

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

CASE NO: **18/2014**

In the matter of:

**THE DIRECTORATE OF MARKET ABUSE**

Referring Party

and

**DAVID MARTIN SWEENEY**

Respondent

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**ORDER**


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WITH DUE CONSIDERATION to the documents placed before this Panel, including the admissions made by the respondent, the Panel finds that the respondent has contravened section 75(1) of the Securities Services Act, No 36 of 2004. We hereby impose a penalty of R1 million inclusive of costs on the respondent in terms of section 103(1)(a) of the Securities Services Act.

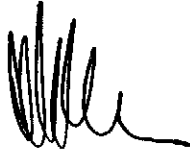
Signed at **PRETORIA** on the 2<sup>nd</sup> day of **October 2014**.

  
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**C F Eloff**

**Chairperson of the Enforcement Committee**



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**H M S/MSimang**



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**H K Dlepu**

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**ADMISSIONS BY THE RESPONDENT IN TERMS OF SECTION 103(1)  
OF THE SECURITIES SERVICES ACT, 36 OF 2004**

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1. I, DAVID MARTIN SWEENEY (identity number 7201145206089), do hereby make oath and confirm that the contents of this affidavit are true and correct and fall within my personal knowledge.
  
2. I confirm that I have read and understood the particulars of contravention. I hereby make the following admissions in terms of section 103(1) of the Securities Services Act, No.36 of 2004 (Act) [as the Act stood prior to its amendment] and state the following facts:
  - 2.1. At all relevant times, I was employed as a senior registered securities trader (trader) by Watermark Securities (Pty) Ltd (Watermark) in respect of equities and derivative instruments. At all relevant times Watermark was an "authorised user" that was authorized to perform trading and investment services as well as acting as a non-clearing derivatives and products member of the JSE Ltd (JSE). The JSE is licensed to operate an exchange.

- 2.2. My duties as a trader included entering orders on the central order book of the JSE equities trading system on behalf of discretionary and non-discretionary clients who wished to trade on the JSE.
- 2.3. As a trader I was obliged in terms of the JSE rules to give consideration to the circumstances of orders placed by clients before entering such orders in the JSE equities trading system and was responsible for the integrity of such orders.
- 2.4. In terms of the JSE rules I was also obliged not to engage in manipulative or deceptive trading practices by placing orders in the JSE equities trading system to buy or sell equity securities which, to my knowledge would, if executed, create a false or deceptive appearance of trading activity or create an artificial price for such equity security.
- 2.5. African Dawn Capital Limited (Afdawn) is a public company whose shares are listed on the Alternative Exchange (ALTX) of the JSE. ALTX is a regulated market.
- 2.6. At all relevant times I invested in Afdawn shares, SSF's and later CFD's for my own personal trading account pursuant to a long-term trading strategy based on third party research and public pronouncements made by Afdawn.
- 2.7. At all relevant times a number of clients at Watermark had also invested in Afdawn shares, SSF's and CFD's.
- 2.8. I executed the purchase of the Afdawn shares that resulted in the trades referred to in Annexure "A" of the particulars of contravention (hereafter referred to as the shares"). In each instance the instruction to buy the shares was given by a portfolio manager at Watermark.

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- 2.9. These shares were purchased for the account of the portfolio manager and/or for the account of clients he managed.
- 2.10. In respect of each trade referred to in Annexure "A" of the particulars of contravention, I contravened Section 75(1)(a) read with section 75(3)(d) of the Act in that:
- 2.10.1. I approved and executed the entry of the bid during the closing auction period which was near the close of market. The bid was successfully matched at the end of the closing auction process. The bid caused the Afdawn share price to close at a price that was higher than it would have closed for that particular day.
- 2.10.2. I foresaw the possibility that the manner in which I approved and entered the bid to purchase the shares could constitute an improper and manipulative trading practice and once executed could cause the closing price of the Afdawn share to change to a higher price thereby creating a false or deceptive appearance of the trading activity in connection with Afdawn share and creating an artificial price for the Afdawn share.
- 2.10.3. I nevertheless acted recklessly and reconciled myself to this possibility and entered the bid to purchase the aforementioned shares which resulted in the use of an improper and manipulative trading practice, which practice created a false and deceptive appearance of the trading activity and created an artificial price in connection with the Afdawn share.
- 2.11. I executed the purchase of the Afdawn shares referred to in Annexure "B" of the particulars of contravention with regard to

orders placed for and on behalf of the accounts mentioned in column 6 of Annexure B held at Watermark.

2.12. In respect of each trade referred to in Annexure "B" of the particulars of contravention, I admit that I contravened Section 75(1)(a) read with section 75(3)(d) of the Act in that:

2.12.1. I entered and executed a bid during the closing auction call phase being near the close of market, the primary purpose of which was to cause the closing price of the Afdawn share to change to a higher price or to maintain the closing share price.

2.12.2. This bid was successfully matched at the end of the closing auction process. This bid caused the Afdawn share price to close at a price that was higher than it would have closed for that particular day.

2.12.3. I knew that the manner in which I entered and executed the bid to purchase the shares constituted an improper and manipulative trading practice and once executed would cause the closing price of the Afdawn share price to change to a higher price thereby creating a false and deceptive appearance of the trading activity in connection with the Afdawn share and creating an artificial price for the Afdawn share.

### 3. MITIGATING FACTORS

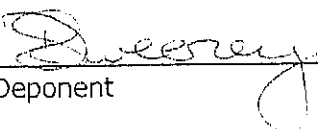
3.1. I am truly remorseful for the manner in which I purchased the aforesaid shares and the artificial effect these transactions had on the Afdawn share price.

- 3.2. I have not in the past been found guilty of contravening any provision of the Act.
- 3.3. I have suffered considerable personal, financial and reputational loss as a result of my investment in African Dawn shares.
- 3.4. I have suffered considerable emotional and mental stress over the past four and a half years, deeply regretting my actions and the consequential suffering on my children and immediate family.
- 3.5. I am under significant stress regarding the threat of being prevented from retaining my current employment and hence not being able to support my children.
- 3.6. I have co-operated to the fullest extent during the enforcement process.
- 3.7. At my instance I personally implemented a conflict of interest and reporting measures for future trades at Watermark Securities after 2008.
- 3.8. The considerable financial stress arising from the losses I incurred have placed stress on my marriage.
- 3.9. I had to liquidate all of my other investments and take out an additional bond on my residential property in order to settle my Afdawn obligations and fund my legal bills and other bills.
- 3.10. My income has declined significantly and my career prospects have been severely impacted with potential employers terminating discussions after the disclosure of the enforcement process.

3.11. At no time during the period in question did I sell the shares in question. In fact I sustained a substantial loss in respect my investment in Afdawn.

#### 4. PENALTY


4.1. I tender to pay a penalty of R1 000 000 (one million rands).

  
Deponent

I certify that the deponent acknowledged to me that he knows and understands the content of this declaration and that he has no objection to taking this declaration, that he has no objection to taking this prescribed oath and considers it to be binding on his conscience.

Thus signed and sworn before me at  
SANDTON

on this 18 day of SEPTEMBER 2014.

  
Commissioner of Oaths

**NANDINI KANAYALAL NAGIN**  
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Parkmore, 2196  
Commissioner of Oaths - Ex Officio  
Practising Attorney R.S.A.