the terms sought by enforcement counsel.

Dated at Halifax, Nova Scotia this 21<sup>st</sup> day of September, 2015.

  
Sandra MacPherson Duncan, Q.C.

Commission Member