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Discipline

Discipline Penalties Imposed on Donald Little; Violation of By-law 29.1

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Donald Little, at all material times a Registered Representative with the London Ontario branch of TD Waterhouse Canada Inc. (TDW).

By-laws, Regulations, Policies Violated Following a disciplinary hearing held on May 15, 16 and 17, 2007, in Toronto, Ontario, a Hearing Panel found that Mr. Little violated IDA By-law 29.1.

Penalty Assessed Mr. Little shall pay a fine of \$15,000; as a condition of his re approval with any Member of the IDA, Mr. Little shall successfully rewrite the examinations based on the Conduct & Practices Handbook and will pay costs in an amount to be fixed by the Hearing Panel at a future date.

Summary of Facts By a decision dated June 13, 2007, a Hearing Panel of the IDA found that Mr. Little had violated IDA By-law 29.1. He was convicted of the following charge:

1. In or about March 2006 the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest, in that he accepted a cheque from an elderly client in the amount of \$500,000, liquidated securities in the client's account in order to cover the cheque and then deposited the cheque into his personal bank account, without the knowledge or consent, and

contrary to the internal policies, of his Member firm employer, in violation of Association By-law 29.1.

The Hearing proceeded on the basis of an Agreed Statement of Facts wherein the parties agreed, among other things, that:

- (a) TDW internal policies prohibited receipt by TDW employees of gifts from clients, other than gifts of a nominal value.
- (b) On or about March 9, 2006, Mr. Little's client, LJH, (who was at the time a widow with no close family and who was over the age of 90 years), gave Mr. Little a cheque, from her account at an unrelated bank, in the amount of \$500,000 payable to him personally.
- (c) On or about March 13, 2006 Mr. Little liquidated securities in LJH's account of approximately \$1.1 million representing virtually her entire net worth (generating approximately \$45,000 in deferred service charges), and transferred the proceeds of the sale of securities to the chequing account of LJH.
- (d) On or about March 16, 2006 Mr. Little deposited the cheque for \$500,000 from LJH into his personal account at TDW.
- (e) On May 4, 2006 LJH executed a statutory declaration stating that she intended the cheque for \$500,000 as a personal gift to Mr. Little, but that she hoped he would return the funds to her for her future care.
- (f) The cheque for \$500,000 was returned by LJH's bank marked as funds not cleared and approximately \$45,000, in deferred service charges, was credited to LJH by TDW.
- (g) On or about March 30, 2006 Mr. Little was terminated by TDW as a result of the conduct detailed herein. On July 3, 2006 LJH passed away.

The Hearing Panel found that Mr. Little accepted the gift from LJH and did not tell his employer about it contrary to the internal policies of TDW. To take a substantial gift from a client can do nothing other than raise a reasonable question about the propriety of the transaction. Two witnesses from LJH's bank who testified at the hearing were entirely reasonable when they had concerns about the gift and the steps

they took as a result of their concern were commendable. Mr. Little's conduct in breaching TDW internal policies, in the particular circumstances of this case, could have the effect of creating an appearance that he was acting other than in the best interests of his client. Such an appearance could detrimentally affect the reputation which the industry must have for financial probity. This conduct was detrimental to the public interest and amounted to conduct unbecoming.

The Hearing Panel noted that there was no evidence of any victimization of LJH. There was no suggestion that LJH was other than in full command of her mental faculties. The Agreed Statement of Facts accurately summarized the statutory declaration made by LJH leaving no doubt that she intended to make a substantial gift to Mr. Little and that she was not under duress or unduly influenced at the time she made the gift. Therefore, she was fully entitled to do what she did. Mr. Little accepted the gift. However, he was employed by a Member of the Association at the time; if he had not been employed by a Member of the Association, he would have been free to do so.

A second charge against Mr. Little was dismissed, namely:

2. In or about June 2003, the Respondent engaged in business conduct or practice which is unbecoming or detrimental to the public interest, in that he became the Attorney, pursuant to a Power of Attorney for Property, and the Executor of the will of an elderly client, without the knowledge or consent, and contrary to the internal policies, of his Member firm employer, in violation of Association By-law 29.1.

Mr. Little's failure to disclose to TDW in June 2003 that he had been appointed as LJH's Attorney pursuant to a Power of Attorney was a breach of TDW internal policies. However it was possible that Mr. Little's breach was a result of inadvertence or negligence. The Hearing Panel was left in a state of doubt on this charge and ruled that the benefit of that doubt must be given to Mr. Little.

When assessing penalty, the Hearing Panel noted that it was necessary to take a serious view of the contravention of which Mr. Little was convicted. The circumstances surrounding his acceptance of the gift from LJH could have a detrimental effect upon the investment industry's reputation for financial probity. Mr. Little was a senior member of the industry with a substantial book of business. He should have been giving guidance to others. General deterrence, might have called for

some suspension of approval. The Hearing Panel took into account that Mr. Little was terminated for cause as a result of his conduct and that he has in effect been under suspension for over 14 months; the Hearing Panel did not therefore impose any suspension of approval.

The Hearing Panel determined that the contravention called for the imposition of a fine. They took into account that Mr. Little has no disciplinary record in the investment industry and that his inability to work in the investment industry for 14 months has caused him serious financial loss. A loss far in excess of the fine portion of the penalty suggested by Staff of the IDA. Moreover, he was charged with the \$45,000 DSC fees which had been charged to LJH's account resulting from his liquidation of her securities. The Hearing Panel also took note of several character witnesses that testified on Mr. Little's behalf.

Finally, the Hearing Panel found that in view of Mr. Little's testimony that he was not aware of certain important provisions in TDW's internal policies that he should write and pass the CPH examination.

Kenneth A. Nason
Association Secretary