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: Satya Prakash Agarwal

Heard: September 29, 2015, in Toronto, Ontario
Reasons for Decision: November 24, 2015.

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

H. Michael Kelly Q.C.	Chair
Guenther W. K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Francis Roy	)	For the Mutual Fund Dealers Association of Canada
Frederick Schumann	)	For the Respondent, Satya Prakash Agarwal

1. The parties proceeded on the basis of an Agreed Statement of Facts (the "ASF"), dated September 25, 2015. The Notice of Hearing, dated March 20, 2015, made the following allegations against Satya Prakash Agarwal (the "Respondent") :

> **Allegation #1**: From April 12, 2010 to March 13, 2013, the Respondent solicited and accepted at least $50,000 from clients HD and SD to be invested on their behalf outside the Member in a real estate investment in which he and his wife purportedly had a direct or indirect interest and which was not disclosed to, and approved by, the Member, contrary to MFDA Rules 1.1.1(a), 1.2.1(c), 2.1.4 and 2.1.1.
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> **Allegation #2**: Between April 2012 and March 15, 2013, the Respondent attempted to settle and subsequently settled a complaint made by clients HD and SD to the Member without the knowledge or involvement of the Member by repaying $50,000.00 to clients HD and SD and requesting that they withdraw their complaint, contrary to MFDA Policy No. 3, MFDA Policy No. 6 and MFDA Rule 2.1.1; and
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> **Allegation #3**: Commencing February 3, 2014, the Respondent has failed to answer questions or produce for inspection copies of documents and records requested by the MFDA during the course of an investigation, contrary to section 22.1 of the MFDA By-Law No.1.

2. Enforcement Counsel and the Respondent signed an ASF, dated September 25, 2015 and filed same at the hearing. The ASF is available for review on the MFDA website at *www.mfda.ca.* Paragraph 29 of the ASF sets out the "Misconduct Admitted " as follows:

> a) between April 12, 2010 and March 13, 2013, his actions in facilitating the PIP Investments for clients HD and SD gave rise to at least a potential conflict of interest which he failed to disclose to the Member, disclose in writing to the clients or ensure was addressed by the exercise of responsible business judgment, influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1; and

b) between April 12, 2010 and March 13, 2013 , by facilitating the sale of the PIP Investments to clients HD and SD , and by providing cheques to clients HD and SD purporting to be interest earned on their PIP Investments, he engaged in outside business activities that were not disclosed to, or approved by, the Member, contrary to MFDA Rule 1.2.1(c) and 2.1.1; and

c) between April, 2012 and March 13, 2013, he attempted to settle and subsequently settled the Complaint directly with the clients HD and SD without the Member's knowledge or approval, contrary to MFDA Policy No. 3 and MFDA Rule 2.1.1

3. After brief submissions of counsel, the Hearing Panel found that the misconduct had been established, on a balance of probabilities. Submissions were made by counsel as to the appropriateness of the agreed-upon penalty.

4. Written submissions, tendered by MFDA Staff, addressing the appropriate penalty, were filed and the recommended penalty therein was not opposed by the Respondent. The recommendation was a joint recommendation. In summary, those submissions, supplemented by oral submissions of both counsel, asserted:

a) The Respondent's misconduct exposed clients HD and SD to potential complete loss of their $50,000.00 investment;

b) The Respondent's misconduct, although serious, did not demonstrate that he would pose a permanent risk to investors;

c) The Respondent had not previously been subject to MFDA disciplinary proceedings;

d) As a result of this misconduct, The Respondent was terminated by the Member in March 2013, and has not since been registered in any capacity in the securities industry;

e) The Respondent accepted responsibility for his actions, and expressed remorse;

f) No loss was ultimately suffered by the investors, and in fact they made a modest financial gain;

g) As deterrence is a primary factor, the proposed penalties are suitable, and in line with previous decisions in similar MFDA disciplinary proceedings (referenced in Staff's Book of Authorities at Tabs 4, 7, 12 and 13).

5. Where a Hearing Panel proceeds on the basis of a settlement agreement, section 24.4 of MFDA By-law No. 1 applies, requiring the Panel to either reject or accept the proposed penalties. The Panel must decide whether or not the proposed penalty is appropriate. The Panel should not interfere with a joint recommendation, unless it is manifestly unfair or inappropriate, as stated in *R v R.W.E.* [2007] O.J. No. 2515 (Ont.C.A.) at paragraph 22.

6. The Hearing Panel was satisfied that the proposed penalty was reasonable and appropriate, based upon the factors set out in paragraph 4, above. The penalty imposed was as follows:

a) The Respondent is prohibited from conducting securities related business, while in the employ of, or associated with, any MFDA Member for a period of five (5) years, pursuant to s. 24.1.1.(c) of MFDA By-law No. 1;
b) The Respondent shall pay a fine in the amount of $35,000.00, pursuant to s. 24.1(b) of MFDA By-law No.1, and
c) The Respondent shall pay costs of this Proceeding in the amount of $5,000.00 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 24th day of November, 2015.

"H. Michael Kelly"

H. Michael Kelly, Q.C.
Chair

"Guenther W. K. Kleberg"

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Industry Representative

"Kenneth P. Mann"

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