

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 97 OF THE SECURITIES
SERVICES ACT, 36 OF 2004**

CASE NO: **6/2008**

In the matter of:

	THE DIRECTORATE OF MARKET ABUSE	The Referring Party
	and	
10	MEYER, BRENDYN	First Respondent
	MARAIS, DEAN	Second Respondent
	WELLCO HEALTH LIMITED	Third Respondent

DETERMINATION OF THE ENFORCEMENT COMMITTEE

*Before The Hon Mr Justice C F Eloff, E A Moolla, R G Cottrell, Ms
C Dlepu, Ms C Maynard, A Mazwai and H M S Msimang*

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The Hon Mr Justice C F Eloff: The two respondents are charged by the Directorate of Market Abuse, care of the Financial Services Board, with making false and misleading statements concerning the affairs of the company cited as third respondent but whose position, for reasons presently to be mentioned, need not be considered at this stage.

The third respondent is a public listed company of which they were the Financial Director and the Chief Executive Officer respectively. Their making of misleading statements is alleged to amount to a contravention

of Section 76(i), read with 76(ii) of the Security Services Act 36 of 2004. It appears to be common cause that the two respondents were responsible for the publication in March 2006 of the provisional results of the company, Welco Health Limited of revenue of R18 003 200.00. Included in that figure was R6 148 000.00 for which the third respondent sold medicinal products to two distributors, but at the time of the publication of the results R3 786 430.00 of the goods were still in the production process and on the application of generally accepted accountancy standards they should not have been included.

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I hasten to add that the position of Welco Health Limited was considered and it was decided by the DMA that the proceedings against it would be withdrawn. The first and second respondents made admissions in which they admitted the main components of the charge. They set forth mitigating factors and tendered a penalty of R100 000.00 each.

The committee has given thought to the question of the extent of the culpability of the first and second respondents. They said that when they made the publication they were under the impression that that would
20 accord with normal accountancy practice. While one may have misgivings about the veracity of the statement, the affidavit tendered by the first and second respondents and which was accepted by the DMA, was on the basis the first and second respondents *bona fide* thought that that was an appropriate method of preparing the financial statements.

On that sublimated basis this committee endorses the imposition of the penalty. The order made is that it's accepted that the first and second respondents were guilty as charged and a penalty, as far as the first respondent is concerned, of a penalty of R100 000.00 and as regards the second respondent a penalty of R100 000.00. These amounts are payable by the 31 December 2008 and no order is made as regards costs.

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CHAIRPERSON**27 November 2008**