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: Christopher John Davies

Heard: April 15, 2020 in Toronto, Ontario
Decision: April 15, 2020
Reasons for Decision: June 16, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth	Chair
Selwyn Kossuth	Industry Representative
Tim Pryor	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Christopher John Davies	)	Respondent, in person

Background

1. By Notice of Hearing dated November 18, 2019 ("Notice of Hearing") a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA") was convened to hear evidence and submissions with respect to allegations against Christopher John Davies ("Respondent") set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation #1: Between February 2014 and July 2017, the Respondent misappropriated or failed to account for at least $434,252.35 received from four clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

Allegation #2: In or about April 2, 2014, the Respondent solicited or received $25,000 from two clients to make a joint investment with the clients in an unapproved investment outside the Member, thereby:

a) Engaging in securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1; or

b) Engaging in personal financial dealings with the clients, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1.

Allegation #3: Between May 2015 and July 2017, the Respondent entered false or misleading notes regarding his communications with clients relating to trades on the Member's back office system, contrary to MFDA Rules 2.1.1, 1.1.2 and 5.1(b).

Allegation #4: Commencing in or about August 2017, the Respondent made false or misleading statements to the Member during the course of an investigation into his conduct, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.5.1 and 1.1.2.

Allegation #5: Commencing on or about November 29, 2018, the Respondent failed to cooperate with an investigation by Staff of the MFDA into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

In Public/In Camera

3. The Respondent and Staff of the MFDA ("Staff") agreed that this matter should be heard in public pursuant to Rule 1.8 of the MFDA *Rules of Procedure*.

Admissions

4. The Respondent and Staff entered into an Agreed Statement of Facts dated March 30, 2020. In Part V of the Agreed Statement of Facts, Staff and the Respondent agreed to the existence of a set of facts. The Agreed Statement of Facts was marked as Exhibit 4 at the hearing and is attached hereto as Appendix "A" to these Reasons. At paragraph 12 to 15 of the agreed facts, the Respondent admits that he was registered in Ontario as a dealing representative, commencing August 9, 2001. From July 26, 2006 to August 31, 2017, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the "Member"), a member of the MFDA. On August 31, 2017, the Member terminated the Respondent as a result of the events described in the Agreed Statement of Fact. At all material times, the Respondent carried on business in the St. Thomas and London, Ontario areas. Evidence heard at the hearing discloses that the Respondent was a married man with four young children.

5. In considering the allegations of misconduct set out in the Notice of Hearing, the Hearing Panel accepted the submission of Staff that the standard of proof in administrative proceedings, such as those instituted pursuant to MFDA By-law No. 1, is a civil standard of balance of probabilities. Since 2008, it has been settled law in Canada that "there is only one civil standard of proof at common law and that is proof on a balance of probabilities". The Supreme Court of Canada has rejected the notion that the seriousness of the allegations or consequences change the standard of proof. In a civil case, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred. Evidence must always be sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test, but there is no objective standard to measure sufficiency.

Brown (Re), 2013 LNCMFDA 68 at para 15

F.H. v. McDougall [2008] 3 S.C.R. 41 at paras. 40, 45, 46 and 49

6. The Hearing Panel further accepted that Staff bears the burden of proving the allegations against the Respondent on a balance of probabilities.

Brown (Re), supra at para. 15.

Section 24.1.1 of MFDA By-law No. 1

7. Commencing at paragraph 57 of the Agreed Statement of Facts, the Respondent admitted allegations 1-4 in the Notice of Hearing. More specifically, the Respondent admitted that:

a) by engaging in the conduct at paragraphs 17-30, 40-41 and 43-47, the Respondent admits that between February 2014 and July 2017, he misappropriated or failed to account for at least $134,252.35 received from four clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2, and 2.5.1;

b) by engaging in the conduct described at paragraphs 32-39, the Respondent admits that between May 2015 and September 2015, he solicited and received $300,000 from a client, to invest in a film production related investment, for which he has failed to account, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2 and 2.5.1;

c) by engaging in the conduct described at paragraphs 19-25, the Respondent admits that, in or about April 2, 2014, he solicited and received $25,000 from two clients to make a joint investment with the clients in an unapproved investment outside the Member, thereby:

   i. engaging in securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 1.1.2 and 2.5.1; and

   ii. engaging in personal financial dealings with the clients, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary

to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1;

d) by engaging in the conduct described at paragraphs 52-54, the Respondent admits that, between May 2015 and July 2017, he entered false or misleading notes regarding his communications with clients relating to trades on the member's back office system, contrary to MFDA Rules 2.1.1, 1.1.2 and 5.1(b); and

e) by engaging in the conduct described at paragraphs 55-56, the Respondent admits that, commencing in or about August 2017, he made false or misleading statements to the Member during the course of an investigation into his conduct, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

8. Accordingly, based on the evidence set out above, the Hearing Panel concluded that the allegations set out in Allegations #1, 2, 3 and 4, had been established on a balance of probabilities and that each amounted to a misconduct pursuant to the Policies, Procedures, Rules and By-Laws of the MFDA.

Issues To Be Determined

9. At paragraph 6 of the Agreed Statement of Facts, Staff and the Respondent jointly requested that the Hearing Panel determine, on the basis of the Agreed Statement of Facts and the additional evidence lead at the hearing and the submissions of the parties, the following:

a) whether, commencing on or about November 29, 2018, the Respondent failed to cooperate with an investigation by Staff into his conduct, contrary to section 22.1 of the MFDA By-law No. 1; and

b) the appropriate fine (if any) to impose on the Respondent, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 and the appropriate amount of costs (if any) of the investigation and hearing to be awarded against the Respondent, pursuant to s. 24.2 of MFDA By-law No. 1.

Failure to Cooperate

10. One of the matters to be determined by the Hearing Panel as directed by the Agreed Statement of Facts, was whether the Respondent failed to cooperate with an investigation by Staff

into his conduct. In this respect, Staff relied on the evidence of Mr. Stephen Davis, MFDA investigator set out in his Affidavit dated April 15, 2020, which was marked as Exhibit 5 to these proceedings.

11. The Affidavit of Mr. Davis disclosed, among other things, that:

a) On May 29, 2018 and June 27, 2018, respectively, Mr. Davis sent registered letters to the Respondent seeking information about the Respondent's bank accounts. Although both registered letters were signed for and accepted, Mr. Davis received no response;

b) On July 23, 2018 and September 14, 2018, respectively, Mr. Davis sent letters by process server to the Respondent, seeking information about the Respondent's bank accounts, and asking the Respondent to advise if he would attend an interview. Both letters advised the Respondent he could have legal counsel present at the Staff's interview;

c) When the process server attended at the Respondent's address, he was advised by the occupants that the Respondent had moved. The process server obtained the Respondent's cell phone number and was able to contact him. While the Respondent refused to provide his new home address, he agreed to meet the process server in a parking lot to accept service of the letters;

d) Mr. Davis did not initially receive a response to those letters, but did receive an email from the Respondent on October 29, 2018. The email forwarded an earlier email, dated July 30, 2018, which the Respondent had sent to Mr. Davis, but which Mr. Davis had not received. After investigating with the MFDA's IT Department, Mr. Davis learned that the Respondent's July 30, 2018 email had been quarantined because it came from an iCloud account and so had not been delivered to Mr. Davis;

e) Between November 2, 2018 and November 22, 2018, Mr. Davis corresponded with the Respondent. Mr. Davis insisted that the Respondent had to attend an interview, to which the Respondent agreed provided it could be conducted near his home in London, Ontario and in a quiet location. The Respondent stated that his mental health concerns precluded him from travelling;

f) Staff agreed to this request, and the interview was scheduled for November 27, 2018, to be held in a hotel conference room in London, Ontario. Mr. Davis also asked the Respondent to bring the bank account information that had been requested in Mr. Davis' prior correspondence;

g) On November 27, 2018, Mr. Davis and Alan Melamud, Enforcement Counsel with the MFDA, travelled to London, Ontario and met the Respondent at the hotel conference room. The Respondent did not bring any documents with him;

h) At the commencement of the interview, the Respondent was again advised of his right to have counsel present and, as no counsel was present, asked to confirm that he still wished to proceed. The Respondent expressed surprise and advised that he had not been aware he could have counsel present. Mr. Melamud explained to the Respondent that he had the right to have counsel present at the interview, that MFDA proceedings could potentially have serious consequences and that if the Respondent wished, the interview could be rescheduled to a later date to permit the Respondent to find representation;

i) The Respondent decided he did wish to consult with counsel before proceeding with the interview. Mr. Davis advised that he would write to the Respondent about rescheduling. The interview, therefore concluded;

j) On November 29, 2018, Mr. Davis sent a letter to the Respondent by secure email and process server, seeking to reschedule the interview. The letter stated in part:

> *With respect to rescheduling the interview, we expect that you, or your lawyer should you choose to retain one, will contact the undersigned no later than December 19, 2018 to advise on which the (sic) following dates you will make yourself available for the interview: January 7 to 11, 2019, January 14, 15 or 18, 2019.*

k) Mr. Davis received email confirmation that the Respondent had opened the secure email. The process server was unable to deliver the letter, as the Respondent did not answer his phone and did not return the process server's voicemail;

l) Mr. Davis did not receive a response to his November 29, 2018 letter from the Respondent and as a consequence, the interview was not rescheduled. The Respondent also never provided the bank account information requested;

m) On January 22, 2019, Mr. Davis sent a letter to the Respondent advising him that his case had been escalated to Enforcement Counsel;

n) On February 4, 2019, Mr. Melamud and the Respondent had an email exchange, in which the Respondent claimed he had believed Mr. Davis' November 29, 2018 letter had asked the Respondent only to keep dates open, and that Mr. Davis would contact him further to reschedule the interview. Mr. Melamud replied that the November 29, 2018 letter had told the Respondent to contact the MFDA with his and his lawyer's (should he retain one) availability.

12. It was the submission of Staff that without interviewing the Respondent and reviewing his bank statements, Staff could not determine the full nature and extent of the Respondent's conduct that is the subject of this proceeding, including whether the Respondent misappropriated or failed to account for money from other clients or solicited other clients to invest in off-book investments. In the case at issue, the Respondent failed at any time to produce his requested bank statements and an interview of the Respondent was never successfully concluded.

13. It was the evidence and submission of the Respondent, that throughout the course of the MFDA's investigation, he was suffering from depression and anxiety, had no intention to fail to cooperate, but was rather debilitated by his mental state and unable to cooperate. His assertion in this respect was partially supported by reports from his medical general practitioner, Dr. Jonathan Carter, the report of Andrew J. Dow, the Respondent's registered psychotherapist, and the report of Dr. Peter C. Williamson, psychiatrist, who examined the Respondent on March 16, 2018. Although the reports confirmed that the Respondent suffered from moderate depression, none of the reports expressed the opinion that the Respondent's mental disorder would negate his ability to cooperate with the investigation of the MFDA, or negate his ability to attend and participate in an interview or produce his bank statements.

14. In fact, other evidence disclosed at the hearing suggested the contrary. The Hearing Panel noted that in or about December 2017, the Respondent was capable of preparing a three page letter of explanation to the Member allegedly explaining his conduct. The Hearing Panel further noted that in or about September 2018, the Respondent was able to interact with the MFDA process server and make arrangements to meet with that process server in a parking lot near his home to

receive service of two letters forwarded to him by the MFDA. Additionally, the Hearing Panel noted that in November of 2018, the Respondent was able to engage in a lengthy set of correspondence with Mr. Davis of the MFDA in order to arrange the November 27, 2018 interview with the MFDA in a quiet location near his home in London, Ontario, which interview eventually did not take place. Finally, the Hearing Panel noted that although the Respondent had failed to respond to many of the letters forwarded to him by Mr. Davis, he was able to respond in one day to correspondence forwarded to him by Mr. Melamud, on January 30, 2019.

15. In coming to its conclusion with respect to the allegation of failure to cooperate, the Hearing Panel considered that as set out in the Affidavit of Mr. Davis, the Respondent failed to contact Staff after he requested to reschedule the London interview so he could retain legal representation and that as a result Staff was unable to interview the Respondent. Additionally, the Hearing Panel considered that, the Respondent never provided the bank account information requested by Staff.

16. The Hearing Panel also accepted Staff's submission that, pursuant to section 22.1 of MFDA By-law No. 1, all Approved Persons and former Approved Persons have an obligation to provide information, documentation, and attend an interview requested by Staff. Section 22.1 states:

> 22.1 For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation.
>
> a) to submit a report in writing with regard to any matter involved in any such investigation;
> b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
> c) to attend and give information respecting any such matters;
> d) to make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation;
>
> and the Member or person shall be obliged to submit such report, to permit such inspection provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books,

> records and accounts and by attending before the person conducting the investigation …
>
> Section 22.1 of MFDA By-law No. 1.
>
> Section 24.1.4 of MFDA By-law No. 1

17. As stated by the Ontario Divisional Court in *Artinian v. College of Physicians and Surgeons of Ontario*,

> Fundamentally, every professional has an obligation to co-operate with his self-governing body.
>
> *Artinian v. College of Physicians and Surgeons of Ontario* (1990), 73 O.R. (2d) 704 (Div. Ct), at para. 9

18. MFDA Hearing Panels have repeatedly held that an Approved Person's failure to cooperate with an MFDA investigation undermines the MFDA's regulatory obligations under section 21 of the By-law. The MFDA requires cooperation from Members and Approved Persons to investigate the conduct of registrants in the mutual fund industry and fulfill its regulatory mandate of investor protection. As stated by the Hearing Panel in *Vitch (Re):*

> There can be no exception to that obligation. The fulfillment of that obligation is particularly important to the MFDA because it has no statutory power to search and seize or to compel the production of documents. Without the cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered.
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> *Vitch (Re)*, 2011 LNCMFDA 63 at paras. 55-56
>
> *Tonnies (Re),* 2005 LNCMFDA 7 at para. 41
>
> *Armani (Re)*, 2017 LNCMFDA 185 at para. 8-10

19. As has been previously stated by Hearing Panels, an Approved Person's obligation extends not only to submitting to an interview, answering questions, and providing documents, but doing so in a timely manner to allow Staff to effectively and efficiently carry out an investigation.

> *Kelly (Re)*, 2012 LNCMFDA 96 at paras. 18-21
>
> *Crompton (Re),* 2015 LNCMFDA 41 at para. 21

20. For the reasons set out above, the Hearing Panel concluded that with respect to the allegation of failure to cooperate, Staff had met the onus of proving it and had established facts that supported a finding of misconduct with respect to Allegation #5 in the Notice of Hearing, i.e. a failure to cooperate with an investigation.

Penalty

21. The second issue to be determined by the Hearing Panel was the appropriate penalty, including fine (if any) and the appropriate amount of costs (if any) to be levied against the Respondent as a result of the five allegations of misconduct found against him. In this respect, the Hearing Panel was guided by the submissions of both Staff and the Respondent, the Sanction Guidelines of the MFDA and the substantial case law to which it was referred.

22. With respect to the appropriateness of proposed penalties, the Hearing Panel was mindful that the primary goal of securities regulation is the protection of the investors and fostering public confidence in the capital markets, and the securities industry. Disciplinary sanctions imposed in a securities regulatory context are intended to restrain future misconduct in furtherance of these goals. As stated by the Hearing Panel in *Tonnies (Re)*:

> The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in Re Mithras Management Ltd. et al. (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:
>
> > …[T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.
>
> *Tonnies (Re),* supra at para. 45.
>
> *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557.

Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission, [2001] 2 S.C.R. 132 at para. 42

23. Sanctions imposed by a Hearing Panel should therefore be protective and preventative to prevent likely future harm to the markets. To determine whether a sanction is appropriate, the Hearing Panel should consider:

a) the protection of the investing public;
b) the integrity of the securities markets;
c) specific and general deterrence;
d) the protection of the MFDA's membership; and
e) the protection of the integrity of the MFDA's enforcement process.

Tonnies (Re), supra at paras. 44, 46

24. Hearing Panels have also previously considered the following factors when determining whether a penalty is appropriate:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience and level of activity in the capital markets;
d) Whether the Respondent recognizes the seriousness of the improper activity;
e) The harm suffered by investors as a result of the Respondent's activity;
f) The benefits received by the Respondent as a result of the improper activity;
g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets;
h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
j) The need to alert others to the consequences of inappropriate activity in the capital markets; and

k) Previous decisions made in similar circumstances.

Tonnies (Re), supra at para. 48

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

25. The Respondent admits to misappropriating $134,252.35 and failing to account for $300,000. As found by the Hearing Panel in *Ng (Re),* "misappropriation is among the most serious types of misconduct encountered by securities regulation…" the Respondent's failure to account is equally serious. While the Respondent asserts he intended to invest Client MM's money into an outside security, this in itself would constitute a contravention of the MFDA Rules. The Respondent can show no evidence of such an investment and cannot account for the funds. The only evidence is that the Respondent used the entirety of the $300,000 for his personal purposes. Ultimately, the Respondent was in a position of trust with his clients, which he exploited to misappropriate or obtain funds for his own uses.

Ng (Re), 2016 LNCMFDA 14 at para. 106-107

MFDA Rule 1.1.1

26. The Respondent further demonstrated a total disregard for the regulatory obligations he had as an Approved Person. The Respondent misled the Member by recording false or misleading notes on the Member's back office system; he gave false statements once he was under investigation by the Member; and he failed to cooperate with Staff's investigation. The comments of the Hearing Panel in *Dixon (Re)* apply to the Respondent:

> The Panel considered that the failure of an Approved Person to cooperate with an MFDA investigation by among other things, not complying with a request by an MFDA investigator made pursuant to s. 22.1 of the By-law is serious misconduct. It subverts the ability of the MFDA to perform its regulatory function by fully investigating a matter and determining all of the facts. Further, the failure to provide information requested in an investigation undermines the integrity of the industry's self-regulatory system and the effectiveness of its operation, including the MFDA's mandate to protect the public.

Dixon (Re), 2017 LNCMFDA 247 at para. 12

Nunweiler (Re), 2012 LNCMFDA 46 at para. 27-33

27. Finally, the MFDA Sanction Guidelines and MFDA Hearing Panels have identified the involvement of "vulnerable investors" and evidence of "premeditation" as aggravating factors. All three clients from whom the Respondent misappropriated money were over the age of 60, and therefore constituted vulnerable investors on account of their age. The Respondent's premeditation is evident in his conduct. The Respondent changed the distribution option on his client's account to misappropriate funds; generated redemption forms with his bank account as the destination account; and recorded false notes on the Member's system to conceal his misconduct.

MFDA Sanction Guidelines, p. 3

Desgroseilliers (Re), 2018 LNCMFDA 172 at para. 51

Vandermey (Re), 2017 LNCMFDA 197 at para. 33

28. The Respondent has not previously been the subject of an MFDA disciplinary proceeding. However, given the seriousness of the Respondent's misconduct, this is not a significant mitigating factor.

29. Other than with respect to the failure to cooperate, the Hearing Panel was satisfied that the Respondent recognizes the seriousness of his misconduct. The Respondent had admitted Allegations 1-4 in the Agreed Statement of Facts, thereby accepting responsibility and avoiding the time and expense of a full disciplinary hearing, relating to those allegations.

30. The Respondent benefited from the receipt of at least $636,783.61. While a portion of the funds misappropriated was repaid by the Respondent, specifically to Clients BD and TD, this was accomplished by improperly obtaining money from other clients.

31. The Respondent poses an ongoing serious risk to investors if he were permitted to continue to operate in the capital markets. The Respondent's misconduct is egregious and he has demonstrated that he is ungovernable.

32. With respect to the question of prohibition, the Hearing Panel was mindful of paragraph 5 of the Agreed Statement of Facts, pursuant to which the Respondent acknowledged Staff's Submission that the Respondent does not oppose that, at a minimum, the appropriate sanction to impose on the Respondent is a permanent prohibition from conducting securities related business. Accordingly, for this reason, and for the reasons set out above, and given the serious nature of the

client's misconduct, the Hearing Panel concluded it was appropriate to impose a permanent prohibition on the Respondent from conducting securities related business while in the employ or associated with a Member of the MFDA.

33. With respect to the quantum of an appropriate fine, the Hearing Panel considered that in cases where a Respondent has failed to account for client's monies, as in this case, Hearing Panels have typically ordered fines that at least disgorge any ill-gotten gains.

> *Ng (Re),* supra at para. 110
>
> *Latour (Re),* 2016 LNCMFDA 180 at para. 29
>
> *Lui (Re),* 2012 LNMCFDA 59 at para. 49
>
> MFDA Sanction Guidelines, supra, pp. 3-4

34. Indeed, even where the respondent, as submitted in this case, may be unable to pay such a fine, Hearing Panels have held that the need for deterrence supersedes inability to pay. As stated by the Hearing Panel in *Brauns (Re)*:

> In our view, any inability to pay the fine (while relevant) is trumped by the need to articulate the seriousness of the Respondent's misconduct, and to at least impose a fine that bears some relationship to the benefit obtained as a result of the misconduct and/or the loss of those affected. In our view, a fine of $850,000 is fit in the circumstances.
>
> *Braun (Re),* 2014 LNCMFDA 9 at para. 16

35. In the case at bar, the Hearing Panel considered that the misconduct occurred over an extended period of time and victimized vulnerable clients and accordingly an inability to pay became a minor consideration in light of the need for substantial general and specific deterrence.

36. Accordingly, the Hearing Panel concluded that it would impose a total fine of $709,252.35. The fine was made up of the amount misappropriated of $434,252.35, plus a fine of $50,000 for each misconduct described in Allegations 1, 2(a), 2(b), 3 and 4, plus a fine of $25,000 for Allegation 5.

37. With respect to the issue of costs, it is noted that during the course of the Hearing, Staff filed a Bill of Cost in an amount of $25,225, which was not disputed. Staff requested, and the Panel accordingly granted costs against the Respondent in an amount of $20,000.

Result

38. Accordingly, for all the above reasons set out above, the Hearing Panel imposed the following penalties and costs upon the Respondent:

a) The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ or associated with any MFDA Member, pursuant to s. 24.1.1(e) of the MFDA By-law No. 1;

b) The Respondent shall pay a fine in the amount of $709,252.35 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

c) The Respondent shall pay costs in the amount of $20,000, pursuant to s. 24.2 of MFDA By-law No. 1;

d) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding, then Exhibits 10, 11, 12, and 13, which are hereby marked as "Confidential", shall be kept separate from the public record and not be disclosed, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*; and

e) If at any time, a non-party to this proceeding, with the exception of the bodies set out in s. 23 of MFDA By-Law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA corporate secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this 12th day of June, 2020.

"Frederick W Chenoweth"
Frederick W Chenoweth
Chair

"Selwyn Kossuth"
Selwyn Kossuth
Industry Representative

"Tim Pryor"
Tim Pryor
Industry Representative

Appendix "A"

Agreed Statement of Facts

File No. 201968

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: Christopher John Davies

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated November 18, 2019, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Christopher John Davies (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing sets out the following allegations:

Allegation #1: Between February 2014 and July 2017, the Respondent misappropriated or failed to account for at least $434,252.35 received from four clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

Allegation #2: In or about April 2, 2014, the Respondent solicited or received $25,000 from two clients to make a joint investment with the clients in an unapproved investment outside the Member, thereby:

a) engaging in securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1; or

b) engaging in personal financial dealings with the clients, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.

Allegation #3: Between May 2015 and July 2017, the Respondent entered false or misleading notes regarding his communications with clients relating to trades on the Member's back office system, contrary to MFDA Rules 2.1.1, 1.1.2 and 5.1(b).

Allegation #4: Commencing in or about August 2017, the Respondent made false or misleading statements to the Member during the course of an investigation into his conduct, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.5.1 and 1.1.2.

Allegation #5: Commencing on or about November 29, 2018, the Respondent failed to cooperate with an investigation by Staff of the MFDA into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

II. IN PUBLIC/IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part V herein. The Respondent admits that the facts in Part V constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits and the Respondent does not oppose that, at a minimum, the appropriate sanction to impose on the Respondent is a permanent prohibition from conducting securities related business while in the employ of or association with a Member of the MFDA.

IV. ISSUES TO BE DETERMINED

6. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts and the additional evidence and submissions of the parties, as set out below, the following:

a) whether, commencing on or about November 29, 2018, the Respondent failed to cooperate with an investigation by Staff of the MFDA into his conduct, contrary to section 22.1. of MFDA By-law No. 1; and

b) the appropriate fine (if any) to impose on the Respondent, pursuant to s. 24. 1.1(b) of MFDA By-law No. 1 and the appropriate amount of costs (if any) of the investigation and hearing to be awarded against the Respondent, pursuant to s. 24.2 of MFDA By-law No.1.

7. Staff and the Respondent agree that both Staff and the Respondent may lead evidence at the hearing on the merits that is relevant to the allegation that the Respondent failed to cooperate with Staff's investigation into his conduct.

8. Staff and the Respondent further agree that the Respondent may lead evidence at hearing on the merits that is relevant to the Respondent's financial, personal, and familial situation. This evidence will be tendered solely for the purpose of the Hearing Panel's determination of the appropriate sanction and for no other purpose. Staff may lead any responding evidence at its discretion, and may cross-examine any witnesses tendered by the Respondent.

9. Staff and the Respondent agree that neither party may lead evidence other than as provided for in paragraphs 7 and 8 above. Staff and the Respondent agree that submissions made with respect to the appropriate sanction are based only on the agreed facts in Part IV and no other facts or documents, subject to paragraphs 7 and 8 above. For greater clarity, neither party may lead evidence that is solely relevant to and/or inconsistent with the Respondent's admissions a set out in Part V.

10. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of

both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

11. Nothing in this Part V is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

V. AGREED FACTS

Registration History

12. Commencing August 9, 2001, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative).

13. From July 26, 2006 to August 31, 2017, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the "Member"), a Member of the MFDA.

14. On August 31, 2017, the Member terminated the Respondent as a result of the events described below.

15. At all material times, the Respondent carried on business in the St. Thomas and London, Ontario area.

The Member's Policies and Procedures

16. At all material times, the Member's policies and procedures:

a) prohibited its Approved Persons form misappropriating and/or misusing client money;
b) prohibited its Approved Persons from engaging in securities related business outside the Member;
c) required that its Approved Persons identify actual or potential conflicts of interest; report and disclose actual or potential conflicts of interest; and eliminate or appropriately manage actual or potential conflicts of interest; and
d) required Approved Persons to cooperate with internal and external investigations, and provide "honest, accurate, complete and timely information."

Clients BD and TD

17. At all material times, Clients BD and TD were clients of the Member whose accounts were serviced by the Respondent. Clients BD and TD were aged 70 years and 84 years, respectively, were spouses and retired.

Redirected monies from Clients' Account and Unauthorized Redemptions

18. Between February 22, 2014 and March 5, 2015, the Respondent misappropriated $205,499.59 from the joint non-registered account of Clients BD and TD at the Member. Without the knowledge or authorization of Clients BD and TD, the Respondent:

a) changed the distribution payment option on the account from "reinvest" to "cash (direct deposit)", and entered his own bank account as the destination account, so that all distributions made by the clients' investments would be paid to the Respondent; and

b) in three instances, signed client BD's signature on transaction forms, redeemed mutual funds from the clients' account at the Member and directed the proceeds to the Respondent's own bank account.

The Film Production Investment

19. On or about April 2, 2014, the Respondent solicited and received $25,000 from Clients BD and TD to invest in a film production related investment (the "Film Production Investment").

20. The Film Production Investment is a security.

21. The Respondent provided Clients BD and TD with a signed note which confirmed that the Respondent received a $25,000 bank draft from Clients BD and TD, and further indicated that the money was for a joint investment in the Film Production Investment, with the profits to be split evenly between Clients BD and TD and the Respondent.

22. The Respondent invested the $25,000 in the Film Production Investment under his name only. The Respondent invested an additional $50,000 in his wife's name, using money he misappropriated from Clients BD and TD.

23. The Respondent's recommendation and sale of the investment in the Film Production Investment to Clients BD and TD was not done for the account of the Member or through the facilities of the Member.

24. The Respondent did not disclose his joint investment with Clients BD and TD in the Film Production Investment to the Member.

25. The Respondent's joint investment in the Film Production Investment with Clients BD and TD gave rise to a conflict of interest that the Respondent failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the clients.

Payment to Clients BD and TD using monies obtained from other clients

26. In or around April 2015, Clients BD and TD began to ask for the repayment of their investment in the Film Production Investment. At around the same time, Clients BD and TD noticed a significant decrease in their mutual fund holdings and questioned the Respondent.

27. On or about June 11, 2015, the Respondent paid Clients BD and TD $177,531.26, at which time Clients BD and TD transferred their investments outside the Member.

28. On September 14, 2016, the Respondent paid Clients BD and TD $8,333.33, purportedly as partial repayment of their investment in the Film Production Investment.

29. The Respondent obtained the monies to pay Clients BD and TD from two other mutual fund clients (Client MM and Client JV), as described in greater detail below.

30. The Respondent misappropriated or failed to account for at least $27,968.33 received from Clients BD and TD. The Respondent further failed to return or account for $16,666.67 of the $25,000 that was to be invested in the Film Production Investment.

31. The Member's affiliate compensated Client BD and TD for the money misappropriated from them by the Respondent.

Client MM

32. At all material times, Client MM was a client of the Member whose accounts were serviced by the Respondent.

Film Production Investment

33. In or about May 2015, the Respondent told Client MM about the Film Production Investment. The Respondent assured Client MM it would generate a significant return.

34. Between May 2015 and September 2015, Client MM agreed to invest $300,000 in the Film Production Investment:

a) in or about May and June 2015, Client MM redeemed $200,000 from her two non-registered investment accounts with the Member and, at the Respondent's instruction, used the money to obtain two bank drafts for $177,531.26 and $22,468.74 which she provided to the Respondent;
b) in September 2015, Client MM redeemed $100,000 from one of her investment accounts with the Member and transferred the money to the Respondent's personal bank account to be invested in the Film Production Investment.

35. As discussed above at paragraph 27, the Respondent used the $177,531.26 bank draft to repay Clients BD and TD. The $22,468.74 bank draft and the $100,000 were deposited into the Respondent's personal bank account and used for his personal benefit.

36. The Respondent states that he had a $600,000 interest in the Film Production Investment, half of which he sold to Client MM in exchange for her $300,000.

37. The Respondent admits that he has no documentary evidence from the film production company to substantiate that he had a $600,000 investment in the Film Production Investment, nor did he provide any documentation to Client MM to evidence the transfer of $300,000 of this investment to Client MM.

38. There is no reasonable prospect of recovery from the Film Production Investment. Client MM has not received any return or repayment from the Film Production Investment.

39. The Respondent failed to account for at least $300,000 received from Client MM.

Redirected monies from Client Accounts

40. In December 2015, without Client MM's knowledge or authorization, the Respondent changed the distribution payment option on one of Client MM's accounts from "reinvest" to "Cash (direct deposit)", and entered his own bank account as the destination account. As a result, the Respondent received a payment of $955.19.

41. The Respondent misappropriated or failed to account for at least $955.19 he received from Client MM.

42. The Member's affiliate compensated Client MM for the money misappropriated from her and for which the Respondent failed to account.

Client JV

43. At all material times, Client JV was a client of the Member whose account was serviced by the Respondent. Client JV was 66 years old and retired.

44. On January 26, 2016, the Respondent changed the account statement delivery option on the Member's system for Client JV from a paper statement to an electronic statement. This change did not require Client JV's signature and was made without her knowledge or authorization. Client JV inquired with the Respondent why she was no longer receiving account statements. The Respondent advised that he would look into the matter, but he did not arrange for Client JV to receive account statements or follow-up with her.

Unauthorized Redemptions

45. Between January 27, 2016 and March 9, 2017, the Respondent misappropriated $113,662.17 from Client JV's non-registered investment account with the Member. The Respondent:

a) had Client JV sign transaction forms that contained instructions for authorized redemptions and, unbeknownst to Client JV, instructions for unauthorized

redemptions which the Respondent processed in her account and directed the proceeds to his personal bank account; and

b) signed Client JV's signature on transaction forms and processed redemptions of mutual funds and directed the proceeds to his personal bank account.

46. As described above at paragraph 28, in or about September 2016, the Respondent paid Client BD and TD $8,333.33 from funds he misappropriated or failed to account for from Client JV.

47. The Respondent misappropriated or failed to account for at least $113,662.17 he received from Client JV.

48. In or about July 2017, the Respondent attempted to process a further redemption of $18,000 from Client JV's account with the Member and direct the proceeds to his own bank account by signing Client JV's signature on a transaction form.

49. The financial institution where the Respondent had a bank account rejected the transfer of monies. The financial institution contacted Client JV, who confirmed the transfer was unauthorized, prompting the financial institution to advise the Member of the unauthorized transaction.

50. Subsequently, the Member commenced an investigation into the Respondent's misconduct.

51. The Member's affiliate compensated Client JV for the money misappropriated from her and for which the Respondent failed to account.

False or Misleading Notes on Member's Back-Office System

52. Between May 2015 and July 2017, the Respondent made false and misleading notes on the Member's back-office system to process the redemptions from the accounts of Clients MM and JV, as described above.

53. In the notes for Client MM, the Respondent falsely recorded that Client MM was redeeming mutual funds to make a loan to her sister or to purchase land with her sister. The

Respondent further told Client MM that if anyone asked her about the redemptions, she should make corroborating false statements.

54. In the notes for Client JV, the Respondent falsely wrote that Client JV was redeeming mutual funds to: (1) invest in her Tax Free Savings Account; (2) withdraw money for herself; or (3) help her daughter pay tuition.

Misleading the Member During its Internal Investigation

55. On August 18, 2017, the investigative department of the Member interviewed the Respondent. During the interview, the Respondent made, among others, the following false or misleading statements:

a) he denied misappropriating monies from Client JV, stating that he believed he was transferring monies from Client JV's account to her daughter's account and had inputted his own account by mistake;
b) he asserted that he had received monies from Client JV solely for the purchase of timeshares for properties on her behalf;
c) he asserted that Client MM had redeemed $200,000 worth of mutual funds to loan to Client MM's sister for the purchase of a farm property;
d) he admitted to receiving $100,000 from Client MM but falsely stated that he invested in the Film Production Investment in her name; and
e) he denied misappropriating monies from any other clients.

56. Later the same day, the Respondent contacted the Member's investigator and admitted to "stealing" from Client JV, but denied misappropriating monies from Client MM or any other clients.

Misconduct Admitted

57. By engaging in the conduct described above at paragraphs 17-30, 40-41, and 43-47, the Respondent admits that, between February 2014 and July 2017, he misappropriated or failed to account for at least $134,252.35 received from four clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.12, and 2.5.1.

58. By engaging in the conduct described above at paragraphs 32-39, the Respondent admits that between May 2015 and September 2015, he solicited and received $300,000 from a client, to invest in a film production related investment, for which he has failed to account, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2, and 2.5.1.

59. By engaging in the conduct described above at paragraphs 19-25, the Respondent admits that, in or about April 2, 2014, he solicited and received $25,000 from two clients to make a joint investment with the clients in an unapproved investment outside the Member, thereby:

a) engaging in securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1; and

b) engaging in personal financial dealings with the clients, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.

60. By engaging in the conduct described above at paragraphs 52-54, the Respondent admits that, between May 2015 and July 2017, he entered false or misleading notes regarding his communications with clients relating to trades on the member's back office system, contrary to MFDA Rules 2.1.1, 1.1.2, and 5.1(b).

61. By engaging in the conduct described above at paragraphs 55-56, the Respondent admits that, commencing in or about August 2017, he made false or misleading statements to the Member during the course of an investigation into his conduct, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2, and 2.5.1.

VI. EXECUTION OF AGREED STATEMENT OF FACTS

62. This Agreed Statement of Facts may be signed in one or more counterparts, which together shall constitute a binding agreement.

63. An electronic copy of any signature shall be effective as an original signature.

DATED this 30th day of March, 2020.

"Christopher John Davies"
Christopher John Davies

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

DM 748043