Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Bradley Gerard Crompton, Michelle Ann Crompton
and William Craig Henderson**

Heard: April 15, 2015, in Toronto, Ontario
Decision and Reasons (Penalty): May 5, 2015

DECISION AND REASONS
(Penalty)

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Nick Pallotta	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

H.C. Clement Wai	)	For the Mutual Fund Dealers Association of Canada
Bradley Gerard Crompton	)	Not in attendance nor represented by Counsel
Michelle Ann Crompton	)	Not in attendance nor represented by Counsel
William Craig Henderson	)	Not in attendance nor represented by Counsel

INTRODUCTION

1. Notices of Hearing were issued by the Mutual Fund Dealers Association of Canada ("MFDA") alleging misconduct against, among others, Bradley Gerard Crompton ("Brad Crompton" or "Crompton"), Michelle Ann Crompton ("Ms. Crompton"), and William Craig Henderson ("Henderson"). Brad Crompton, Ms. Crompton and Henderson are collectively referred to as "the Respondents."

2. The hearing into these allegations took place on March 9, 2015. The Respondents chose not to attend. We directed that the hearing proceed in their absence. In our Reasons for Decision dated March 26, 2015, we explained why. That explanation need not be repeated here.

3. At the conclusion of the hearing, we found that between May 2007 and August 2007, Crompton:

(a) facilitated a stealth advising arrangement whereby non-registered persons engaged in securities related business with clients on behalf of the Member, contrary to MFDA Rules 1.1.1(c) and 2.1.1; and

(b) failed to perform the necessary due diligence to learn the essential facts relative to the clients to ensure that the investments and the leveraged investment strategy recommended to and implemented in the accounts of the clients was suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

4. In relation to Crompton, we also found that beginning in or around September 2010, he failed to attend an interview requested by Staff of the MFDA ("Staff") during the course of an investigation, and thereby failed to cooperate with the ongoing investigation, contrary to section 22.1 of MFDA By-law No. 1.

5. We found that between May 2007 and October 2008, Ms. Crompton, in her capacity as the designated branch manager, failed to adequately supervise a branch and failed to ensure that

the business conducted on behalf of the Member by Approved Persons at the branch was in compliance with applicable securities legislation and the MFDA By-law and Rules, contrary to MFDA Rules 2.5.3(b), 2.1.1 and MFDA Policy No. 2.

6. Finally, we found that beginning in or around September 2010, Ms. Crompton and Henderson failed to attend an interview requested by Staff during the course of an investigation, and thereby failed to cooperate with an ongoing investigation, contrary to section 22.1 of MFDA By-law No. 1.

7. The facts to support those findings are set out in detail in our earlier Reasons. These need not be repeated here. In our earlier Reasons, we also elaborated on our findings in several paragraphs that do bear repetition when considering the issue of penalty:

> 64. … Allegation 1(b) against Crompton and Allegation 4 against Ms. Crompton are articulated as a failure to perform due diligence to ensure suitability and as a failure to adequately supervise a branch office and ensure compliance respectively. These contraventions are indeed supported by both the evidence and the Rules cited. However, we note that one of the Rules cited in relation to each of these allegations is Rule 2.1.1. It provides more generally, amongst other things, that each Approved Person of a Member shall (a) deal fairly, honestly and in good faith with its clients; and observe high standards of ethics and conduct in the transaction of business.
>
> 65. The facts in relation to Allegation 1(b) against Crompton and Allegation 4 against Ms. Crompton reveal not only failures of due diligence and supervision, but deliberate dishonesty and ethical violations of the utmost seriousness. On the totality of the evidence, we find that Crompton and Ms. Crompton were knowingly parties to deliberate deception, which included the falsification of documents to ensure approvals of otherwise unsuitable investment decisions.

8. We directed that the penalty hearing take place on April 15, 2015. Although the Respondents were not entitled to further notice of the proceedings, we also directed that Staff advise the Respondents, to the extent possible, of what had transpired to date, including the Reasons of the Hearing Panel, the date set to address penalty, and the opportunity for the Respondents to participate in the penalty hearing, should they choose to do so.

9. The Cromptons did not respond to emails enclosing our earlier Reasons and notifying

them of what had transpired to date. Mr. Henderson responded by email, indicating that he would not be attending the penalty hearing. We will comment further on his response below.

10. On April 15, 2015, the penalty hearing proceeded in the absence of the Respondents. Staff provided us with a victim impact statement from one investor/client, written submissions as to penalty, and a book of authorities. At the conclusion of Staff's submissions, we reserved judgment.

11. For the reasons that follow, we permanently prohibit Crompton and Ms. Crompton from conducting securities-related business in any capacity while in the employ of, or in association with, any MFDA Member; impose a fine of $500,000 on each, and award costs against each in the amount of $10,000. We prohibit Henderson from conducting securities-related business in any capacity while in the employ of, or in association with, any MFDA Member for a period of two (2) years, impose a fine on him of $25,000 and award costs against him in the amount of $10,000. We also impose conditions on his re-registration outlined below.

ANALYSIS

12. Crompton and Ms. Crompton were knowingly parties to deliberate deception, which included the falsification of documents to ensure approvals of otherwise unsuitable investment decisions. Both instructed non-registered persons to get clients to sign New Account Application Forms and loan documents in blank. The documents would then be sent to the Underwriting Department which would then populate the Know Your Client information in the documents to ensure that the documentation would pass supervisory review by the Member. Clients were led to believe that the non-registered person with whom they dealt was the mutual fund salesperson responsible for servicing their accounts. As a result of the scheme, a number of clients were placed in leveraged investment strategies that were wholly unsuitable, to their prejudice. The conduct of Crompton and Ms. Crompton was an egregious violation of their obligations.

13. Ms. Crompton was a branch manager. Her responsibilities included the training and supervision of others to ensure that business was being conducted in compliance with applicable

securities legislation and MFDA By-laws, Rules and Policies. As is obvious, her misconduct also involved a gross violation of her position of responsibility as a branch manager.

14. Both Crompton and Ms. Crompton were directing minds of Canada Mortgage & Lending Corp ("CMLC"), the company that promoted the leveraged investment strategy in issue here. The Member's York Mills Branch operated under the CMLC trade name. Crompton and Ms. Crompton received the majority of the commissions and trailers as a result of the improper leveraging.

15. As reflected in the victim impact statement filed at the penalty hearing, the Cromptons' conduct undoubtedly had a serious impact on affected clients. We need not quantify losses suffered in order to conclude that the impact on clients was profound. There were at least 14 complaints that arose from improper leveraging and resulting suitability concerns. We received detailed evidence in relation to several of the clients.

16. In addition to the misconduct already described, the Cromptons failed to cooperate as required with the MFDA investigation into this matter. They have shown no remorse or acceptance of responsibility for their conduct. They did nothing to obviate the need for Staff to fully prepare for a contested hearing. They did nothing to ameliorate the impact of their misconduct on clients.

17. Neither Crompton nor Ms. Crompton has any prior disciplinary record. However, the absence of a prior disciplinary record does little or nothing to counterbalance the egregious conduct in this case. Put succinctly, deliberate dishonesty, for the personal benefit of the Respondents, which had the effect of placing multiple clients at risk must be met with a penalty that gives prominence to the protection of the investing public, and specific and general deterrence. In addition, the integrity of the securities market, protection of the MFDA's membership and the integrity of the MFDA's enforcement processes are related, relevant considerations.

18. In the circumstances, the penalty for Crompton and Ms. Crompton must include

permanent prohibition. As well, a strong deterrent penalty must include a fine that brings home to them and others the seriousness of their misconduct. Our review of the jurisprudence supports a fine in the amount of $500,000. For example, in *Re: Thomas G. Arseneau*, 2012 Atlantic Regional Council, Decision and Reasons dated September 28, 2012, the hearing panel imposed such a fine, in addition to a permanent prohibition. It characterized Arseneau's activities at para. 62 as "a most egregious departure from the proper conduct expected and required in his relationship with his clients and merits the most severe penalty." It also noted at para. 64 the number of claimants, the amounts borrowed, the amount of their losses, the amount of commissions involved and the need to deter others from conduct "so outrageously outside the bounds of the conduct required when promoting borrowing for leveraged investments and the very basis requirements to Know-Your-Client and determinations of suitability." The misconduct of Crompton and Ms. Crompton is deserving of the same characterizations made by that hearing panel in the above quotations.

19. Finally, Staff has requested that an order for costs be made against each of these Respondents. We agree both with that submission and the amount proposed. There is no reason why a portion of the costs attributable to the investigation and the hearing that followed should not be assumed by the Respondents, rather than the MFDA directly or Members and Approved Persons indirectly. A costs award of $10,000 in relation to each Respondent is appropriate in the circumstances.

20. Henderson is differently situated. He was a salaried employee. He received no commissions or trailers as a result of the misconduct outlined. Staff fairly conceded that there is no evidence that he had any knowing involvement in the fraudulent activities of the Cromptons.

21. That being said, Henderson's conduct remains serious. He failed to cooperate with the ongoing MFDA investigation in a timely way. Indeed, he only attended for an interview years after he was requested to do so. The fact that he ultimately did attend for an interview does not immunize him, of course, from a finding of misconduct. The duty to cooperate includes the duty to do so fully and in a timely way. This point was made by another administrative tribunal in *Law Society of Upper Canada v. Mercy Dadepo*, 2009 ONLSHP 43:

> [20] Particular 2 alleges that Ms. Dadepo failed to fully co-operate with an investigation of the Law Society by failing to produce specific books and records, despite requests that she do so in communications from the Law Society including telephone calls on May 27, 2008, June 3, 2008, and June 13, 2008 and in letters dated May 24, 2007, May 8, 2008, June 4, 2008, June 13, 2008 and July 25, 2008.
>
> [21] It is the obligation of any licensee to **fully** co-operate with the Society. That obligation may remain unfulfilled when a licensee provides some, but not all, of the information or documentation needed for a Society investigation. Otherwise, a licensee could frustrate the statutory obligation of the Society to protect the public interest by responding in an incomplete way to its legitimate requests. It follows that professional misconduct for failing to co-operate is not confined to cases in which there has been no responsiveness whatsoever to the Society's requests. That is why an allegation of professional misconduct may be framed, as it is here, as a failure to **fully** co-operate with the Society.
>
> [22] That being said, it is not the case that every shortcoming in providing the Society what it needs amounts to professional misconduct. A finding of failure to co-operate arises from conduct properly stigmatized as misconduct. This may, but need not, involve proof of a deliberate intent to thwart the Society's investigation. More commonly, it involves a failure of the licensee to act responsibly in assisting or working with the Society to provide in a timely way what is required. The abdication of the licensee's duty to co-operate may arise, for example, from indifference, neglect, or a chaotic or otherwise dysfunctional practice. However, where the licensee is, in good faith, making full efforts to comply in a timely and responsible way with the Society's requests, shortcomings in compliance may give rise to other concerns and may even evidence other breaches of the licensee's obligations, but will not amount to a failure to co-operate.

22. Although the Law Society of Upper Canada operates within a different regulatory framework, the Law Society hearing panel's comments otherwise have equal application here.

23. Henderson's lack of timely cooperation meant that he could not be disciplined for additional misconduct which was only revealed during his interview process and after the time to initiate disciplinary proceedings had expired. In particular, there was evidence revealed during Henderson's interview that he was complicit in the scheme whereby non-registered persons were meeting with clients and registered persons were signing off on the relevant documents without discussing them with the clients. Although Henderson is not being disciplined for that misconduct, we are entitled to take into consideration the adverse impact that his failure to cooperate in a timely way had on the investigation, including the MFDA's inability to proceed against him for the outlined misconduct.

24. There is no evidence of remorse or acknowledgement of responsibility on Henderson's part.

25. As earlier indicated, Henderson responded to a recent email informing him of his penalty hearing. He made certain assertions that remain unsupported by any evidence. In particular, we do not find any evidentiary foundation for, or accept, his assertion that he failed to cooperate in a timely way on the advice of his lawyer that he not attend without counsel. Moreover, he had legal counsel at times during the investigative and hearing stage. He may have had financial issues that precluded him from continuous representation, but this offers no excuse and little mitigation for his failure to cooperate for such a lengthy period of time.

26. Staff submitted that Henderson should also be the subject of a permanent prohibition. In the alternative, Staff suggested that a more limited prohibition should be directly tied to the length of non-cooperation: in other words, a four-year period of non-cooperation should be met with at least a prohibition of equal length. We respectfully disagree with both submissions.

27. Although Henderson's misconduct is serious, it must be differentiated (as we have done in these and our earlier Reasons) from the level of misconduct engaged in by the Cromptons. Given the facts already outlined, we are not of the view that a permanent prohibition is a fit penalty. Nor do we adopt a somewhat inflexible matching formula for determining the length of prohibition that should be imposed for misconduct involving delayed cooperation. Instead, we prefer to simply acknowledge that the length of non-cooperation is a factor that is relevant to the issue of penalty.

28. In the totality of circumstances, we impose a prohibition for a period of two years, together with an order for costs in the amount of $10,000, and a fine in the amount of $25,000. The quantum of the fine, as recommended by Staff, fairly reflects how Henderson is differently situated from the Cromptons.

29. After the expiry of the two year period, Henderson may seek to again be registered. We

order that he shall not be re-registered unless the fine and costs are fully paid and unless he writes or re-writes and passes an appropriate industry course or other education acceptable to MFDA Staff. Moreover, for the first 12 months of his registration, he shall be closely supervised by a Member pursuant to a supervision plan approved in advance by MFDA Staff.

30. Our Order shall reflect the terms outlined in these Reasons.

31. We are grateful to Mr. Wai for his thorough and fair presentation in this matter.

DATED this 5th day of May, 2015.

"Mark J. Sandler"

Mark J. Sandler
Chair

"Nick Pallotta"

Nick Pallotta
Industry Representative

"Selwyn Kossuth

Selwyn Kossuth
Industry Representative

DM 424807 v2