



World Bank Administrative Tribunal

2009

No. 389

**AJ,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**AJ,
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Jan Paulsson, President, and Judges Francisco Orrego Vicuña, Sarah Christie, and Florentino P. Feliciano. The Application was received on 14 August 2007. The Applicant's request for anonymity was granted on 12 September 2007.

2. The Bank permanently barred the Applicant from future Bank employment and from access to Bank premises after its internal investigations determined that the Applicant had engaged in misconduct. This is the challenged decision.

FACTUAL BACKGROUND

3. The Applicant joined the Bank in 1988 and retired in October 2005. At the time of his retirement he was a senior manager.

4. On 29 September 2005 the Applicant was served by the Bank's Department of Institutional Integrity ("INT") with a Notice of Alleged Misconduct pursuant to Staff Rule 8.01. Supplemental Notices of Alleged Misconduct were served on 25 October 2005 and on 20 April 2006. These Notices led to two investigations of the Applicant, resulting in two INT Final Reports of Investigation, dated 6 October 2006 and 22 February 2007.

5. Based on the two Final Reports of Investigation, the Vice President of Human Resources ("HRSVP") issued two decisions dated 8 January 2007 and 17 April 2007

finding that the Applicant had engaged in misconduct and permanently barring him from future Bank employment and from access to Bank premises.

6. The INT Final Report of Investigation dated 6 October 2006 focused on the following two allegations of misconduct:

- a. while serving as [a senior manager of the Bank], [the Applicant] and/or [his] spouse purchased shares of stock in at least three companies which were then current or prospective Bank vendors either doing business with or seeking to do business with [the Applicant's] Unit; some purchases which were made under preferential circumstances; and
- b. [the Applicant] failed to disclose these and other financial interests, willfully misrepresented facts intended to be relied upon in connection with them, and failed to recuse [himself] from decisions regarding the interests involved.

7. INT concluded that the investigative records contained "evidence reasonably sufficient" to support a finding that the Applicant:

- a. engaged in conflicts of interest and violated Bank rules and policies when he purchased stock in [Company A], [Company B], and [Company C] – a Bank vendor subsidiary, the vendor itself, and a prospective Bank vendor, respectively – when both [Company B] and [Company C] had business interest in contracts with [the Applicant's] division.
- b. abused his position at the Bank for his own benefit, engaged in conflicts of interest, and violated Bank rules and policies when he purchased stock in [Company A] and [Company C] under preferential circumstances.
- c. violated Bank rules and policies when he failed to disclose to the Bank his purchases of stock in [Company A], [Company B], and [Company C], and failed to recuse himself from personal involvement in Bank activities directly affecting the financial interests of [Company B] at the same time as he personally owned shares of stock in [Company A] and/or [Company B].
- d. willfully misrepresented facts intended to be relied upon when he falsely told investigators that he had not received income from stock beyond his [home country] holdings.

8. In light of this Final Report of 6 October 2006, HRSVP on 8 January 2007 concluded *inter alia* that:

You purchased shares of stock in companies that had then-current or prospective business interests in your ... Unit. Further, you failed to recuse yourself from personal involvement in Bank activities involving at least one of these business entities – which at the very least creates the impression that you affected their financial interests. These actions constitute a serious conflict of interest and a breach of your obligation under the Principles of Staff Employment to adhere to a high degree of integrity and concern for the interests of the Bank Group and to avoid situations and activities that might reflect adversely on the Bank Group, compromise its operations or lead to real or apparent conflicts of interests. Moreover, there is reasonably sufficient evidence showing that you purchased some of the shares of stock under preferential terms.

Your actions are all the more troubling in light of your position of responsibility and seniority at the Bank. Rather than lead by example and discharge your duties solely with the interest and objectives of the Bank Group in view, you chose to ignore your ethical obligations out of self-interest. The seriousness of your conduct is aggravated by your failure to disclose to the Bank your stock purchases – despite having had an obligation to do so – and by misrepresentations you made to INT during the course of the investigation.

Since you have left the services of the Bank, I have decided pursuant to Staff Rule 8.01, section 4, that the appropriate disciplinary measure is to permanently bar you from future employment within the World Bank Group. In addition, you will be prohibited from access to all World Bank Group facilities, absent exceptional circumstances as decided by the Vice President, Human Resources.

9. The Final Report of 22 February 2007 addressed the following two allegations of misconduct:

- a. beginning in 2002, while serving as [a senior manager of the Bank], [the Applicant] personally intervened and advocated for the [Company X] to serve as a Bank vendor of IT consulting services, and, over the course of at least three years, using [his] position at the Bank [the Applicant] orchestrated a business relationship which improperly favored and enabled [Company X] to become the beneficiary of 32 sole-sourced contracts/purchase orders from [his Unit], totaling \$8.5 million U.S. dollars, thereby conferring a benefit on [himself] and/or another;

- b. [the Applicant] engaged in misconduct by attempting to interfere with an ongoing investigation.

10. INT concluded that there was “evidence reasonably sufficient” to support the finding that the Applicant:

- a. facilitated a joint venture between a friend [Mr. H, a former Bank staff member who worked with the Applicant] and [Company X], a Bank subcontractor and contractor;
- b. improperly promoted this joint venture to Bank departments and Bank contractors;
- c. used his position ... to obtain a waiver of licensing rules to allow [Company X] to become a Bank vendor;
- d. in return for a deliverable of little or no value, arranged for the Bank to pay [Company X] US\$150,000 which was used to fund [Mr. H’s] joint venture;
- e. supervised a department which then awarded [Company X] over the next three years more than US\$4 million through improperly sole-sourced contracts;
- f. knowing it was improper to do so, questioned [Ms. T, a Bank staff member] about the scope and conduct of an ongoing investigation that threatened to concern himself, and urged her to deny their conversation if questioned by INT; and
- g. refused, while serving as a staff member, to cooperate with an investigation under Staff Rule 8.01.

11. In light of this Final Report of 22 February 2007, HRSVP on 17 April 2007 decided that in this respect as well the Applicant had engaged in misconduct and concluded *inter alia* that:

The INT report reveals that while you were ... at the World Bank, (a) you personally intervened and advocated for the [Company X] to serve as a Bank vendor of information technology consulting services, (b) over the course of at least three years, you orchestrated a business relationship between the Bank and [Company X] which favored and enabled [Company X] to become the beneficiary of 32 sole-sourced contracts and/or purchase orders from [your Unit], and (c) you sought to benefit and further a business relationship between [Company X] and a staff member who was formerly in your [Unit] and who continued for some time to

work for you as a short-term consultant. Based on the evidence of record, I have concluded that in doing so, you failed to discharge your duties “solely with the interests and objectives” of the World Bank in view as required by Principle 3 of the World Bank Principles of Staff Employment. This activity was inconsistent with the requirement in Principle 3 that staff “shall not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations.”

Based on my review of the record, I have also concluded that the business interactions you had with your former staff member as well as other persons in the IT community under the circumstances outlined in the report led at the very least to an appearance of conflict of interest which should have been avoided under the requirements of Principle 3, which provides that “[t]he sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as employees of international organizations, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest.”

In addition, I have concluded that your interactions with [Ms. T, a Bank staff member] constitute misconduct. ...

Finally, I have concluded that your refusal to answer investigator’s questions constitutes misconduct. ...

In the case at hand, I conclude that the findings of misconduct I outline above provide a separate, independent basis to impose discipline. Because you have terminated Bank service, the discipline imposed in connection with this matter will be to permanently bar you from future employment within the World Bank Group and to prohibit you from access to all World Bank Group facilities, absent exceptional circumstances as decided by the Vice President, Human Resources.

12. On 14 August 2007, after obtaining the Bank’s consent, the Applicant filed his Application directly with the Tribunal, challenging the two decisions by HRSVP and complaining about the Bank’s alleged failure to protect his confidential personnel information and violation of due process.

13. On 18 September 2007 the Bank raised an objection to the Tribunal’s jurisdiction to hear the Applicant’s claim relating to his confidential personnel information.

14. On 18 March 2008 the Tribunal concluded in its jurisdictional ruling that

in reviewing the HRSVP's decisions of 8 January and 17 April 2007, the Tribunal will examine the alleged breach of the Applicant's confidential personnel information but only in the context of his claims of lack of due process in the relevant investigations.
15. On 9 May 2008 the Tribunal received a letter from the Bank stating that it had discovered certain documents – the Applicant's 2000 financial disclosure form and related materials – that were relevant to the Applicant's investigations. The Bank later requested that the Tribunal allow it to conduct a follow-up investigation to determine whether the original findings of misconduct and sanctions imposed on the Applicant should be modified.
16. The Tribunal granted the Bank's request to conduct a limited follow-up investigation. INT provided a Supplemental Report of Investigation on 24 September 2008. After reviewing this Supplemental Report, HRSVP determined that the Report did not require any changes to the disciplinary sanctions announced in the letters of 8 January 2007 and 17 April 2007. HRSVP determined, however, that the decision of 8 January 2007 should be modified to eliminate the finding that the Applicant's conflict of interest was aggravated by failure to disclose his stock holdings, because it had now become clear that he had in fact disclosed such holdings in a financial disclosure form for the year at issue. In a letter to the Applicant dated 29 September 2008, HRSVP informed the Applicant that:

In my view, the findings contained in the Supplemental Report require modification of one of the determinations made by my predecessor [the former HRSVP] on January 8, 2007 in your misconduct case. As you know, [the former HRSVP] decided that ... you purchased stock in companies that had current or prospective business interests with your [Unit], and that your conduct constituted a conflict of interest. [The former HRSVP] further concluded that your actions were aggravated by failure to disclose investments in these companies on annual financial

disclosure statements filed by senior managers, and by misrepresentations made to INT investigators. ... The Supplemental Report shows, however, based on information that came to light in May 2008, that you filed a financial disclosure statement for the key year at issue. Consequently, I have decided to modify [the former HRSVP's] decision to eliminate the finding that the conflict of interest was aggravated by failure to file the relevant financial disclosure forms. ...

The Supplemental Report does not provide a factual basis to modify any other misconduct findings, however. Nor does it justify dismissal of the disciplinary measures.

17. The Applicant raises three main claims: (i) HRSVP's misconduct decisions are invalid; (ii) the sanctions imposed are disproportionate; and (iii) the Bank violated due process. As remedies he claims: (i) vacation of HRSVP's decisions; (ii) compensation in the amount of two years net salary; and (iii) attorney's costs.

18. The Bank requests that the Tribunal uphold HRSVP's decisions and deny all claims of the Applicant.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

19. The scope of review by the Tribunal in disciplinary cases is now well-established.

In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it "examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed."

It is also well-established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

I. WHETHER THE APPLICANT ENGAGED IN MISCONDUCT

20. HRSVP's disciplinary decisions of 8 January 2007 (as amended on 29 September 2008) and 17 April 2007 were based on his determinations that the Applicant had engaged in misconduct in the following ways:

- purchasing stock in Companies A, B, and C;
- furthering a business relationship between Company X and a Bank staff member, and favoring Company X's selection for sole-source contracts;
- interacting with a staff member regarding the investigation; and
- refusing to answer INT investigators' questions.

Purchasing Stock in Companies A, B, and C

21. The decision of 8 January found misconduct because the Applicant had purchased shares, some under preferential terms, in companies that had "then-current or prospective" dealings with the Applicant's Unit. The factual questions before the Tribunal are: (i) whether the Applicant purchased stock in Companies A, B, and C; (ii) whether he traded in these companies when the companies had actual or prospective business with his Unit; and (iii) whether the Applicant purchased some of the shares on preferential terms. If the answers are affirmative, then the legal question before the Tribunal is whether these facts amount to misconduct.

22. *Findings of fact.* The Applicant's Unit provides information technology services to the Bank. As a very senior manager of the Unit (serving from 1997 to 2005), the Applicant was responsible for management of all matters relating to the Bank's information technology services and infrastructure.

23. Companies A, B, and C provide information technology services. Company A is a subsidiary of Company B. The Chief Operating Officer ("COO") of Company B, Mr. S,

also served as director on the board of Company A. Company B was registered as a vendor to the Bank in 1999 and has been doing business with the Applicant's Unit since then. Company C was also registered as a Bank vendor and actively sought business with the Applicant's Unit.

24. With respect to Company A, the investigative record shows that the Applicant purchased 1100 of its shares on 18 October 1999, 385 shares on 7 and 16 December 1999, and 500 shares on 7 April 2000. He sold the stock intermittently between December 1999 and October 2000, and realized a profit of \$97,442.

25. With respect to Company B, the Applicant bought 1000 shares on 15 May 2001 and sold them on 8 August 2001, suffering a loss of \$1,720.

26. With respect to Company C, the Applicant purchased 300 shares on 19 October 2000 and sold them on 12 July 2002, suffering a loss somewhat in excess of \$4,000.

27. The Applicant's purchase of shares in the above three companies as outlined above is undisputed. Nor is it disputed that the Applicant conducted the above trading while he was a senior manager of the Bank. The record shows that during the trading period (1999-2002), Company A's parent, Company B, was a vendor in the Applicant's Unit. Company C was also registered as Bank vendor seeking business with the Unit.

28. More particularly, Company B was registered as a Bank vendor in 1999 and received its first Bank contract in May 1999 for \$102,280 to provide services to the Applicant's Unit. In July 2000, Company B was awarded its second Bank contract in the amount of \$174,720. Company B continued to provide significant services for the Applicant's Unit through 2001. Over the next few years, Company B received more than \$90 million in Bank contracts. These findings by INT are unchallenged; Company B had

business interests with the Applicant's Unit when he traded stock in Company B's subsidiary Company A in 1999 and 2000, and when he traded stock in Company B in 2001.

29. The record also shows that at the time the Applicant purchased stock in Company C, it was registered as a Bank vendor and was actively seeking Bank contracts to provide IT services. For example, in September 2000, Company C bid on a \$1 million Bank contract to provide IT services to the Applicant's Unit. (Ultimately it lost its bid to Company B.) This aspect of INT's findings is also well-documented; Company C had prospective business interests before the Applicant's Unit when he purchased shares in Company C in October 2000.

30. INT's Final Report of 6 October 2006 concluded that the Applicant purchased the shares preferentially through the "Friends and Family Program" offered by the companies.

31. The Applicant denies buying the shares under preferential conditions. He maintains that he purchased the shares at all times with the advice and guidance of his brokers. At times he made money, and other times he lost. He contends that the Bank has not met its burden of proving that he was in the Friends and Family Program, or that he ever asked to be in such a program.

32. The Bank points to the following evidence, revealed in the INT's Final Report, to demonstrate that the Applicant purchased the shares, particularly from Companies A and C, on preferential terms.

33. First, on 18 October 1999, Company A conducted an initial public offering ("IPO") in the U.S. The IPO shares were offered at \$18 per share. The IPO was oversubscribed, i.e. the request for shares from investors exceeded the number of shares being offered for

sale. The demand was 27 times greater than the supply. Under standard practice in the U.S., the underwriters accordingly reduced the number of shares sought by each investor by a factor of 27.

34. Company A reserved a large number of IPO shares at \$18 per share to persons associated with the company under its Friends and Family Program. Individuals included in the Friends and Family Program were entitled to receive the number of shares specified without the reduction imposed on members of the general public due to oversubscription.

35. The Applicant purchased 1100 shares of Company A on the day of the IPO at \$18 per share. The Bank contends that to buy so many shares as a member of the general public, the Applicant would have been required to subscribe to 27 times as many shares and thus to commit to a much higher initial investment – indeed \$534,600, whereas his typical portfolio investments were for less than \$10,000. The Bank reasons that it is entirely implausible that the Applicant would have ended up with 1100 shares at the IPO price in this manner.

36. Second, the Bank maintains that INT gathered evidence that the Applicant was able to purchase shares of Company A because of connections with two individuals, Mr. S and Mr. G. At the time of Company A's IPO, Mr. S served as the COO of Company B, and as a director on the board of Company A. Mr. G was a manager in the Applicant's Unit. Mr. G knew Mr. S and informed the Applicant of the opportunity to buy stock under preferential terms.

37. Third, the Bank adds that on 19 October 2000, Company C conducted an IPO in the U.S. and also established a Friends and Family Program that gave persons associated with the company reserved access to stock on the date of the IPO at \$41.36 per share. The

Applicant bought 300 shares on the day of the IPO at \$41.36 per share. According to the Bank, it is unlikely that the Applicant purchased these 300 shares at the IPO price via normal subscription in light of the fact that the demand for the shares in the IPO was four times greater than the supply and that meant that he would have had to commit to an investment of nearly \$50,000.

38. The Bank states that INT gathered evidence showing that the Applicant was able to purchase stock in Company C at preferential terms through connections with Mr. G and an employee of Company C. Mr. G told the investigators that he knew Company C's employee in question socially. The employee offered him an opportunity to buy stock during the IPO through the Friends and Family Program. He also told the investigators that he introduced Company C's employee to the Applicant, and informed the Applicant about the IPO opportunity. According to Mr. G, Company C's employee had an interest in providing services to the Applicant's Unit. The employee wanted to meet with the Applicant to explore business opportunities for Company C within the Applicant's Unit.

39. Finally, the Bank observes that the Applicant did not provide any evidence to show that he participated in the IPOs without favorable treatment. If he had obtained shares of Companies A and C solely on an arm's length basis, he would have been able, in the Bank's view, to provide the investigators with an affidavit from his brokers to this effect. He did not do so.

40. The Tribunal considers that there is a high degree of probability that the Applicant did purchase shares from Companies A and C through their Friends and Family Programs. It seems unlikely that he did not know he was included in such a program when he traded the stock. At any rate, as shall be seen below, whether the Applicant bought the shares on

preferential terms is not decisive for the purposes of Principle 3 of the Principles of Staff Employment and Staff Rule 3.01.

41. *Whether the Applicant's actions amount to misconduct.* HRSVP found the Applicant's purchase of shares and his actions in this respect to be inconsistent with his obligations under the Principles of Staff Employment and the Bank rules relating to conflicts of interest.

42. Principle 3.1 of the Principles of Staff Employment (effective at the relevant time) prescribes the general obligations of Bank staff members as follows:

3.1 The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as employees of international organizations, staff members have a special responsibility to avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. Therefore, staff members shall:

- a. discharge their duties solely with the interest and objectives of the Organizations in view...;
- b. respect the international character of their positions and maintain their independence by not accepting any instructions relating to the performance of their duties from any governments, or other entities or persons external to the Organizations Staff members shall not accept in connection with their appointment or service with the Organizations any remuneration, nor any benefit, favor or gift of significant value from any such governments or other entities or persons, nor shall they, while in the service of The World Bank or the IFC, accept any medal, decoration or similar honor for such service. ...
- c. conduct themselves at all times in a manner befitting their status as employees of an international organization. They shall not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations. They shall avoid any action and, in particular, any public pronouncement or personal gainful activity that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status.

43. Staff Rule 3.01 (effective at the relevant time) states:

Disclosure of Financial and Business Interests

8.01 A staff member shall disclose any financial or business interest of himself or of a member of his immediate family that might reasonably reflect unfavorably on or cause embarrassment to the Bank Group, or be in actual or apparent conflict with the staff member's Bank Group duties, and shall abstain from exercising any related responsibility, except as otherwise instructed. Disclosure shall be made promptly and in writing to the staff member's manager. Instruction by the manager to proceed with, modify or abstain from the exercise of responsibility shall be in writing, and copies shall be furnished to the department director and the Committee. If the staff member disagrees with such instruction, the staff member may appeal to the Committee.

Financial Statements of Senior Staff

8.02 Staff members at the level of vice president or above, and such other senior staff members as the President may designate, shall file each January a confidential written statement of financial interests in a form prescribed by the President. These statements shall be filed with and examined by the Senior Vice President and General Counsel of the Bank who may advise the President about them. These statements shall be available for inspection only by the President and the Senior Vice President and General Counsel of the Bank.

44. The Bank Code of Professional Ethics (effective at the relevant time) in the section entitled "Financial Interests" states:

It is vital that the World Bank Group's business activities and its relationships with other organizations, businesses, suppliers, contractors, and the like remain beyond reproach. As a result, we shall disclose any personal business or financial interests – as well as those of our immediate family members – that might reflect unfavorably on, or cause embarrassment to, the World Bank Group or be in actual or apparent conflict with our duties to the World Bank Group. Staff must disclose information when they are an officer, or owner, or when they have a financial interest in any organization doing business with the World Bank Group. If in doubt about disclosing information, consult the Professional Ethics Office.

45. Staff Rule 8.01 (effective at the relevant time) states in relevant parts:

3.01 Disciplinary measures may be imposed whenever there is a finding of misconduct. Misconduct does not require malice or guilty purpose.

Misconduct includes, but is not limited to, the following acts and omissions:

- a. Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment ...;
- b. Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct; failure to perform assigned duties or performance of assigned duties in an improper or reckless manner; failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; undertaking an activity where authority to do so has been denied; failure to exercise adequate control and supervision over the execution of assigned tasks; and use of Bank Group funds or property for improper purposes; retaliation against those who in good faith bring allegations of misconduct to the attention of management or who avail themselves of the Bank's grievance system; willful misrepresentation of facts intended to be relied upon;
- c. Acts or omissions in conflict with the general obligations of staff members set forth in Chapter Three of the Principles of Staff Employment and Rule 3.01, "Outside Activities and Interests";
- d. Misuse of Bank Group funds or other public funds for private gain in connection with Bank activities or employment, or abuse of position in the Bank for personal gain.

46. Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or apparent conflicts; he also had an obligation to avoid situations and activities that might "lead to real or apparent conflicts of interest." Principle 3 obligates staff members to "discharge their duties solely with the interest and objectives of the [Bank] in view." This singleness of purpose should not be compromised by other considerations, such as a staff member's personal interest in a business

relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

47. The essential facts are uncontroversial. The Applicant knew that Company B (Company A's parent company) was a Bank vendor doing business with his Unit. He knew that Company B received its first contract (for \$102,280) in May 1999 and its second (for \$174,720) in July 2000. He also knew the company was actively seeking more business. He nevertheless bought 1000 of its shares in May 2001. He also bought a substantial number of shares in Company B's subsidiary, Company A – 1100 shares in October 1999, 385 shares in December 1999 and 500 shares in April 2000. In addition, although he knew Company C was seeking business with his Unit and had in fact bid on a \$1 million contract to provide IT services to the Unit, he purchased 300 of Company C's shares in October 2000.

48. The Applicant's stock transactions in companies that he knew were doing business with his Unit and actively seeking more business with his Unit violated the letter and spirit of Principle 3 of the Principles of Staff Employment. It does not matter whether he purchased the stock at preferential terms. Such transactions in companies and subsidiaries that had active business interests with his Unit in and of themselves created a conflict, which the Applicant was obligated to avoid.

49. The Applicant argues that he was not involved in the procurement process implicating the companies in question. He states that procurement was at all times a very transparent and public matter under the independent oversight of the General Services Department ("GSD") of the Bank. The Bank answers that the Applicant was responsible

for the overall management of the Bank's IT services and infrastructure. He set the business priorities and strategy that determined whether to hire outside companies or perform functions in-house. For example, the Applicant was a strong proponent of outsourcing certain activities, such as the software development functions that were eventually awarded to Company B, and participated in developing criteria to screen companies with whom the Bank wanted to do business. By virtue of his position, the Bank argues, he was able to influence the procurement decisions in question, even if he did not participate in the nuts and bolts of the bidding process or contract administration.

50. It has not, in the Tribunal's view, been proved that the Applicant in fact tainted the procurement decisions. For the purposes of Principle 3, however, the decisive legal question is whether he placed himself in situations leading to real or apparent conflicts of interest. INT has presented sufficient evidence of the Applicant's violation of Principle 3. It would be unrealistic to accept that the procurement process, the ultimate procurement decisions, and the administration of the contracts involving the companies in question were immune from the Applicant's influence (at least from his indirect supervisory influence). The companies were providing or bidding to provide services to the Unit of which the Applicant was the head and whose work strategy was set by him; he participated in developing criteria to screen the companies; he did not disclose his financial interests in the companies in question to his manager; he did not recuse himself in all Bank matters involving the companies; and he did not put in place any mechanism to exclude himself to avoid any influence. In these circumstances, inevitable doubts and questions remain as to whether the Applicant influenced the Bank's decisions involving the companies. There is

at least an appearance that he may have influenced the Bank's decisions in matters of interest to the companies.

51. Nor can the Applicant assert that his involvement in these companies was limited to trading stock only and that there was a firewall between him and the companies to avoid real or apparent conflicts of interest. The following circumstances show that no firewall in fact existed:

- the Applicant in 2000 met Mr. S (who served as Chief Operating Officer of Company B and as a director on the board of Company A), and developed a social and friendly relationship with him. As noted before, Company B became a Bank vendor in 1999 and was doing business with the Applicant's Unit in 2000; around that time the Applicant was trading stock in Company A, Company B's subsidiary;
- in April 2000 the Applicant actively recommended Company B to the Securities and Futures Commission of Hong Kong for IT services. In an e-mail message to Mr. S, the Applicant wrote: "I took the liberty of recommending your organization given the very positive experience the Bank has had." This happened when he owned stock in Company A, a subsidiary of Company B doing business with his Unit;
- in September 2000, Mr. R (Company B's representative) inquired of the Applicant about the tender of a Bank contract worth over \$1 million and in response to which the Applicant forwarded to him the tender materials. The Applicant held stock in Company B's subsidiary at that time;

- at the end of September 2000, the Applicant met with Mr. R to engage in final discussions before Company B was recommended for the award of the contract; and
- Company C in conjunction with its IPO media campaign held a “closing bell” cocktail party in New York and the Applicant flew to New York to attend this event.

52. The above events, taken together with the fact that he was trading stock in these companies while they were doing business or seeking to do business with his Unit, evidence conflict of interest, or at least its appearance. The Applicant maintains that these were innocent incidents, and that nothing improper happened. This argument misses the point. The Applicant was required to avoid situations that might lead to real or apparent conflicts of interest; he should not have traded in companies that he knew were doing business or seeking business with his Unit, and he should not have involved himself in matters relating to these companies.

53. In his defense the Applicant relies on the fact that HRSVP did not find serious misconduct on his part, such as abuse of Bank position for financial benefit. It is true that HRSVP did not find serious misconduct, notwithstanding that INT concluded that “investigative record contains evidence reasonably sufficient to support a finding that [the Applicant] abused his position at the Bank for his own benefit.” This does not however mean that the Applicant complied with his duties under Principle 3. The broad obligation of Principle 3 cannot be discharged by merely showing *post facto* that HRSVP found no serious misconduct. Principle 3 was designed to prevent staff members from placing

themselves in situations that might impair their judgment or lead to conflict or appearance of conflicts of interest.

54. The Applicant also argues that the Bank did not make clear its policy on conflicts of interest, and that there was no real conflict. These arguments are unavailing. Principle 3, Staff Rule 3.01, and the Bank Code of Professional Ethics are clear. They set out an objective standard of conduct, not a subjective one. Judging by an objective standard, it is evident that the Applicant placed himself in situations that created real or apparent conflicts of interest. His subjective belief is immaterial.

55. The Applicant was a long-serving employee. By virtue of his senior position he was responsible for setting an example of ethical behavior and good corporate governance for all staff. He should have exercised sound judgment where his financial interests and Bank duties intersected. He knew the Bank rules and policy relating to conflicts of interest and disclosure requirements. He testified to that effect during the INT interview. At any rate, ignorance of law is no excuse, and even less so when it is apparent that the Applicant should have consulted his manager and sought guidance from the Ethics Office as indicated by the Code of Professional Ethics. He failed to do so.

56. Finally, the Applicant invokes the Tribunal's judgment in *D*, Decision No. 304 [2003] in his defense. The Applicant states that: "The Tribunal in *D* found that matters were kept separate where the Applicant made a personal loan to an individual doing business with the IFC, and this did not represent a conflict of interest situation as alleged by Respondent."

57. *D*, however, is not a controlling precedent on conflicts of interest. The main issue in *D* was whether the applicant abused his position for financial gain. The applicant in that

case was an investment officer in the International Finance Corporation (“IFC”). As an investment officer, his job was to review IFC loans, negotiate the terms of those loans and supervise their servicing. The applicant worked on two loans that were made to a company in which a Mr. S was principal; the families of the applicant and Mr. S had known each other for many years. While the second loan was outstanding, the applicant made a \$50,000 personal loan to Mr. S. Later, after completing an investigation, the Bank terminated the applicant’s appointment for abusing his position for financial gain. The main issue before the Tribunal was whether the applicant’s conduct amounted to abuse of position for financial gain.

58. It is true that the Tribunal did observe that “there is no evidence of an actual conflict of interest. ... In effect, the parties kept the IFC loan and the personal loan altogether separate and free of any conflict in repayment and collection.” The Tribunal was not, however, required to determine what constitutes real or apparent conflicts of interest in the context of Principle 3 of the Principles of Staff Employment, and in any event found that:

[T]he Tribunal has little doubt that the Applicant committed a serious error in judgment when he made his loan to Mr. S – ten weeks after a loan was granted by the IFC to TBS, in which Mr. S was Managing Director and loan guarantor – at a time when the IFC loan was still subject to repayment, and when the Applicant was still an IFC Investment Officer.

...

The Tribunal therefore finds that the Respondent was justified in identifying the loan to Mr. S as a violation of Staff Rule 8.01, para. 3.01(b): a failure to observe generally applicable norms of prudent professional conduct.

Accordingly, *D* does not assist the Applicant.

59. The Applicant also violated his duty to disclose his financial interests in Companies A, B, and C as embodied in Staff Rule 3.01 (effective at the relevant time). Paragraph 8.01 thereof states:

A staff member shall disclose any financial or business interest of himself or of a member of his immediate family that might reasonably reflect unfavorably on or cause embarrassment to the Bank Group, or be in actual or apparent conflict with the staff member's Bank Group duties, and shall abstain from exercising any related responsibility, except as otherwise instructed. Disclosure shall be made promptly and in writing to the staff member's manager. Instruction by the manager to proceed with, modify or abstain from the exercise of responsibility shall be in writing

60. This Rule required the Applicant to disclose to his manager his ownership of stock in Companies A, B, and C. His investments in these companies created real or apparent conflicts of interest. He was bound to reveal his financial interests in these companies promptly and in writing. Yet he never reported to his manager that he had purchased stock in companies that were doing or seeking to do business in his area of responsibility. He violated Staff Rule 3.01 by failing to reveal his financial interests.

61. The Applicant claims that he discharged his duty by listing his holdings of stock in Companies A and C on his 2000 financial disclosure form. This argument misreads Staff Rule 3.01. Paragraph 8.01 as just quoted imposes on a staff member a duty to disclose in writing to his or her manager any financial interests "that might reasonably reflect unfavorably on or cause embarrassment to the Bank Group, or be in actual or apparent conflict with the staff member's Bank Group duties." The Applicant failed in his duty to disclose his financial interests in a meaningful way.

62. The Tribunal finds that this failure cannot be cured by submitting a yearly disclosure form under paragraph 8.02 of Staff Rule 3.01, which provides:

Staff members at the level of vice president or above, and such other senior staff members as the President may designate, shall file each January a confidential written statement of financial interests in a form prescribed by the President.

63. This is a separate obligation on the Bank's senior managers. A conflict is not excused by mentioning it on a financial disclosure form after the fact. The duty to disclose is a separate requirement, applicable to all staff members. Once a staff member has any financial interests that might reasonably create actual or apparent conflicts of interest, he or she is obligated to reveal that interest to his or her manager. That disclosure has to be made promptly. A staff member is also simultaneously obligated to "abstain from exercising any related responsibility" until he or she is cleared to do so by his or her manager. Compliance with these obligations allows the relevant manager to make an informed decision as to whether an actual or apparent conflict exists, and whether to allow the staff member in question to continue exercising responsibility in the areas of conflict, or how best to handle a possible conflict of interest. The purpose of paragraph 8.01 would be seriously undermined if the Tribunal were to accept that a breach of duty under paragraph 8.01 can be cured by filing a *post facto* yearly financial disclosure form.

64. In sum, the Applicant violated his duty to disclose under Staff Rule 3.01. A violation of this Rule constitutes misconduct under Staff Rule 8.01. HRSVP's censure of the Applicant's purchase of shares in Companies A, B, and C was well founded.

Furthering the Business of Company X

65. HRSVP's decision of 17 April 2007 was based on a finding that the Applicant had engaged in misconduct because: (i) he furthered a business relationship between Company X and a Bank staff member; (ii) he intervened to register Company X as a Bank vendor; and (iii) he promoted a business relationship between the Bank and Company X. The

Tribunal will examine whether the facts support these conclusions and if so whether they legally amount to misconduct.

66. *Furthering a business relationship between Company X and a Bank staff member: findings of fact.* Company X (like Companies A, B, and C) provides IT services. Companies X and B are closely linked. Their management and ownership teams have overlapped and they have collaborated on Bank business contracts and subcontracts. The founder of Company X, Mr. R, served as Company B's U.S. representative.

67. The staff member in question is one Mr. H. He served as a senior officer in the Applicant's Unit and worked directly with the Applicant. They were close friends. Before leaving the Bank in January 2001, Mr. H began considering his future employment options. He planned to start a software development joint venture in China. He sought the Applicant's assistance in identifying potential business partners. The record shows that the Applicant provided Mr. H with guidance on potential partners and business opportunities.

68. In July and August 2000, Mr. H and the Applicant traveled to China and India to meet Bank vendors and IT companies. During their travels, the Applicant introduced Mr. H to representatives of Company X's parent company. Both Company X and its parent company were founded by the same individual, Mr. R.

69. During the meeting with the representatives of Company X and its parent company, Mr. H discussed the creation of a private joint venture with Company X. Thereafter, Mr. H started helping Company X to expand its business in China with the cooperation of a Chinese company. The Applicant helped with this effort behind the scenes. This is clear from the following e-mail message of 6 September 2000 from Mr. H to an employee of the Chinese company. In that e-mail message, Mr. H wrote to the latter:

Thanks for the update [on the meeting between the representatives of Company X and the Chinese company].

Please tell Mr. Li that I am very happy and encouraged to hear the progress made, and will continue to help wherever I can to make [the Chinese company] more globally known. I would also suggest that he writes a short thank-you note to the World Bank's [senior manager, i.e. the Applicant], whom he met in Beijing when we were visiting there. [The Applicant] helped a lot behind the scene to make this happen, and he just inquired the status on this subject from the CEO of [Company X] here.

70. Mr. H forwarded the e-mail message to the Applicant on the same day "FYI." There is no indication that the Applicant sought to correct Mr. H's characterization of his involvement.

71. On 16 January 2001, a few weeks after Mr. H left the Bank, the Applicant rehired him as a Short-Term Consultant. His appointment continued until 30 June 2001. Mr. H's contemporaneous e-mail exchanges show that while working as a Short-Term Consultant, he was actively pursuing his private business venture with Mr. R and Company X in China and kept the Applicant informed of his activities.

72. In November 2001, Mr. H officially founded a joint venture with Company X, incorporated in China and named "Company X (Shanghai)."

73. Between 2002 and 2005, the Applicant made efforts to generate business for Mr. H and Company X (Shanghai) from registered Bank vendors and contractors, from the Bank's Treasury Vice Presidency ("TRE"), and from the Applicant's own Unit. The Applicant also employed Mr. H as a Short-Term Consultant in the Applicant's Unit from January 2003 to June 2006. The following examples show the types of efforts the Applicant made on behalf of Mr. H and his private business venture:

(i) on 6 September 2002 the Applicant wrote to Mr. H stating that he had met with representatives from a Bank contractor (a company) and had told them that Mr. H

could assist the contractor in China through Company X (Shanghai) or in his personal capacity as a consultant;

(ii) on 12 October 2003 the Applicant wrote to Mr. H suggesting that he explore business opportunities for Company X (Shanghai) with TRE, and advised Mr. H as to how to position his company to appeal to TRE;

(iii) on 31 October 2003 the Applicant recommended Mr. H's services to the president of another company, a registered Bank vendor, hoping to expand business for their mutual benefit;

(iv) on 1 April 2004 the Applicant sent an e-mail message to the executives of yet another company which was an existing Bank contractor, to arrange meetings between that company's CEO and Mr. H so that they could discuss business opportunities involving Company X (Shanghai);

(v) on 19 September 2004 the Applicant wrote to Mr. H stating that he met with the director of another Bank contractor again, and offered to introduce Mr. H to this individual to explore an off-shoring project in China;

(vi) in August 2005 the Applicant sent an e-mail message to his colleague in the Unit, instructing her to create a purchase order for Mr. H's company under the Bank's contract with Company B, and in the same message instructed the colleague to extend Mr. H's employment with the Bank as a Short-Term Consultant for 150 days per fiscal year.

74. Besides the above, the Applicant interacted with Mr. R and Mr. S to help Mr. H resolve business and funding issues for Company X (Shanghai). In 2003 and 2004, Mr. H sought the Applicant's assistance when Mr. H faced difficulties in generating business for Company X (Shanghai) and in dealing with Mr. R and Mr. S. In response, the Applicant

intervened to rescue Mr. H. For instance, in an e-mail message, Mr. H wrote to the Applicant expressing his frustration with Company X, particularly with Mr. R and Mr. S.

In response, the Applicant wrote to Mr. H:

When I was in Bombay I did discuss with [Mr. S] and [Mr. R] and posed the question directly whether your collaboration should continue. Both of them felt it should continue and that [Mr. R] has been working towards getting some projects. I suggest that you hold off for a few weeks and perhaps chat with [Mr. R] as opposed to sending an e-mail. I will also raise it with him.

75. In a subsequent e-mail message, the Applicant wrote to Mr. R: "I was chatting with [Mr. H] and he mentioned that he had sent a couple of e-mails to you and that you had not responded." Mr. R replied: "I will talk to [Mr. H] and address his e-mails."

76. In 2005, as the Applicant's retirement date approached, the Applicant discussed with Mr. H the prospect of going into business together and also pursued the idea of organizing a venture capital fund. What ultimately happened to their business plan does not appear in the record.

77. *Intervention to register Company X as a Bank vendor: findings of fact.* The Applicant used his influence to ensure the registration of Company X as a Bank vendor even though the company did not meet the Bank's registration requirements. In February 2002, about two months after Mr. H created Company X (Shanghai), Company X applied to the Bank's GSD to become a Bank vendor. The Bank rejected the application in early April 2002 because Company X showed losses for two previous years and did not meet the Bank's financial-stability criteria. On 7 April 2002, the Applicant wrote to Ms. T, a manager of GSD, asking her to reconsider:

[I have been] informed ... that as [Company X] had declared losses in 2 years the registration was denied. My position is that in the software and application services area there are some organizations who have

specialized knowledge and skills that I am willing to take the risk to contract with. ... In this particular case I came to know of a capability that the company has. ... In light of what I have stated ... and the risk that I am willing to take, I would appreciate if you could review and reconsider the denial for registration. Please let me know as we would like to [proceed] fast given the availability of funds and the urgency of the work.

78. According to Ms. T, she made an exception to the Bank's registration requirements and accepted Company X as a Bank vendor because the request to reconsider came from the Applicant, a senior manager.

79. *Promotion of a business relationship between the Bank and Company X: findings of fact.* On 30 April 2002, Company X was awarded its first Bank contract for \$39,000. The project manager was Mr. G, and the consultant from Company X assigned to the Bank was Mr. R. Under the contract, Mr. R was to advise the Bank on various aspects of IT operations and industry best practices.

80. On 15 May 2002, Company X was awarded a second contract from the Applicant's Unit for \$150,000 to provide advisory services directly to the Applicant. Mr. R continued to be the consultant engaged under the contract. The Applicant drafted the terms of reference, developed the justification to award the contract to Company X on a sole-source basis, and designated himself as the Bank project manager. According to the Bank, the award was made without competition even though the Bank's procurement policy calls for competition for all contracts above \$50,000. The Bank adds that it was highly unusual for someone at the Applicant's level to be involved to this degree in drafting procurement documents and in the details of contract administration.

81. Company X obtained 32 subsequent contracts from the Applicant's Unit, totaling \$4 million from 2002 to 2005, all on a sole-source basis.

82. *Whether the Applicant's actions relating to Mr. H and Company X amount to misconduct.* As discussed, Principle 3 imposes broad obligations on a staff member. The Applicant was obligated not to place himself in situations that lead to real or apparent conflicts of interest. He was required to serve the Bank with undivided loyalty. He was mandated to avoid situations where his loyalty or integrity could be questioned. The Applicant's conduct with respect to efforts to promote Mr. H and his private business venture (outlined in paragraphs 65-76) clearly violated Principle 3.

83. The Applicant's conduct put in doubt whether he had only Bank interests in mind when he hired Mr. H as a Short-Term Consultant, knowing that Mr. H was heavily involved in the pursuit of his own business interests during his consultancy period with the Bank. Worse are the Applicant's efforts to promote Mr. H's joint venture – Company X (Shanghai) – to other Bank vendors. The Tribunal accepts INT's comment that “[w]here a [senior manager] promotes a friend's venture to Bank partners or to other Bank contractors, those partners or vendors may see the marketing as a veiled message of ‘support my friends or else.’” It is not proven that this actually happened in the present case. Still, the active promotion and involvement by a senior manager of the Bank in the private business venture of Mr. H put into question the Applicant's integrity and loyalty and exposed the Bank to prejudice.

84. The Applicant argues that his efforts to help Mr. H could be considered as providing references for former employees – a matter of professional courtesy, with nothing ever sought in return. But the Applicant did more than provide references. The Applicant made sustained efforts on Mr. H's behalf, supported Mr. H's venture with respect to Company X (Shanghai), and intervened with Mr. S and Mr. R to resolve Mr. H's

difficulties with them. Especially in light of the Applicant's own post-retirement plan, his conduct suggested a potential personal interest in promoting Mr. H, thereby creating real or apparent conflicts of interest. The Applicant insists that the record lacks any evidence that he sought something in return. For the purposes of Principle 3, however, the question is not whether there is proof of a *quid pro quo*. The essential question is whether he put himself in a situation that led to or might lead to real or apparent conflicts of interest. Put differently, did he place himself in a situation that raised questions about his undivided loyalty and integrity? The Tribunal considers that the Applicant did so, in violation of Principle 3. The Applicant's unusual intervention to register Company X as a Bank vendor created a conflict of interest because he personally knew the founder of Company X, Mr. R; he traded stock in Company B, which was related to Company X; and Company X was Mr. H's business partner. Company X's financial instability, and the Applicant's attempt to minimize this factor, add to the inappropriateness of his conduct. In these circumstances, employing Company X on a sole-source basis raised serious questions.

85. The Applicant insists that he had not abused his authority, that his attempts to promote Mr. H were professionally acceptable and that the process of awarding contracts to Company X was not tainted. Again, the misconduct in question here pertains to Principle 3: whether the Applicant placed himself in a situation that created a real or apparent conflict of interest. The Tribunal accepts the Bank's characterization of how such a conflict was created, in these terms:

As the Bank's [senior manager], the Applicant was in a position of power and able to exert influence on Bank vendors and contractors. They were interested in securing the Applicant's goodwill and in promoting their own business interests within the Bank, and would have felt some pressure to respond positively to his suggestions and requests as they undoubtedly perceived him as a person who could influence their business

opportunities with the Bank. The Applicant's endorsement, recommendations and interventions on behalf of Mr. [H] and [Company X (Shanghai)] carried weight with those companies. While the Applicant was recommending Mr. [H] in his private capacity as a businessman in China to Bank vendors and contractors, he was simultaneously employing him as a Short-Term Consultant to advise the Bank on IT services to the institution. Also, when Mr. [H] was working for [the Applicant's Unit] as a Short-Term Consultant, the Applicant was directing [his Unit] to hire Mr. [H's] company as subcontractor for [Company B]. Furthermore, the Applicant intervened with representatives of [Company B], Mr. [S] and Mr. [R], to ensure their support for Mr. [H's] private business venture, and secured a valuable vendor registration with the Bank for [Company X], which happened to be Mr. [H's] business partner and also happened to be co-founded by Mr. [R]. The Applicant then proceeded to hire [Company X] and Mr. [R] to advise him personally as the Bank's [senior manager]. Throughout this time, Mr. [R] and Mr. [S] also represented [Company B], a major Bank contractor receiving millions of dollars in [Bank] business, and Mr. [S] was forming a personal friendship with the Applicant. And, the Applicant was getting [Company A] IPO stock at preferential prices because of his ties to Mr. [S]. These activities plainly created an appearance of a conflict of interest.

86. In sum, the Tribunal accepts HRSVP's conclusion that the Applicant's conduct with respect to Mr. H and Company X amounted to misconduct in violation of Principle 3 of the Principles of Staff Employment.

Interacting with a Staff Member (Ms. T) regarding the Investigation

87. In his decision of 17 April 2007 HRSVP concluded that the Applicant engaged in misconduct because he had improperly interacted with a staff member regarding an INT investigation. HRSVP explained:

[The Applicant's] interactions with Ms. [T] of GSD ... constitute misconduct. The evidence shows that at the time [the Applicant] engaged Ms. [T], [the Applicant] knew of the existence of an INT investigation and endeavored to learn from her whether she had been interviewed and what information might have been provided to INT. [The Applicant] then asked her to agree with [him] that if later asked, the conversation that had just transpired would not be acknowledged. I believe these actions are incompatible with the obligations imposed by Principle 3 of the Principles of Staff Employment.

88. *Findings of fact.* On 16 and 19 September 2005, INT investigators interviewed Mr. H. They reminded him of his obligation not to disclose his knowledge of the investigation.

89. On 20 and 21 September 2005, INT interviewed three other staff members in the Applicant's Unit. INT reminded them too not to disclose the investigation to others.

90. On 23 September 2005, the Applicant's assistant called Ms. T inquiring whether she could meet with the Applicant. Ms. T did so that afternoon.

91. INT had not, at this point, contacted the Applicant or informed him of the investigation. The Applicant was not formally informed of any investigations relating to Company X until his first interview on 29 September 2005, when he was served with a Notice of Alleged Misconduct.

92. INT was apprised of the Applicant's interaction with Ms. T. At INT's request, on 18 October 2005, in an e-mail message to INT, Ms. T described her conversation with the Applicant as follows:

As requested, I am sending this summary of a conversation with [the Applicant] regarding an INT inquiry. This summary captures the major themes/tone of the conversation and is not and should not be taken as a verbatim transcript.

On ... Friday September 23/05 ... I went to his office.

[The Applicant] was gracious, we sat down and chatted briefly about a meeting we had held earlier in the day regarding IT outsourcing and an Eservices portal project. [The Applicant] then asked if I had been visited by INT recently.

I stated that I had not had any visits from INT recently.

[The Applicant] expressed surprise and stated that INT had been asking his staff for information and copies of contract documentation for the [Company X] and [Company B] contracts and was I sure that INT had not asked procurement for information on these two contracts.

I responded again by saying that INT had not been in touch with me recently but had asked for some information on the [Company X] contract quite a while ago.

[The Applicant] asked as to what “quite a while ago” was?

I told him I could not recall exactly when they had contacted me “perhaps April, maybe February.” ...

[The Applicant] pressed on the date but I said that I did not recall exactly. He also queried if they had also asked about the [Company B] contract and I said no, I also pointed out that if INT had contacted Procurement about any contracts we would not be at liberty to discuss it. [The Applicant] responded “of course.”

[The Applicant] then asked if I remembered [Mr. H], a former Bank staff who had worked for [the Applicant]. He said [Mr. H] had retired from the Bank and had moved to China and set up his own company [Company X (Shanghai)]. [The Applicant] went on to say that [Mr. H] had done some work for [the Applicant] but that it was operational work that had nothing to do with GSDPR. He also stated that [Company X] Shanghai had done some work as a subcontractor to [Company B] on the Bank’s contract.

I responded that [Mr. H] must have had an HR Appointment for any work as I was not familiar with any Procurement contracts for [Mr. H’s] services and that the [Company X] link with the [Company B] contract must be the subcontract arrangement.

[The Applicant] said that the questions that were being asked had to do with value received for money spent because the contracts had grown so large.

I reminded [the Applicant] that the [Company X] contract had been an ongoing concern of Procurement because of the growth in size and scope of the work and that back in July 04 ... my staff had advised [some Bank staff members] that no further sole-source contracting would be allowed I asked [the Applicant] if he recalled that in May/05 in an effort to bring the [Company X] contract to a close, [some colleagues] were asked to write a sole-source justification that provided a historical perspective on how [Company X] was selected for the project, what work had been completed, what work was left to complete and what the level of effort and expected costs were to complete the project.

[The Applicant] responded in the affirmative reminding me how important the CMM project was and how most people did not understand its

importance and how difficult it was to find consultant expertise in this area.

[The Applicant] inquired again if I was sure that INT had not requested any information on the [Company B] contract.

I said that I was not aware of anything specific but that perhaps any information could have been requested when I was on leave and had an acting but that I did not think so.

[The Applicant] thanked me for the discussion ending with a line “with all due respect to our colleagues in INT we did not have this conversation.”

I smiled and nodded agreeing that the conversation had not happened.

[The Applicant] walked me to the door once again reverting to the earlier conversation on the Eservices portal project and the good partnership between GSD and [his Unit].

I left wondering: Was [the Applicant] trying to intimidate me? Was [the Applicant] trying to pump to see if and what information I had? I was concerned that a [senior manager] would suggest that the conversation had not occurred.

93. The Applicant does not deny his interaction with Ms. T and does not specifically deny the contents of the conversation described above.

94. *Whether the Applicant’s interaction with Ms. T amounts to misconduct.* In the Bank’s view, the Applicant’s interaction with Ms. T as set out above constitutes improper professional conduct violating Principle 3.

95. The Applicant argues that the interaction was simply a professional encounter and cannot be considered as misconduct for the following reasons: (i) the meeting occurred prior to any notice to the Applicant that there was an investigation; (ii) the Applicant was “gracious” in his conversation and it cannot be concluded that she was intimidated; (iii) the Applicant asked her not to mention the meeting as the Applicant did not want the conversation to fuel further rumor-mongering; and (iv) prior to formal notice, the

Applicant knew of no standard of conduct which forbids an employee from discussing with a colleague whether the rumors of an investigation are true or not.

96. The Tribunal is satisfied that the Applicant's interaction with Ms. T was improper. This did not appear to be an ordinary business-related meeting. The Applicant says that he wanted to find out whether the rumor about an investigation was true. But his conversation with Ms. T went further. From the description above, it is obvious that: (i) the Applicant knew there was an investigation ongoing even though he was only served with a Notice of Alleged Misconduct on 29 September 2005, a few days after his conversation with Ms. T; (ii) he assumed that the investigation might involve Mr. H and Company X; and (iii) he predicted Ms. T could be a relevant witness because of her involvement in procurement matters. In these circumstances, his interaction with a subordinate who might be a potential witness was improper. His suggestion to the subordinate to keep the conversation a secret from the investigators exacerbates matters. The Applicant's interaction with Ms. T amounted to improper professional conduct below the standard required under Principle 3 of the Principles of Staff Employment.

Refusing to Answer INT Investigators' Questions

97. HRSVP in his decision of 17 April 2007 concluded that:

[The Applicant's] refusal to answer investigator's questions constitutes misconduct. Staff Rule 8.01, "Disciplinary Proceedings," imposes on staff a duty to cooperate with investigations. [The Applicant's] refusal to answer questions was unjustified and itself constitutes misconduct.

98. *Findings of fact.* In the morning of 25 October 2005, INT telephoned the Applicant and told him that INT needed to meet with him that day. The Applicant agreed and met with INT in the afternoon. At the meeting, INT served him a Supplemental Notice of Alleged Misconduct alleging that his interaction with Ms. T amounted to misconduct.

99. The relevant portion of the transcript of the interview on 25 October 2005 is recounted below:

[INT investigator]: ... thank you for coming here on such a short notice. ... So without further ado, let me go ahead and present you with a document [Supplemental Notice of Alleged Misconduct] and ask you to kindly read that. ... It is that you engaged in misconduct by attempting to interfere with an ongoing investigation. ...

[The Applicant]: Could I say something?

[INT investigator]: Certainly.

[The Applicant]: As you know, I have hired legal counsel.

[INT investigator]: Yes.

[The Applicant]: And I would like not to respond today to this. I would like to seek advice from my counsel and then respond to it at the appropriate time.

...

[INT investigator]: But it's my duty to inform you that as an administrative process in which there is no right to counsel, part of a staff member's responsibilities in this process is to respond personally to the questions that we as investigators pose on the issue in an interview, investigative interview setting. And this particular responsibility does go to the duty to cooperate provision under Staff Rule 8.01.

...

[The Applicant]: Let me say this. It's very clear to me what you said. Excuse me. I have a bad throat because I'm fasting. So I don't drink any water.

I would still like some time to respond and I will respond and I will have a discussion with you, but not today. That's my preference and I think that's my entitlements, as well. I've been given this and I have to reflect on it and you can be sure that as I did with the earlier investigation, I cooperated fully and since then I've been working extremely hard under very difficult circumstances to meet all your requirements.

There's nothing more that I want than to give you all the information that you can make a judgment on or at least make your findings. I appreciate the fact that you have to do your job when there are allegations and I hope

you will also appreciate the fact that when I do respond I have to be reflective on the issues.

So therefore I would like to defer my response, but I'll come back to you soon. And I'm pretty confident that I can respond.

100. *Whether the Applicant's conduct amounts to misconduct.* In INT's view the Applicant violated his duty to cooperate by refusing to submit to an interview on 25 October 2005 in the context of an ongoing investigation.

101. The Applicant maintains that he refused to be interviewed because INT had failed to give him a transcript of his prior interview despite INT's promise to do so. Considering the earlier far-ranging two-day interview of the Applicant as well as INT's promise that he could see the transcript, it was not unreasonable for the Applicant to refuse a second interview, based on the advice of his counsel, after INT had failed to give him the transcript.

102. The Applicant has a duty to cooperate in INT investigations. Paragraph 4.06 of Staff Rule 8.01 (both the 2004 and current versions) states:

A staff member who is the subject of a preliminary inquiry or an investigation has a duty to cooperate with the person conducting the investigation. A staff member believed to have knowledge relevant to a preliminary inquiry or an investigation also has a duty to cooperate absent a showing by the staff member of reasons, determined by the person conducting the investigation, to be sufficient to justify failure to cooperate. Failure or refusal to cooperate may constitute misconduct under this Rule.

103. Under the above Rule, refusal to interview and answer INT questions may amount to "failure to cooperate" in violation of the Rule.

104. The Applicant has not challenged the validity of paragraph 4.06 of Staff Rule 8.01. Rather his argument is that his refusal to be interviewed was justified and did not constitute misconduct.

105. What constitutes failure to cooperate must be decided on a case-by-case basis. The important circumstances here are as follows.

106. On 29 and 30 September 2005, the INT investigators interviewed the Applicant in the course of two days, close to ten hours in total, on allegations relating to Company X. During the interview, INT told the Applicant that he could request a copy of the transcript if he wanted it while preparing his written response. When the Applicant later requested a copy of the transcript INT refused stating “[t]o allow you to review your transcript prior to submitting your written response would potentially undermine the truth-seeking process.” In the Applicant’s view, INT’s refusal was unjustifiable because INT had gone back on the word of its investigator.

107. The Applicant submits that INT did not take into account how extensively the Applicant had cooperated throughout the investigations. INT failed to consider the following factors:

(i) INT reviewed numerous banking, tax, and financial records made available only because of the Applicant’s extensive cooperation;

(ii) at INT’s request, the Applicant signed a blank waiver that allowed INT to obtain all of his bank records and other financial information;

(iii) the Applicant gave INT copies of his tax returns, information concerning his income and expenses, copies of account statements and access to hundreds, if not thousands of e-mail records;

(iv) the Applicant detailed for INT all financial transactions in excess of \$5,000 over a six-year period, and explained to INT the source and use of funds to purchase all real property; and

(v) the Applicant supplied boxes of documents to INT which included a large quantity of e-mail records and personal financial information which INT could not have otherwise obtained after his retirement from the Bank.

108. By 25 October 2005, the Applicant knew INT was conducting a broad investigation, looking into the Applicant's activities over a period of three years. So when on 25 October 2005 he received a new Notice of Alleged Misconduct, he wanted to reflect on it before giving his response in the interview. He wanted to defer the interview, he explains, because he had a bad throat that day and also because he wanted to consult his lawyer. But he promised he would respond and provide INT with all the information that it needed to make a finding.

109. INT and HRSVP in finding misconduct in this regard relied solely on the incident of 25 October 2005. INT concluded that "by refusing to submit to an interview on October 25, 2005, in the context of an ongoing investigation, [the Applicant], who was then an active staff member, violated his duty of cooperation with the Bank."

110. The Bank evidently takes a narrow view of paragraph 4.06 of Staff Rule 8.01. In summary, it reasons as follows. When INT decides to pursue a formal investigation it calls a staff member for a meeting; the staff member meets INT; INT serves the staff member a Notice of Alleged Misconduct; INT asks the staff member to read the Notice and then starts asking him or her questions immediately; the staff member, who will have seen the allegations only for the first time, must start answering; and a request to meet on another day to respond to the questions would constitute misconduct.

111. The Staff Guide to INT (current and previous versions) states that a staff member under investigation "may consult with an outside attorney, the Staff Association, the

Ombuds Services, or family members about the allegations, without prior clearance from INT.” This option to consult was also restated in the Notice of Alleged Misconduct that was presented to the Applicant on 25 October 2005. So on that day, when the Applicant for the first time saw the new allegation, he wanted time to reflect and to consult his lawyer. In effect he wanted to exercise his option to consult his counsel as permitted by INT procedure. INT took the position that his refusal to proceed with the interview and answer the questions there and then amounted to misconduct. It is questionable whether INT’s position is consistent with its own published procedure that allows a staff member to consult an attorney, the Staff Association or the Ombuds Services in such circumstances. Moreover, the Applicant stated that he was not feeling well as he had a bad throat. INT has not given a reason why it could not have accommodated the Applicant’s request and rescheduled the interview. In addition, the record shows that the Applicant cooperated with INT in various ways as described above. It would not be a reasonable application of paragraph 4.06 of Staff Rule 8.01 to characterize as misconduct a staff member’s request to defer an INT interview regardless of whether the request is reasonable, whether the staff member promises to have the interview another day, and whether the staff member otherwise cooperates with INT.

112. The Tribunal notes that this aspect of INT’s practice (starting interviewing immediately upon presenting a notice of alleged misconduct) was noted as problematic in the Independent Panel Review of The World Bank Group’s Department of Institutional Integrity (“Volcker Panel”). The Volcker Panel recommended in September 2007 that “INT should furnish a Bank staff member who is the subject of an investigation with at least one day’s advance notice of the alleged misconduct ... before INT conducts a formal

interview of the subject staff member.” INT has implemented this recommendation. INT’s Guide to the Staff Rule 8.01 Investigative Process (December 2008) now provides that:

If an investigator intends to conduct an interview with a subject staff member to provide him or her with written notice of alleged misconduct and seek their response during an interview, the investigator shall notify the subject staff member in writing with at least twenty-four (24) hours notice, unless there is a specific reason to believe that advance notice would jeopardize the investigation, such as by leading to tampering with witnesses or evidence. The written advance notice shall provide:

- i. notice of the nature of the alleged misconduct, unless such notice would jeopardize the investigation, such as by leading to tampering with witnesses or evidence;
- ii. the list of standards relevant to allegations of misconduct;
- iii. an overview of the investigative and decision-making process; and
- iv. the staff member’s rights and obligations, including the right to be accompanied by another staff member to their interview.

113. Thus, under current practice, a staff member will have at least 24-hour to reflect on a notice of alleged misconduct and also consult with an attorney or the Staff Association or the Bank’s Ombudsman during this 24-hour reflection period. Of course, these changes came too late for the Applicant. Yet even under the then applicable rules the Tribunal finds that the single occurrence on 25 October 2005, viewed in isolation, cannot be deemed a failure to cooperate amounting to misconduct.

II. WHETHER THE SANCTIONS IMPOSED WERE DISPROPORTIONATE

114. The Applicant argues that the sanctions imposed – permanent bans from rehire and entry to Bank premises – are disproportionate for the following reasons: (i) permanent bans are the harshest sanctions imposable in any misconduct case where a staff member has left the Bank; (ii) such a harsh sanction cannot be justified here because the Applicant has not

engaged in any serious misconduct; (iii) the Applicant's conduct did not create actual conflicts of interest, and even if trading in shares of the companies in question led to an appearance of conflicts he did reveal his interest in the companies in disclosure forms; and (iv) the Applicant served the Bank for many years with honesty and integrity and there had not been a single allegation of financial impropriety prior to the current investigations.

115. The Bank contends that sanctions imposed were justifiable because: (i) the conflicts of interest created by the Applicant's purchase of stock in companies and subsidiaries of companies doing or seeking to do business with the Applicant's Unit were serious; (ii) his intervention with IT companies to promote Mr. H's business interests placed the Bank in a negative light; (iii) his wrongdoing was aggravated by misrepresentations to INT investigators and failure to cooperate in the investigation; (iv) although he has no prior record of misconduct, he was part of the Bank's senior management team and was expected to lead by example; and (v) in the Bank's practice, where staff members have violated the Bank's rules on conflicts of interest, the sanctions imposed have included termination, bar from future employment, and denial of access to Bank premises.

116. Staff Rule 8.01 recognizes, both in its current and previous versions, that disciplinary measures will be determined based on a number of factors. Paragraph 3.01 of Staff Rule 8.01 (both the 2004 and current versions) states:

Upon a finding of misconduct, disciplinary measures, if any, imposed by the Bank Group on a staff member will be determined on a case-by-case basis. Any decision on disciplinary measures will take into account such factors as the seriousness of the matter, any extenuating circumstances, the situation of the staff member, the interests of the Bank Group, and the frequency of conduct for which disciplinary measures may be imposed.

117. In view of the findings set down above, the Tribunal upholds HRSVP's decision that the Applicant engaged in misconduct on three counts: (i) trading in Companies A, B,

and C; (ii) furthering a business relationship between Company X and a Bank staff member, and favoring Company X to obtain sole-source contracts; and (iii) interacting improperly with a staff member regarding an ongoing investigation. The Applicant's involvement in Companies A, B, C, and X lasted for close to two years, and his efforts to promote Mr. H also continued for more than two years. The Applicant may well have had an excellent record of performance, but as the Tribunal observed in *S*, Decision No. 373 [2007], para. 63:

the good ratings of a staff member's performance by his or her immediate supervisors and colleagues "cannot of course bind the judgment and discretion of those higher managers within the Bank Group who are responsible for upholding ethical standards on a Bank-wide basis and considering the imposition of disciplinary measures." ... Similarly, in *Kwakwa*, Decision No. 300 [2003], the applicant's able performance was not sufficient to overcome the consequences even of an isolated instance of financial impropriety.

118. Moreover, the Applicant was a senior manager. He was expected to lead by example. He should have kept his Bank dealings with outside entities beyond reproach. He did not. In *K*, Decision No. 352 [2006], para. 39, the Tribunal observed:

A senior staff member – introduced in his own request for anonymity as “a distinguished engineer” and “an outstanding professional” – should lead by example, not presume to be entitled to indulgences denied to colleagues at more modest levels of the hierarchy.

119. The Tribunal finds no basis for invalidating the sanctions imposed by the Bank.

III. WHETHER THE APPLICANT'S DUE PROCESS RIGHTS WERE VIOLATED

120. The Applicant has raised a number of due process claims. Each must be examined bearing in mind that the Bank's disciplinary proceedings are administrative rather than criminal in nature. In *Kwakwa*, Decision No. 300 [2003], para. 29, the Tribunal observed that the Bank is not required to accord a staff member accused of misconduct “the full

panoply of due process requirements that are applicable in the administration of criminal law.” The Tribunal in *Rendall-Speranza*, Decision No. 197 [1998], para. 57, explained the nature of disciplinary proceedings in the Bank as follows:

In order to assess whether the investigation was carried out fairly, it is necessary to appreciate the nature of the investigation and its role within the context of disciplinary proceedings. After a complaint of misconduct is filed, an investigation is to be undertaken in order to develop a factual record on which the Bank might choose to implement disciplinary measures. The investigation is of an administrative, and not an adjudicatory, nature. It is part of the grievance system internal to the Bank. The purpose is to gather information, and to establish and find facts, so that the Bank can decide whether to impose disciplinary measures or to take any other action pursuant to the Staff Rules. The concerns for due process in such a context relate to the development of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. They do not necessarily require conformity to all the technicalities of judicial proceedings.

Notice of Alleged Misconduct

121. The Applicant claims that he was not given fair and specific notice of the allegations against him; INT’s open-ended and ill-defined notices made it impossible for him to respond and defend himself from the unclear charges.

122. Staff Rule 8.01, paragraph 4.03 (both the 2004 and current versions) states that:

Where it is determined that there is a sufficient basis to merit an investigation, the staff member will be notified in writing of the alleged misconduct at the onset of the investigation. The notice will include a description of the allegations made against the staff member, and a summary of the staff member’s rights and obligations.

123. In *King*, Decision No. 131 [1993], para. 35, the Tribunal held that the notice of alleged misconduct

must be expressed in such terms that the accused staff member is made aware from the outset of the scope of the possible default alleged against him. The notification must be reasonably exact in the specification of the wrong alleged. If it is not so expressed, and is not set out in sufficient detail, then the staff member cannot know of what he is being accused, may

remain unaware of considerations material to the allegation as it affects him and can thus be left unable to make a properly directed or considered response.

124. When INT conducts its first interview, it provides the accused staff member an opportunity to seek clarifications with respect to the notice of alleged misconduct. In the present case, the Bank provided the Applicant with three notices of alleged misconduct. The contents of the notices are recited in paragraphs 6 and 9 above. The notices are reasonably specific and detailed. The Applicant could have sought clarification. Moreover, all evidence relating to each allegation and INT's analysis with respect to each allegation were set out in detail in INT's draft final reports. The Applicant was in due course given the chance to comment on the draft final reports. He could not expect that the notice of alleged misconduct would lay out all the evidence with respect to each allegation. The Applicant complains unpersuasively that he "was never made aware as he should have been from the outset of the possible scope of the wrongdoing alleged against him." The notices in fact sufficiently defined the scope of the investigations; the Tribunal finds that there were no deficiencies in the notices that violated the Applicant's due process rights.

Right to Effective Counsel

125. The Applicant claims that INT interfered with his right to effective counsel. Although INT proceedings are not criminal in nature, the present Applicant was under several complex investigations. INT's record of investigations may, potentially, be transmitted subsequently by the Bank to national criminal law enforcement authorities, as indeed happened in this case. Thus, the Applicant should have been given the right to effective counsel. INT violated the Applicant's due process rights in the following manner: (i) INT prohibited the Applicant from consulting his counsel before submitting to

INT interviews, as happened on 25 October 2005; (ii) INT denied him the right to have his counsel present during interviews; and (iii) INT continued to engage in direct communication with the Applicant despite receiving notification that he was represented by counsel.

126. Staff Rule 8.01, paragraph 4.10 (both the 2004 and current versions) states:

Assistance During an Investigation. A staff member may be accompanied at investigation interviews by another staff member who is reasonably available and who is not connected to the matter under investigation. The presence of such a person will not relieve a staff member of the obligation to respond personally in the matter under investigation. Members of the Legal Departments of the Bank Group may not represent, advise or otherwise assist a staff member in connection with investigations into suspected misconduct.

127. In *G (No. 2)*, Decision No. 361 [2007], para. 24, the Tribunal observed that “Staff Rule 8.01, which governs disciplinary proceedings at the Bank, does not explicitly grant a staff member under investigation a right to an attorney, or to recoupment of attorney’s fees.” In *G (No. 2)*, the Tribunal was asked to address the question whether a staff member who retained an attorney during an INT investigation can claim attorney’s fees if ultimately no misconduct is found. The Tribunal answered in the negative. The Tribunal observed at paras. 32-34:

The Tribunal concludes that when the Applicant sought legal assistance and retained her own counsel, she had no right to charge the Bank for legal assistance. The Bank’s refusal to reimburse the Applicant for her attorney’s fees could not be considered a violation of any right guaranteed under the Principles of Staff Employment, the Staff Rules, or the due process rights of the Applicant.

The Tribunal finds that attorney’s fees should not ordinarily be awarded when INT pursues a good faith investigation into allegations of misconduct, even though ultimately no misconduct is found. The Tribunal accepts the Bank’s reasoning, as it applies to this case, when it submits that:

INT investigation is not litigation, and it was neither necessary nor required for Applicant to hire an attorney during the INT investigation. INT must be free to pursue good faith investigations into allegations of misconduct without the concern for the possibility of incurring an obligation to pay costly attorney's fees if, ultimately, no misconduct is found.

An award of attorney's fees to the Applicant would essentially penalize Respondent for fully and fairly investigating allegations of misconduct against Applicant. Since there was absence of malice and presence of probable cause for the INT investigation, Respondent has not infringed Applicant's right to fair treatment under Principles 2.1 and 9.1.

On the other hand, cases may arise where the Tribunal would award attorney's fees if the circumstances were to show that an investigation was initiated out of malice or if there is "evidence of harassment or other abuse of investigatory initiatives," as per the *obiter dictum* of the Tribunal's judgment in *G*, Decision No. 340 [2005], para. 78. The Applicant has not provided any convincing evidence that suggests that there was any such malice on the part of INT, that the investigation was commenced simply to harass her, or that there was an abuse of investigatory initiatives.

128. In sum, neither the Staff Rules nor the jurisprudence of the Tribunal regarding due process rights confers a right to the assistance of counsel in disciplinary proceedings. Nor, in contrast to a defendant in a criminal case, does a staff member accused of misconduct have the right to Bank-appointed counsel.

129. The question then is whether a staff member can retain counsel of his or her own choosing during Bank disciplinary proceedings. The Staff Rules have not addressed this question explicitly. In *G (No. 2)*, the Tribunal left the question open when it observed at para. 25 that: "Whether or not paragraph 4.10 [of Staff Rule 8.01] is interpreted so as to allow a staff member under investigation to seek assistance from an attorney outside the Bank, it places no legal obligation on the Bank to provide that staff member with an attorney or to reimburse the cost of such help in the event the staff member decides to

retain one.” But the Staff Rules do not prohibit a staff member from retaining counsel at his or her expense during INT investigations. Both the Bank and INT accept that a staff member under investigation may retain counsel. The Staff Guide to INT (current and previous versions) states that a staff member under investigation “may consult with an outside attorney, the Staff Association, the Ombuds Services, or family members about the allegations, without prior clearance from INT.” Thus, the Applicant was within his rights when he decided to retain counsel to represent him during the investigations.

130. The essential question before the Tribunal relates to the extent to which a staff member’s private counsel should be allowed to participate in disciplinary proceedings. The Applicant claims that his due process rights were violated when INT refused to give him the opportunity to consult his counsel before submitting to the interview on 25 October 2005. As mentioned before, on that day INT provided the Applicant with a notice of a new allegation and proceeded to interview the Applicant on the new allegation. The Applicant told INT that he had retained counsel and wanted to consult him before he proceeded to the interview. INT refused and told the Applicant that he had “no right to counsel” and that refusal to submit to the interview would be a violation of Staff Rule 8.01 amounting to misconduct. The Tribunal finds that when on 25 October 2005 the Applicant asked to consult his attorney before answering the allegation, INT should have afforded him that opportunity in accordance with The Staff Guide to INT. Moreover, neither the Bank nor INT has explained how delaying the interview of 25 October 2005 even for a day would have prejudiced INT’s investigation. The Tribunal finds that INT acted unreasonably in this respect.

131. In the end, however, any further criticism of INT's insistence on immediate questioning would be *obiter dictum* because, as seen above, the Tribunal does not accept that the attitude adopted by the Applicant on 25 October 2005 constituted a failure to cooperate amounting to misconduct. The Applicant has not demonstrated that INT achieved any illegitimate result, nor that he suffered any unwarranted disadvantage, by reason of that insistence.

132. The Applicant also claims that INT violated his due process rights in denying him the right to have his counsel present during his interviews. Under Staff Rule 8.01, paragraph 4.10, an accused staff member is allowed to bring along only another staff member to interviews. INT does not allow a staff member to have his or her lawyer present during interviews. In the Applicant's case, the Applicant has not substantiated how such denial has infringed on his due process rights. The Applicant has not cited any precedent either from this Tribunal or from any other international tribunal holding that due process requires counsel's presence during INT interviews.

133. It is likely that many (and perhaps the vast preponderance) of INT interviews are inconsequential from the perspective of the interviewee staff member. Of course they may also lead to disciplinary measures affecting the interviewee's professional standing. But as long as they remain internal to the Bank, they do not lead to criminal liability. Complications may arise when the investigation overlaps with areas of concern to national law enforcement officials. For example, a staff member might be instructed by INT to answer a question notwithstanding his or her request first to be advised by counsel, and might then proceed to give a self-incriminating answer.

134. There are obviously balances to be struck. The fact-finding mission of INT, as an internal investigatory organ with legitimate aims and limited powers, would be greatly hampered if it were subject to the full rigors of a code of penal procedure. Judicial organs outside the Bank apply a variety of standards and can protect their own perception of due process in their own way – such as excluding a confession which does not meet constitutional standards.

135. Although the Tribunal has no legislative function, it is conceivable that it would reject certain regulations and practices as contrary to fundamental principles. Still, the present case leads the Tribunal neither to pronounce a general requirement of permission to allow the presence of counsel at INT interviews, nor to find fault with the way the exclusion of counsel operated in this case.

136. The important question is whether the Applicant was given an adequate opportunity to defend himself. The Tribunal understands that counsel can assist a staff member to prepare better for interactions and other communications with INT. That was indeed the case here. After the interview process, the Applicant's counsel participated in two other important stages of the investigations – written responses and comments on INT's draft reports. The Applicant's counsel did provide the written response. INT forwarded draft reports to the Applicant. His counsel provided extensive comments on the reports. The proceedings thus gave significant opportunities for the Applicant to involve his counsel. The Tribunal is unwilling to hold that the absence of counsel during the interview in and of itself amounts to a violation of due process rights, at least in this case where the Applicant has not substantiated how this limitation denied him opportunities to defend himself effectively in a manner that violated his due process rights.

137. Finally, the Applicant complains that INT continued to engage in direct contact with the Applicant despite receiving notification that he was represented by counsel. The Applicant does not explain how this resulted in due process violations. Under paragraph 4.06 of Staff Rule 8.01, the Applicant had a duty to cooperate with INT investigations. It was thus reasonable for INT investigators to contact him directly. In certain situations, a staff member may request that INT contact his or her counsel in case of need. For example, a staff member may be on mission or on personal travel or may be sick during an investigation. In such situations, if a staff member requests that INT contact him or her through counsel, INT should do so. In the present case, the Applicant has not provided any convincing reasons why INT should have refrained from contacting him directly. He could not terminate all direct contact with INT simply because he hired a lawyer. Based on the record before it, the Tribunal does not see that the Applicant's due process rights were violated in this regard.

INT's Conduct during the Investigations

138. The Applicant argues that INT's conduct violated his due process rights in the following ways: (i) INT conducted the investigations publicly, raiding and impounding his office in a notorious manner; (ii) INT refused to provide the Applicant with the interview transcript; (iii) INT did not conduct an adequate search of the 2000 financial disclosure form that the Applicant had filed and of which he had informed INT; (iv) INT leaked the investigations to the press, which wrongfully exposed the Applicant to ridicule, seriously harmed the Applicant's reputation and made many of his post-retirement plans impossible; (v) INT withheld exculpatory statements; (vi) the investigations were overly long; (vii)

INT prejudicially divided its investigation into two parts, producing separate final reports of investigation; and (viii) the investigations were improperly influenced by management.

139. First, with respect to the allegedly public manner of conducting the investigations, the Applicant has not brought proof that INT raided his office the way he described. On the contrary, the transcript of INT's limited interview with the Applicant on 25 October 2005 demonstrates that INT granted professional courtesy to the Applicant to protect his dignity. During the interview, an HR manager presented the Applicant with a notice of administrative leave effective 25 October. The Applicant requested that he be allowed to leave his office without being escorted by security. INT and HR officials agreed. INT also discussed with the Applicant the retrieval of documents from his office by INT staff. The Applicant suggested that it should be done in the evening after office hours. INT also agreed to that. The Tribunal does not see how INT violated his due process rights in this connection.

140. Second, the Applicant claims that INT refused to give him the transcript of his interview of 29 and 30 September 2005. Under INT's practice at the time, INT gave interview transcripts to a staff member only with the draft reports, not before. Under the current procedure, INT allows an accused staff member to have a copy of the transcripts of an interview as soon as possible after the interview. In this case, following prior practice INT provided the transcript with the draft reports. His counsel had a chance to review and provide comments on it, in the same manner as with draft reports. Therefore, the Tribunal concludes that the Applicant was not prejudiced. (True, it appears from the transcript that an INT investigator told him that it would be provided earlier, at the written response stage

and not the stage of draft reports, but this statement seems to have been a mistake without significant consequence.)

141. Third, the Applicant has understandably complained about his 2000 financial disclosure form. The Applicant told INT that he had filed the form but did not have a copy. The financial disclosure forms are kept in the care and custody of the Bank's Legal Department. INT asked the Legal Department in April 2006 to conduct a search to see whether the Applicant had filed his 2000 financial disclosure form. After a search, the Legal Department informed INT that the Applicant had not done so. Only in May 2008 did the Legal Department discover the 2000 financial disclosure form. This failure on the part of the Legal Department appeared likely to prejudice the Applicant because HRSVP in his decision of 8 January 2007 considered the failure to file the form as an aggravating factor. This potential prejudice, however, was corrected when, with the Tribunal's permission, INT conducted a supplementary investigation and HRSVP on the basis of the Supplementary Report of Investigation modified the prior decision. The Tribunal, as discussed above, has also considered the impact of the 2000 financial disclosure form and concluded that it does not affect the finding of misconduct relating to Companies A, B, and C. The failure to discover the 2000 form in a timely manner, however, certainly caused the Applicant stress and required him to seek assistance from his counsel with respect to the supplementary investigation. True, the Applicant might have avoided this by better personal record-keeping. But equally, the Legal Department failed to fulfill its duties as custodian. This was a mishap, but while the Bank bears responsibility it also should be given credit for its immediate disclosure when the document was discovered.

142. Fourth, with respect to the leaks to the press, the facts are as follows. In January 2006 while the INT investigations were under way, a reporter from the Washington Post called the Applicant's counsel advising him that the Washington Post had obtained internal Bank documents concerning the Applicant's investigations and would publish the Applicant's name in an upcoming article on corruption. The Applicant's counsel then called INT twice about the leak, but it seems that his calls were not returned. The Washington Post and the U.S. News & World Report, respectively in January and September of 2006, published articles mentioning the Applicant's name in reference to INT's ongoing investigations into allegations against him. Both articles provided specific information about the subject-matter and status of the investigations. For example, the Washington Post article states "internal bank documents obtained by the Washington Post show that the watchdog unit is investigating [the Applicant], who retired three months ago as the Bank's [senior manager]. Sources familiar with the investigation said it involves alleged improprieties in the bank's procurement of technology services." Confidential information about the investigations continued to surface in the newspapers. As recently as October 2008, another news agency published a series of articles about the investigations concerning the Applicant.

143. The Applicant requested that the Bank investigate the source of these leaks on at least seven occasions. He claims that the leaks caused serious damage to his reputation and prevented him from pursuing a career after his retirement. Citing *R*, Decision No. 371 [2007], the Bank argues that it should not be held responsible because there was no evidence that INT was the source of the leak. Moreover, the Bank observes that the

Applicant did not provide any clues as to who may have disclosed information or why. Therefore, his claim that INT should have investigated his complaint is unconvincing.

144. This answer should be contrasted with the following comment made by the Tribunal in *M*, Decision No. 369 [2007], paras. 96-97, where a similar situation arose:

The handling of the leak of the investigation to the press was hardly conducive to due process. While it is true that journalists do not reveal sources of information, there could have been an inquiry in respect of the Bank personnel shown to have had some interest in this matter The Bank took no steps to counter the damaging publication and offered no explanation for its failure to do so other than the fact that its practice is not to do so. Public statements would have been appropriate.

The Bank's protestations of powerlessness in the face of the vastly prejudicial press leak (or leaks) is unpersuasive. Only a limited number of people could have leaked the information, which without any doubt caused acute embarrassment and prejudice to the Applicant. Numerous interviewees revealed that they had read about the incendiary allegations in the press. The Bank's passivity in this respect, when the matter so clearly called for clarifications from protagonists who were in fact interviewed at considerable length, is disturbing and inexplicable.

145. In the present case, INT and the Bank appear to have been as passive as in *M*. The Bank takes the position that there was insufficient basis even to commence a preliminary inquiry about the leaks. Yet the press articles referred to confidential information about the investigations of which only a few INT officials and other staff members directly involved in the investigations could have been aware. The Washington Post article cited "internal documents," "sources familiar with the investigation," and "Bank personnel." The same article quoted the then Bank President stating: "I'm aware of a particularly serious set of allegations involving a senior Bank official." INT nevertheless remained passive. It did not even properly respond to the Applicant's repeated complaints about the leaks and requests for an investigation. In one e-mail message to the Applicant, INT shared with the Applicant its concern but merely stated "we will continue to maintain our

confidentiality policy regarding the investigation.” As in *M*, INT apparently did not trouble itself to question the limited number of people who had access to the Applicant’s investigative materials.

146. The Bank invokes *R* in its defense. The facts in *R* are as follows. In 1999, while working at the Bank, the applicant rendered consulting services to a U.S. corporation (“the Corporation”). Later, the U.S. Government filed criminal and civil charges against the Corporation, which included information about the applicant’s involvement with the Corporation. The case was documented in public court filings and widely reported in the press. In July 2005, INT commenced an investigation of the applicant. While the investigation was under way, in February 2006, a former INT officer participated as a speaker at a seminar held at the Bank’s headquarters. He gave a presentation on transnational corruption. One of the examples he used was the case involving the Corporation. He also briefly mentioned that a Bank staff member had provided services to the Corporation. According to the officer, he “prefaced [his] comments by saying words to the effect of: ‘this is public information’ and referred to a press article mentioning this matter.” The officer did not mention the applicant’s name. In addition, at the same time, a reporter from the U.S. News & World Report had called the applicant’s counsel to discuss a soon-to-be released article about the World Bank, fraud and corruption. In the conversation, the reporter asked about the applicant’s activities involving the Corporation. The published article, however, did not mention the applicant’s name. In the circumstances, the applicant claimed that INT breached confidentiality and failed to investigate the breach.

147. In *R*, the Tribunal did not find INT or the Bank responsible, in view of the following factors: (i) information about the applicant's involvement with the Corporation was already public before INT commenced investigating him; (ii) in response to the applicant's complaint, INT spoke to the former INT officer and he submitted a written declaration stating that he had only used publicly available information and had never mentioned the applicant's name; (iii) the former INT officer had no access to the applicant's investigative materials; (iv) in response to the complaint about the alleged disclosure at the seminar, INT responded to the applicant and sought more information to decide whether an investigation was warranted, but the applicant did not provide additional information; (v) the U.S. News & World Report did not publish the applicant's name in the article and the article did not mention anything specific about the investigation; and (vi) the applicant in fact did not complain to INT about the article in the U.S. News & World Report.

148. The Tribunal finds that the material facts of *R* differ from the present case. In the current case, INT and the Bank were as passive as in *M*. INT did not seek additional information to decide whether to commence a preliminary inquiry; there was no damaging public information about the Applicant before the INT investigations commenced; specific information about the investigations to which only a few individuals in the Bank had access was contained in the press articles; and the articles mentioned internal Bank documents and quoted the President. Therefore, the present case is quite distinguishable from *R*, and is rather closer to *M*.

149. The importance of the vigorous and constant effort to eliminate corruption within international organizations can hardly be overemphasized. Yet this cannot be invoked as a

laissez-passer to excuse disregard for the interests of staff members, and in particular their rights to due process. It is true in this case that the Applicant was guilty of misconduct. It might therefore be said that he deserved what he got, and must live with the consequences of his actions. This would however be wrong for a number of reasons. First, the Applicant was entitled to be treated in accordance with the rules. His misconduct was not established at the time of the leaks, and even if the persons responsible for the leaks felt very certain about the Applicant's culpability they had no right to punish him by offering him up to the press. Speculations in the press about "improprieties" inevitably lead to uncontrollable suppositions which take on a life of their own, and imaginary circumstances are repeated, in ever more distorted ways, as fact. Someone in the Applicant's situation is in no position to rebut such speculations while the investigation is pending. In the end the facts established may be very different from suppositions in the media. One may say that the Applicant should have to live with the fact that the truth of his conduct becomes known, but that is different from allowing him to be smeared by exaggerations and distortions. Some may feel that "misconduct is misconduct" but most people have a more nuanced sense of gradations of moral blame.

150. Second, what is at stake in the enforcement of due process is the set of rights to which all staff members are entitled: a set of rules which contributes to a climate of fairness and propriety which is of value even to staff members who will never have the slightest contact with INT. If the Bank is not held to some duty of active prevention of leaks, the potential for abuse is evident. Senior officials who want to get credit for taking decisive action may thus find it tempting to allow individuals to be singled out prematurely on the intolerable basis that it creates useful examples.

151. Finally, the Applicant complains that INT withheld exculpatory statements; investigations were overly long; INT prejudicially divided its investigation into two parts, producing two separate final reports of investigation; and the investigations were improperly influenced by management.

152. This series of complaints may be readily disposed of as lacking in foundation. The record does not demonstrate that INT withheld evidence material to the investigations. The investigations were lengthy because they were complex, involving a number of allegations covering the Applicant's activities for a number of years. The investigators had difficulties in obtaining certain documents as they have no subpoena power. The Applicant also refused to participate in the interview stage of the investigation relating to the allegations involving Companies A, B, and C. All considered, it does not appear that it was unreasonable that the investigators took close to two years to conclude the investigations. The Applicant argues that INT improperly divided the investigation into two parts, producing two reports of investigation. INT states that it issued two separate reports to speed the process because the allegations and the facts in the first report took less time to examine than those in the second report. The Tribunal has stated before that it "has no authority to micromanage the activity of INT." *G*, Decision No. 340 [2005], para. 73. The Applicant has not substantiated how dividing the investigation into two parts resulted in any due process violation. With respect to the investigations being improperly influenced by management, the Tribunal has seen no convincing evidence to that effect.

IV. COMPENSATION AND ATTORNEY'S COSTS

153. HRSVP found misconduct on four counts: (i) purchasing stock in Companies A, B, and C; (ii) furthering a business relationship between Company X and a Bank staff

member, and favoring Company X to obtain sole-source contracts; (iii) interacting with a staff member regarding the investigation; and (iv) refusing to answer INT investigators' questions. As seen above, the Tribunal upholds all of the misconduct decisions save with respect to the incident of 25 October 2005, as to which it does not accept HRSVP's conclusion that the Applicant's refusal to answer INT investigators' questions amounted to misconduct. This was, in the Tribunal's view, a matter of minor importance and does not affect the overall result of the investigations. The Applicant has not provided convincing arguments to show why the sanctions are disproportionate.

154. There is still the matter of the Bank's passivity with respect to the press leaks. In the past, the Tribunal has awarded compensation for due process violations even though the Tribunal upheld the substantive misconduct decisions of the Bank. For instance, in *Mustafa*, Decision No. 207 [1999], the Tribunal upheld the Bank's decision that the applicant had engaged in sexual harassment and also upheld the Bank's decision to terminate the applicant's appointment. The Tribunal, however, found that the Bank had violated his due process rights by not providing him with a copy of the investigation report before imposing disciplinary measures. The Tribunal awarded compensation in the amount of three months' net salary.

155. In this case, the Bank's response to the leaks of the confidential information about the Applicant's investigations to the press was inadequate and inconsistent with his due process rights. The fact that the Applicant was guilty of misconduct does not leave him bereft of rights. The Tribunal views the Bank's passive attitude toward the media leaks to have been unacceptable. Its censure is motivated not only by the prejudice caused to this Applicant, but consideration of the interest of all staff in the enhancement of a culture

founded on respect for due process. The Tribunal accordingly orders the Bank to pay the Applicant \$25,000. It emphasizes that it views this amount as symbolic, and that it views the failure as one of considerable gravity. Deserving future applicants who can demonstrate the likelihood of concrete prejudice would be in a position to recoup actual damages if such conduct by the Bank recurs.

156. At the jurisdictional stage of this case, the Applicant prevailed but the Tribunal deferred a ruling on costs. Since the Bank's jurisdictional objection was unmeritorious and since it transpires that one of the Applicant's grievances was legitimate in principle, the Tribunal orders the Bank to contribute \$5,000 to the Applicant's legal costs for the jurisdictional phase.

DECISION

For the reasons given above, the Tribunal decides as follows:

- (i) the Bank shall pay the Applicant compensation in the amount of \$25,000;
- (ii) the Bank shall pay a contribution in the amount of \$5,000 to the Applicant's costs incurred in the course of the jurisdictional phase of the case; and
- (iii) all other pleas are dismissed.

/S/ Jan Paulsson

Jan Paulsson
President

/S/ Olufemi Elias

Olufemi Elias
Executive Secretary

At Washington, DC, 25 March 2009