

THE SECURITIES ACT )  
 )  
Sections 8(1), 19(5) and 148.1(1) )

Order No. 6191  
September 1, 2010

**MARIO DI FONZO**

**WHEREAS:**

(A) On April 19, 2010, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") giving notice of its intention to hold a hearing ("Proceedings") to consider whether it was in the public interest to grant orders under *The Securities Act* ("Act") with respect to Mario Di Fonzo ("DI FONZO");

(B) Staff of the Commission and the respondent entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated August 20, 2010 ("Settlement Agreement"), which proposed settlement of the Proceedings, subject to the approval of the Commission;

(C) The respondent has consented to the issuance of this Order and has waived his rights to a full hearing;

(D) On September 1, 2010, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) The Commission is of the opinion that it is in the public interest to make this order.

**IT IS ORDERED:**

1. **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.
2. **THAT** pursuant to subsection 19(5) of the Act:
  - (a) subsection 19(1) of the Act, with respect to such of the trades referred to in that subsection, does not apply to DI FONZO, and

- (b) subsection 19(2) of the Act, with respect to such securities referred to in that subsection, does not apply to DI FONZO,

for a period of ten (10) years from the date of this order.

**3. THAT** pursuant to subsection 8(1) of the Act a written reprimand be placed on DI FONZO's registration file with the Commission relating to the matters set out in this Settlement Agreement, with a copy of this Settlement Agreement to be attached as Schedule "A" to the reprimand.

**4. THAT** pursuant to subsection 148.1(1) of the Act, DI FONZO pay an administrative penalty of \$6,500, to be paid in two equal instalments each in the amount of \$3,250 as follows:

- (a) first instalment to be paid within 2 days of the date of this Order, and  
(b) second instalment to be paid no later than October 31<sup>st</sup>, 2010.

**5. THAT** DI FONZO pay to the Commission costs in the amount of \$500 to be paid forthwith.

**BY ORDER OF THE COMMISSION**

  
\_\_\_\_\_  
**Director**

**SCHEDULE "A"**

**Settlement Agreement**

**Mario Di Fonzo**

**and**

**The Staff of The Manitoba Securities Commission**

**The Manitoba Securities Commission  
500 – 400 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 4K5**

Ex No.: 3  
Ex. of: Di Fonzo  
Date: Sept 11/10  
Rob Rose Reporting  
415-4544

## SETTLEMENT AGREEMENT

### A. Introduction

- A1. On April 19, 2010, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") naming Mario Di Fonzo ("DI FONZO") as respondent and giving notice of its intention to hold a hearing under *The Securities Act* ("Act") to consider:
1. whether or not it is in the public interest to order, pursuant to subsection 8(1) of the Act, that as to the registration of DI FONZO as a Dealing Representative and/or Branch Manager under the Act, that DI FONZO be reprimanded, terms and conditions on his registration be imposed, and/or his registration be suspended;
  2. whether or not it is in the public interest to order, pursuant to section 19(5) of the Act, that:
    - (a) subsection 19(1) of the Act does not, with respect to such of the trades referred to in that section, apply to DI FONZO;
    - (b) subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to DI FONZO;
  3. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of the Act, that DI FONZO pay an administrative penalty;
  4. whether or not it is in the public interest to order that the respondent pay the costs of and incidental to the investigation and hearing;
  5. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.
- A2. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the NOH and SOA dated April 19, 2010 ("Proceedings"). A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").
- A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

**B. Statement of Facts**

- B1. DI FONZO was first registered under the Act as a salesman on April 21, 1993 and has since been registered under the Act almost continuously with various employing sponsors as follows:
- (a) from April 21, 1993 to February 25, 1994 as a salesperson with Phoenix (Mutual Fund Distributors) Ltd. ("PHOENIX");
  - (b) from February 26, 1994 to April 11, 1997 as an Officer & Director (Trading) with PHOENIX;
  - (c) from April 11, 1997 to August 11, 2004 as an Officer & Director (Trading) with Prime Financial Securities Inc. ("PRIME FINANCIAL");
  - (d) from August 18, 2004 to August 19, 2004 as a salesperson, from August 19, 2004 to September 28, 2009 as a Branch Manager, and from September 28, 2009 to present as a Dealing Representative, and approved as a Branch Manager (MFDA members only), with IPC Investment Corporation ("IPC").
- B2. On December 30, 1992, PHOENIX was incorporated under the laws of Manitoba. On March 1, 1994, DI FONZO became a director and officer of PHOENIX. On January 20, 1997, PHOENIX changed its name to PRIME FINANCIAL.
- B3. At all material times, DI FONZO was an officer (President and Secretary) and director of PRIME FINANCIAL.
- B4. At all material times while DI FONZO was registered with PRIME FINANCIAL, PRIME FINANCIAL was registered under the Act as a Broker-Dealer restricted to mutual funds until December 31, 2002 at which time its category of registration became known as Mutual Fund Dealer and, in addition to mutual funds, for portions of the time, its authorized trading officials and registered sales personnel were registered to trade in Labour Sponsored Investment Funds, Bonds, and/or Guaranteed Investment Certificates.
- B5. At all material times while DI FONZO was registered with IPC up to September 28, 2009, IPC was registered under the Act as Mutual Fund Dealer and, in addition to mutual funds, its authorized trading officials and registered sales personnel were registered to trade in Labour Sponsored Investment Funds, Bonds, and Guaranteed Investment Certificates. From September 28, 2009 to present, IPC was and is registered under the Act as a Mutual Fund Dealer and pursuant to National Instrument 31-103 its individuals registered as dealing representatives may act as a dealer or an underwriter in respect of a security of which IPC as the individual's sponsoring firm is permitted to trade or underwrite, namely a mutual fund or an investment fund that is a labour-sponsored investment fund corporation or labour-sponsored venture capital corporation under legislation of a

jurisdiction of Canada.

- B6. At all material times the registration of DI FONZO under the Act did not cover trading in and the distribution of Promissory Notes or Debentures as described below.

**Other corporate entities –**

- B7. On January 7, 1992, 2821851 Manitoba Ltd. was incorporated under the laws of Manitoba.
- B8. On November 17, 1998, 2821851 Manitoba Ltd. changed its name to Westcan Printing Group Ltd. (“WESTCAN PRINTING”).
- B9. At all material times, DI FONZO was an officer (Chairman and Secretary) and a director of WESTCAN PRINTING. DI FONZO HOLDINGS INC. was a shareholder in WESTCAN PRINTING.
- B10. DI FONZO HOLDINGS INC. was a company incorporated under the laws of Manitoba on February 23, 1998. DI FONZO was its first director and incorporator and, thereafter, a director, officer (President and Secretary), and shareholder.
- B11. In 2001, DI FONZO approached mutual fund clients of his and recommended they redeem mutual funds to purchase WESTCAN PRINTING Promissory Notes, which they did. These clients were Mr. and Mrs. Pepe and Ms. Panagia. These matters are further particularized below.
- B12. In 2002, DI FONZO approached mutual fund clients of his and recommended they redeem mutual funds and, in one case, borrow money, in order to purchase WESTCAN PRINTING Debentures, which they did. These clients were Ms. Panagia, Ms. La Carrubba, Mr. Houldsworth, and Ms. Lonardelli and Mr. Buccini. These matters are further particularized below.

**Mr. and Mrs. Pepe -**

- B13. At all material times, Mr. and Mrs. Pepe were mutual fund clients of DI FONZO.
- B14. In late 2001, Mr. and Mrs. Pepe were 52 and 49 years of age, respectively, with limited investment knowledge.
- B15. At this time, DI FONZO introduced them to an investment opportunity in his company, with a 10% return. DI FONZO described how the company had equipment, contracts, and was making money.
- B16. Mr. and Mrs. Pepe decided to invest in DI FONZO’s company.

- B17. In October of 2001, mutual funds invested through DI FONZO were redeemed in the amount of \$100,000 net. Once redeemed, the proceeds were turned over to DI FONZO to be invested by Mr. and Mrs. Pepe in WESTCAN PRINTING.
- B18. Due to the redemptions, additional costs including deferred sales charges and capital gains resulted.
- B19. The monies invested in WESTCAN PRINTING were monies Mr. and Mrs. Pepe had intended to use in the future for retirement. The amount of money invested constituted approximately 20% of the net worth of Mr. and Mrs. Pepe combined.
- B20. Mr. and Mrs. Pepe received a Promissory Note from WESTCAN PRINTING in the amount of \$100,000 dated October 26, 2001 due on November 1, 2003 paying interest at the rate of 10% per annum payable monthly.

**Ms. Panagia -**

- B21. Prior to her husband's death in November of 2000, Ms. Panagia and her late husband had been clients of DI FONZO's for a number of years.
- B22. Shortly before his death, her husband was very concerned for the financial well being of his wife Ms. Panagia and their two sons, due to his own poor health. Ms. Panagia and her husband met with DI FONZO in this regard. DI FONZO reassured them not to worry. He would take care of the finances and he advised there was good insurance. As a result of their meeting, Ms. Panagia placed her complete trust in DI FONZO.
- B23. In November of 2000, Ms. Panagia's husband died. Ms. Panagia remained a client of DI FONZO's and turned over the insurance proceeds in the range of \$350,000 to him to invest on her behalf.
- B24. By the latter part of 2001, Ms. Panagia was 58 years of age, widowed, and relied upon DI FONZO for investment advice. Her investment knowledge was limited as she had relied upon her husband and then after his death DI FONZO.
- B25. At this time, DI FONZO presented Ms. Panagia with an investment opportunity.
- B26. DI FONZO described the opportunity as being a good investment in a private company, with interest at the rate of 10%.
- B27. Ms. Panagia followed his recommendation.
- B28. In October of 2001, mutual funds were redeemed such that proceeds of \$100,000 were obtained and invested in a Promissory Note in WESTCAN PRINTING.

- B29. Ms. Panagia obtained a Promissory Note from WESTCAN PRINTING in the amount of \$100,000 dated October 30, 2001 bearing interest at a rate of 10% per annum with a maturity date of November 1, 2003 ("ORIGINAL 2001 PN").
- B30. Approximately one year later, in 2002, again at the introduction and recommendation of DI FONZO, further mutual funds of Ms. Panagia were redeemed and invested in a Debenture with WESTCAN PRINTING. As represented by DI FONZO, the total amount of monies required for the Debenture was \$100,000. To achieve this amount, \$50,000 was obtained by redeeming mutual funds of Ms. Panagia and the remaining \$50,000 was achieved by applying \$50,000 from the ORIGINAL 2001 PN to this Debenture investment.
- B31. Once again, Ms. Panagia followed the advice of DI FONZO. At the time, Ms. Panagia did not fully appreciate she was investing in a debenture or what it was.
- B32. In order to take \$50,000 from the ORIGINAL 2001 PN and apply it to the new 2002 Debenture investment, in or about September or October of 2002, the ORIGINAL 2001 PN remained in place, but at the reduced principal amount of \$50,000. Later, at the expiration of its term in November of 2003, the ORIGINAL 2001 PN was renewed for a further two years to November 1, 2005, at an interest rate of 7.5%.
- B33. Ms. Panagia received a Debenture in the amount of \$100,000 from WESTCAN PRINTING dated September 30, 2002.
- B34. In conjunction with investing in WESTCAN PRINTING, Ms. Panagia had signed documents as presented to her by DI FONZO.
- B35. Therefore, by September of 2002, the total amount of Ms. Panagia's monies invested in WESTCAN PRINTING as a result of DI FONZO's introduction, advice, recommendation, handling of funds, and preparation of paperwork was \$150,000.
- B36. In addition to the \$150,000, additional deductions or charges totaling approximately \$8,000 were incurred in the mutual fund account of Ms. Panagia as a result of the redemptions.
- B37. Ultimately, Ms. Panagia also experienced tax implications, associated with the investments in WESTCAN PRINTING, which were unexpected by her.

**Ms. La Carrubba -**

- B38. At all material times, Ms. La Carrubba was a mutual fund client of DI FONZO.



- B39. In the latter part of 2002, Ms. La Carrubba was 81 years of age, widowed, understood verbal English somewhat, had no to limited investment knowledge at best, and a very low tolerance for risk. Ms. La Carrubba had been investing her monies for the purpose of establishing an inheritance for her children.
- B40. Ms. La Carrubba proceeded with investing in WESTCAN PRINTING through DI FONZO.
- B41. In September of 2002, mutual funds of Ms. La Carrubba which had been invested through DI FONZO were redeemed in the amount of \$100,000 net. The proceeds were forwarded for investing in WESTCAN PRINTING. The original source of these funds had been from the sale of Ms. La Carrubba's former home in which she resided prior to coming to Canada and living with relatives.
- B42. Ms. La Carrubba received a Debenture from WESTCAN PRINTING in the amount of \$100,000 in September of 2002.
- B43. The amount of money invested in the Debenture constituted approximately one half of Ms. La Carrubba's net worth.
- B44. Additional costs were incurred related to the redemptions, being deferred sales charges in excess of \$3,500.
- B45. Ms. La Carrubba died in 2005.

**Mr. Houldsworth -**

- B46. At all material times, Mr. Houldsworth was a mutual fund client of DI FONZO.
- B47. In 2002, Mr. Houldsworth was employed with a young family to support. His wife was a stay-at-home mom. His investment knowledge was fair and his tolerance for risk was moderate.
- B48. At this time, DI FONZO introduced Mr. Houldsworth to an investment opportunity in a printing company.
- B49. DI FONZO described how he himself was investing money in the company, how the company was a good company with growth, and how the return on the investment to Mr. Houldsworth would be 9%. DI FONZO portrayed the risk of the investment as low, as Mr. Houldsworth would be second in line after the banks and before DI FONZO himself in being repaid.
- B50. The investment being proposed by DI FONZO was a \$100,000 Debenture in WESTCAN PRINTING.
- B51. DI FONZO recommended that Mr. Houldsworth borrow the money, using his home as collateral. DI FONZO referred Mr. Houldsworth to a contact at a

financial institution. Mr. Houldsworth followed the advice of DI FONZO and met with the representative of the financial institution.

- B52. Subsequently, the home of Mr. Houldsworth was assessed at less than the \$100,000 needed to invest in the Debenture.
- B53. DI FONZO then recommended to Mr. Houldsworth he redeem mutual funds, held through DI FONZO, to make up the difference between the amount that could be borrowed and the \$100,000 needed to invest. Mr. Houldsworth again followed the advice of DI FONZO.
- B54. In September of 2002, mutual funds in the net amount of \$7,000 were redeemed from the joint account of Mr. Houldsworth and his wife at the recommendation of and with the assistance of DI FONZO.
- B55. In September of 2002, a line of credit was obtained by Mr. Houldsworth in the amount of \$93,750, secured by a mortgage against his home, in order to invest in the Debenture.
- B56. In September of 2002, Mr. Houldsworth invested \$100,000 in WESTCAN PRINTING and received a Debenture.

**Ms. Lonardelli –**

- B57. At all material times, Ms. Lonardelli and Mr. Buccini were mutual fund clients of DI FONZO. Ms. Lonardelli and Mr. Buccini were married in 1997. Before her marriage to Mr. Buccini, Ms. Lonardelli had been widowed and raised four children while employed as a cook.
- B58. In September of 2002, Ms. Lonardelli was 69 years of age, retired, had fair to average investment knowledge and a low tolerance for risk. Mr. Buccini was also 69 years of age and retired.
- B59. In or about August of 2002, approximately \$50,000 worth of mutual funds from each of Ms. Lonardelli and Mr. Buccini, said funds having previously been invested through DI FONZO, were redeemed. From the redemption proceeds, \$100,000 was invested in WESTCAN PRINTING through DI FONZO. In return, in or about September of 2002, a \$100,000 Debenture from WESTCAN PRINTING was acquired, in the sole name of Ms. Lonardelli.
- B60. Ms. Lonardelli died in May of 2004. Mr. Buccini died in January of 2005.

**General –**

- B61. In respect of the Promissory Notes and the Debentures, no filings had been made with the Commission for any exemption nor had any exemption order been granted, except that, as to the Debentures, on September 27, 2002 four Form 8's dated September 18, 2002 were filed with the Commission.

- B62. At the time the Promissory Notes were issued in 2001 and the Debentures were issued in 2002, WESTCAN PRINTING was in serious need of funds.
- B63. A Trust Deed Securing Convertible Debentures entered into by WESTCAN PRINTING and DI FONZO HOLDINGS INC. ("TRUST DEED") applied to the Debentures issued in 2002.
- B64. Pursuant to the TRUST DEED, each Debenture had a five year term repayable on September 30, 2007, subject to a right of renewal for an additional five years, and bore interest on the aggregate principal sum outstanding calculated and paid annually in arrears at the rate of 9% per annum to be paid on the anniversary date of each and every year during the term.
- B65. Pursuant to the TRUST DEED, DI FONZO HOLDINGS INC. was named as the trustee.
- B66. DIFONZO HOLDINGS INC. remained trustee until on or about February of 2005.
- B67. In February of 2005, in order to facilitate a share purchase of WESTCAN PRINTING by another printing company, WESTCAN PRINTING was amalgamated with its shareholders DIFONZO HOLDINGS LTD. and ASHLEY HOLDINGS LTD. and a new trustee was appointed.
- B68. The sale of WESTCAN PRINTING proceeded and the company continued on under the same name of Westcan Printing Group Ltd.
- B69. Some time after the sale of WESTCAN PRINTING in 2005, the principal amounts of the Promissory Notes and of the Debentures were paid back in 2006 and 2007.
- B70. In 2008, Westcan Printing Group Ltd. was dissolved.

### **C. Acknowledgements**

- C1. DI FONZO acknowledges that he:
- (a) traded in securities of WESTCAN PRINTING, being Promissory Notes, without registration contrary to section 6 of the Act and outside the scope of his registration;
  - (b) traded in securities of WESTCAN PRINTING, being Promissory Notes, without prospectus contrary to section 37 of the Act and outside the scope of his registration;

- (c) traded in securities of WESTCAN PRINTING, being Debentures, outside the scope of his registration;
- (d) failed to avoid personal financial dealings with his clients;
- (e) recommended investments and utilized investment strategies in the accounts of his clients that, in all of the circumstances, including investment knowledge, experience, and objectives, age, financial circumstances, and tolerance for risk, were unsuitable;

and therefore the terms of settlement are in the public interest.

C2. Staff acknowledges the cooperation of DI FONZO during the investigation.

#### **D. Terms of Settlement**

D1. In order to effect a resolution of the issues raised by the Proceedings, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsections 8(1), 19(5) and 148.1(1) of the Act that:

- (a) the Settlement Agreement be approved;
- (b) pursuant to subsection 19(5) of the Act:
  - (i) subsection 19(1) of the Act, with respect to such of the trades referred to in that subsection, does not apply to DI FONZO, and
  - (ii) subsection 19(2) of the Act, with respect to such securities referred to in that subsection, does not apply to DI FONZO,for a period of ten (10) years from the date of the order;
- (c) a written reprimand be placed on DI FONZO's registration file with the Commission relating to the matters set out in this Settlement Agreement, with a copy of this Settlement Agreement to be attached as Schedule "A" to the reprimand;
- (d) pursuant to subsection 148.1(1) of the Act, DI FONZO pay an administrative penalty of \$6,500, to be paid in two equal instalments each in the amount of \$3,250 as follows:
  - (i) first instalment to be paid within 2 days of the date of the Order, and
  - (ii) second instalment to be paid no later than October 31<sup>st</sup>, 2010;

- (e) DI FONZO pay to the Commission costs in the amount of \$500 to be paid forthwith upon approval of the Settlement Agreement.

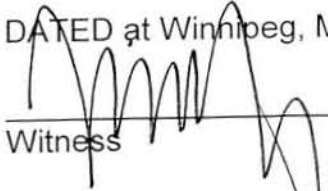
D2. In arriving at the terms of settlement, Staff have taken into consideration that these Proceedings are the first time enforcement action has been taken against DI FONZO during his history as a registrant under the Act, that since the investigation leading to these Proceedings DI FONZO has continued to be a registrant under the Act and no other enforcement proceedings have been initiated by Staff regarding his conduct, that Staff have received information that the investors referred to hereinabove were paid back as to principal and interest on the Promissory Notes and Debentures, as applicable, said repayment predominantly being a result of, and occurring after the sale of, WESTCAN PRINTING, and that Staff have received information that DI FONZO is currently of ill health requiring medical attention due to cancer.


#### **E. Procedure for Approval of Settlement**

- E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the NOH.
- E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and the respondent hereby waives his right to a full hearing and appeal of this matter.
- E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the NOH unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.
- E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
- E5. The respondent agrees that he will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

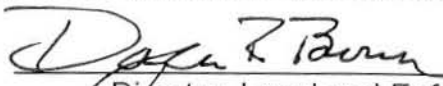
E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this 10<sup>th</sup> day of August, 2010.

  
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Witness

  
\_\_\_\_\_  
Mario Di Fonzo

DATED at Winnipeg, Manitoba, this 20<sup>th</sup> day of August, 2010.

Staff of the Manitoba Securities Commission  
per:   
\_\_\_\_\_  
Director, Legal and Enforcement