



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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IN THE MATTER OF MUCHOKI FUNGAI SIMBA
(also previously known as Henderson MacDonald Alexander Butcher)

AMENDED STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1
of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

Staff of the Enforcement Branch of the Ontario Securities Commission (“**Enforcement Staff**”) request that the Commission make the following orders:

1. that trading in any securities or derivatives by Muchoki Fungai Simba, also previously known as Henderson MacDonald Alexander Butcher (the “**Respondent**”), cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the “**Act**”);
2. that the acquisition of any securities by the Respondent is prohibited permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
3. that any exemptions contained in Ontario securities law do not apply to the Respondent permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
4. that the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

5. that the Respondent be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
6. that the Respondent pay an administrative penalty of not more than \$1 million for each failure by the Respondent to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
7. that the Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
8. that the Respondent pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
9. such other order as the Commission considers appropriate in the public interest.

B. FACTS

Enforcement Staff make the following allegations of fact:

(a) Overview

1. This proceeding involves a former registrant who engaged in unregistered trading and advising in securities in the account of a retired person.
2. Between January 6, 2014 and March 16, 2015 (the “**Material Time**”), the Respondent purchased and sold securities in the Locked-in Retirement Account (“**LIRA Account**”) of H.B. at Scotia iTRADE. The Respondent entered over 440 buy/sell orders in the LIRA Account during the Material Time.
3. During the Material Time, H.B. relied on the Respondent to make and execute all investment decisions relating to the funds in his LIRA Account. Pursuant to a verbal agreement between the Respondent and H.B., the Respondent had unfettered access to and complete discretionary trading authority over H.B.’s LIRA Account.

4. The Respondent's activities during the Material Time resulted in a total loss of \$56,009.26 in H.B.'s LIRA Account. To date, the Respondent has paid H.B. \$5,000.00 as compensation for his losses.

5. In the course of his conduct, the Respondent failed to comply with the registration requirements of Ontario securities law and, in doing so, breached a cornerstone of the regulatory framework of the Act. The registration requirements serve important gate-keeping and investor protection functions by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading and advising in securities.

(b) The Respondent

6. The Respondent is, and was during the Material Time, a resident of Ontario.

7. During the Material Time, the Respondent was not registered with the Commission in any capacity.

8. From 1998 to November 2009, the Respondent was a mutual fund and insurance salesperson with Canfin Magellan Investments Inc. ("**Canfin**"). From about 1999 to 2003, H.B. was a client of the Respondent at Canfin.

9. On February 20, 2012, the Mutual Fund Dealers Association (the "**MFDA**") issued an order permanently prohibiting the Respondent from conducting securities related business in any capacity while in the employ of or associated with any member of the MFDA.

10. The Respondent was not registered with the Commission in any capacity during the Material Time.

(c) Conduct at Issue

11. In the fall of 2013, H.B. contacted the Respondent to invest his retirement funds from the Pension Plan of the Canadian YMCA. At the time, H.B. was not aware that the Respondent was no longer employed by Canfin or had been sanctioned by the MFDA.

12. The Respondent agreed to invest H.B.'s retirement funds. H.B. agreed to compensate the Respondent based on the performance of the investments the Respondent would make on his behalf, although the Respondent was never paid.

13. In November 2013, the Respondent helped H.B. open a LIRA Account at Scotia iTRADE. In the same month, the Respondent helped H.B. transfer his retirement funds, totalling \$94,760.84, to his LIRA Account.

14. At around the same time, the Respondent also helped H.B. open a tax-free savings account ("**TFSA Account**") at Scotia iTRADE. Although H.B. requested that the Respondent transfer \$20,000 from the retirement funds to the TFSA Account, the TFSA Account was never used or funded. However, more than \$20,000 in cash was maintained in H.B.'s LIRA Account until December 2014.

15. During the Material Time, the Respondent had unfettered access to H.B.'s LIRA Account through the online platform at Scotia iTRADE. Using the online platform, the Respondent entered over 440 buy/sell orders in H.B.'s LIRA Account. Approximately 230 buy/sell orders were made with respect to options while the remainder related to shares of publicly listed companies.

16. No other person, including H.B., purchased or sold securities through the LIRA Account during the Material Time.

17. During the Material Time, the Respondent had complete discretionary trading authority over H.B.'s LIRA Account. H.B. had little role, if any, in the investment decision-making process. H.B. relied on the Respondent to make and execute all investment decisions relating to his LIRA Account. The Respondent made the ultimate decision regarding all investments in H.B.'s LIRA Account.

18. On March 4, 2015, when contacted by H.B. about withdrawing \$20,000 from the TFSA Account, the Respondent stated that he pressed a wrong button and that all the money just disappeared. In fact, the LIRA Account did not have sufficient funds to satisfy the proposed withdrawal due to the Respondent's trading activities. H.B. subsequently learned that the Respondent had left Canfin and was sanctioned by the MFDA.

19. The Respondent's conduct during the Material Time led to a total loss of \$56,009.26 in H.B.'s LIRA Account.

20. During the Material Time, the Respondent was not registered with the Commission in any capacity.

21. To date, the Respondent has paid H.B. a total of \$5,000.00 as compensation for the losses he incurred in H.B.'s LIRA Account.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest:

1. the Respondent engaged in, or held himself out as engaging in, the business of trading in securities without being registered to do so, and where no exemption to the registration requirement of Ontario securities law was available, contrary to subsection 25(1) of the Act; and
2. the Respondent engaged in, or held himself out as engaging in, the business of advising with respect to investing in, buying or selling securities without being registered to do so, and where no exemption to the registration requirement of Ontario securities law was available, contrary to subsection 25(3) of the Act.

Enforcement Staff reserve the right to make such other allegation as Enforcement Staff may advise and the Commission may permit.

DATED at Toronto, March 29, 2018.

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