



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: Carla-Marie Aksomitis

Heard: January 19, 2016, in Halifax, Nova Scotia
Decision and Reasons: May 24, 2016

DECISION AND REASONS

Hearing Panel of the Atlantic Regional Council:

D. Merlin Nunn, Q.C.	Chair
Ann C. Etter	Industry Representative
John R. Maguire	Industry Representative

Appearances:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Carla-Marie Aksomitis)	Not present or represented by counsel
)	
)	

1. On August 7, 2015, Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing in respect of Carla-Marie Aksomitis (the “Respondent”) which sets out two allegations, namely:

Allegation # 1: Between about February and May, 2013, the Respondent misappropriated approximately \$19,360 from client MR and client RK, thereby failing to deal fairly, honestly and in good faith with clients, and observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

Allegation # 2: Between about August 2012 and June 2013, the Respondent misappropriated approximately \$97,337 from 27 individuals who held bank accounts at the Royal Bank of Canada thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

2. The Respondent did not file a reply to the Notice of Hearing nor did she attend the first appearance on October 5, 2015 when the Hearing Panel had ordered the hearing on the merits of the matter to take place on January 19, 2016.

3. The evidence presented on behalf of MFDA makes it abundantly clear that the Respondent was served with documents and letters advising of the date, time and location of the hearing on the merits and was fully aware of the scheduled January 19, 2016 hearing. (See Vasiliadis Affidavit, Exhibit 4).

4. Despite this she did not appear nor did anyone appear on her behalf at the January 19, 2016 hearing.

5. In accordance with Rule 8.3 (1) of the MFDA Rules of Procedure a Hearing Panel may accept as proven any facts alleged or conclusions drawn by the Corporation in the Notice of Hearing that a Respondent does not specifically deny in a Reply. Here no Reply was filed and the Hearing Panel may act accordingly.

6. As well, under Rule 8.4 (1) where no Reply is filed, a Hearing Panel may proceed with the hearing without further notice and in the absence of the Respondent and may accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in Sections 24.1 and 24.2 of MFDA By-law No. 1.

7. The Panel decided that the Respondent did not take part in any of the scheduled hearings and showed no interest in making any defence to the allegations made against her, thereby leaving the Panel open to apply Rule 8.4 (1) of the MFDA Rules of Procedure and to proceed with the Hearing in her absence, receive the evidence submitted and accept the facts alleged and conclusions drawn by the MFDA as proven and to further consider the matter of penalty to be imposed.

8. The facts alleged by MFDA are contained in the Gallimore and Chadwick Affidavits, (Exhibits 5 and 6 respectively) and, though all the details of the events set out therein are accepted as proven by the Panel, it is unnecessary to set them out in this decision.

9. Essentially, those facts show that the Respondent was registered in Nova Scotia as a mutual funds salesperson/dealing representative with Royal Mutual Funds Inc., a member of the MFDA and was an Approved Person under the MFDA Rules.

10. The Respondent was employed at the Royal Bank of Canada, Musquodoboit Harbour Branch and performed bank work as well as her mutual fund work between the years 2009 and July of 2013, at which time she was terminated as the matters in Allegations 1 and 2 came to light.

11. MFDA began its investigation regarding these matters and on May 27, 2014 Mr. Gallimore conducted an interview with the Respondent during which the facts alleged were discussed in detail and admitted to by the Respondent. This interview was digitally recorded at the time and a transcribed copy is attached to Mr. Gallimore's Affidavit (Exhibit 5) as Tab 5.

12. The Respondent admitted to forging the signature to process an unauthorized redemption in the account of RK, age 81, in the amount of \$359.57 on February 5, 2013.

13. Also admitted were three unauthorized redemptions, the first on February 27, 2013 for \$4,000, the second on March 8, 2013 for \$5,000 and the third on May 31, 2013, for \$10,000, all from the account of MR, age 76, with the necessary signatures on the redemption papers all forged by the Respondent.

14. The Respondent indicated that the first amount of \$359.57 was put back into RK's account as the redemption was questioned by RK.

15. With regard to the other amounts totalling \$19,000 the Respondent indicated that she used the money to pay her personal debts.

16. These transactions and misappropriations of clients' funds all relate to Allegation # 1 and the Panel accepts all the facts outlined here and further elaborated in the Gallimore Affidavit (Exhibit 5) Tab 5 as fully proven and that the Respondent failed to deal fairly, honestly and in good faith with clients, and observe high standards of ethics and conduct in the transaction of business, thereby breaching MFDA Rule 2.1.1.

17. Allegation # 1 therefore is proven.

18. With regard to Allegation # 2, the Panel accepts the evidence that the Respondent misappropriated monies from Royal Bank clients' accounts, as opposed to Royal Mutual Funds Inc. clients.

19. The Respondent did not remember the names of all the people from whose accounts money was taken nor did she remember the total misappropriated. However, the evidence does establish that 27 people with bank accounts at that Royal Bank had money taken from their accounts by the Respondent and the total according to the Royal Bank was \$101,000.

20. The Respondent admitted her behaviour but did not have any idea of the total amount misappropriated suggesting perhaps about \$40,000. Nevertheless the Respondent agreed to a settlement of \$100,000, which was apparently entered as a judgement against her and is paying the bank \$1,500 a month for four years with a lump sum payment of \$20,000 at the end of the term.

21. In the circumstances here with no Reply filed and the non-attendance at the Hearing, the Panel accepts as proven that the Respondent's behaviour indicated a determined and continual misappropriation of bank client funds to be used for the Respondent's own personal uses. The Panel is satisfied to accept the number of the Royal Bank clients whose accounts were fraudulently dealt with was 27 and the total amount stolen was shown to be, at least, \$100,000, the settlement amount agreed to by the Respondent. The Panel acknowledges that this amount is approximately \$2,600 more than set forth in Allegation #2.

Penalty

22. In the present case, Staff proposes the following penalties against the Respondent:

- (a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of the MFDA By-law No. 1;
- (b) a fine in the amount of \$175,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- (c) costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

23. The Panel is well aware of the principles it should follow concerning the appropriateness of penalty. First and foremost the underlying principle is that the primary goal of securities regulation is the protection of the investor. See *Pezim v. British Columbia (Superintendent of Brokers)*, (1994) 2 S.C.R. 557 (SCC) at paras 59 and 68.

24. Secondly a Hearing Panel has a number of considerations in determining an appropriate penalty. These are set down in the earlier cases of *Re Tonnies*, a Hearing Panel Decision of the Prairie Regional Council, MFDA, File No. 200503, dated June 27, 2005, and *Re Larson* [2009] Hearing Panel Decision of the Prairie Regional Council, MFDA, File No. 200826, dated October 14, 2009, which include:

- (a) Protection of the investing public;
- (b) The integrity of the securities markets;
- (c) Specific and general deterrence;
- (d) Protection of the MFDA membership; and
- (e) Protection of the integrity of the MFDA's enforcement process.

25. The cases referred to also set out some general factors to consider as part of those set out above. This Panel has considered all of the foregoing in regard to the activities carried out by the Respondent.

26. Her behaviour in regard to these mutual fund investors is egregious. It was premeditated, planned and deliberate understanding that forgery was necessary to complete the theft yet she acted accordingly to attain her aim. Such a person has no place in the investment industry. Ms. Aksomitis has violated all the conduct rules of the MFDA.

27. She needed money to pay her debts. On three separate occasions she targeted an elderly client who might not notice thefts from his accounts, forged his signature on the required forms and stole \$19,000 from him. Those are two significant crimes, theft and forgery.

28. Her conduct warrants a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member and this Panel so orders.

29. The requested \$175,000 fine raises the issue as to whether the amount of fine is based to the extent requested on the \$100,000 stolen from Royal Bank clients' accounts. MFDA counsel strongly asserted that the Panel should include that amount and consider the total amount stolen as \$119,000 which, coupled with the other factors to consider would warrant the fine requested.

30. The Panel spent considerable time on this issue as the Royal Bank is not a Member of MFDA and, in this case, has conducted its own investigation, entered a judgement against the Respondent and agreed to a settlement whereby the Respondent is required to make substantial repayment over a four year period.

31. To inflict a significant fine on activity outside of MFDA Members may very well create jurisdictional problems, as well as, open a precedent door that might not be in the MFDA best interests.

32. After a full consideration of this issue the Panel has decided that a fine of three times the amount misappropriated from the mutual fund clients would be proper and meets all the principles required to be considered. This amounts to three times \$19,000 for a total of \$57,000.

33. The Panel did decide that the Respondent's thefts from clients at Royal Bank did constitute activity that would cause an Approved Person to be in breach of the conduct rules of the MFDA even if no MFDA Member was involved. In such a situation it is the activity that amounts to conduct not allowed under the MFDA Rules. After some thought the Panel has decided that the situation here warrants an additional fine on the conduct of the Respondent for her complete disregard of the MFDA Rules under which she is required to perform her duties and the standards she must abide by in doing so.

34. The appropriate amount in this regard is \$10,000.

35. The total fine therefore is \$67,000.

36. The Panel also awards MFDA costs in the amount of \$7,500.

DATED this 24th day of May, 2016.

“D. Merlin Nunn”

D. Merlin Nunn, Q.C.
Chair

“Ann C. Etter”

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Industry Representative

“John R. Maguire”

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