



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: Scott Michael Kelly

Heard: January 15, 2013 in Toronto, Ontario
Decision and Reasons: January 17, 2013

**DECISION AND REASONS
(Penalty)**

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
David W. Kerr	Industry Representative
T. Hugh McNabney	Industry Representative

Appearances:

H. C. Clement Wai)	For the Mutual Fund Dealers Association of
)	Canada
Scott Michael Kelly)	Did not appear and was not represented by
)	counsel

1. The Panel released its decision in this matter on October 23, 2012 in which it found misconduct alleged against the Respondent was proven in that he failed to cooperate with an investigator contrary to s. 22.1 of the MFDA By-law No. 1. The Respondent had already admitted that he had falsified signatures of two clients on clients' account documents contrary to MFDA Rule 2.1.1. The Panel ordered the MFDA Hearings Coordinator to set a consent date for a hearing as to penalty. The Panel was advised that January 15, 2013 was chosen on consent by the Respondent and Enforcement Counsel to commence as requested by the Respondent at 9:00 a.m.

2. At 9:00 a.m. the Panel convened. The Respondent did not appear. The Panel adjourned the hearing until 9:15 a.m. to allow counsel and the Hearings Coordinator to attempt to contact Respondent. Those efforts were unsuccessful. At 9:20 a.m. the Panel reconvened to hear Enforcement Counsel's submissions.

3. Enforcement Counsel sought the following penalty:

(a) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member;

(b) a fine in the range of \$50,000 to \$55,000; and

(c) costs in the amount of \$5,000.

4. Enforcement Counsel stressed the considerations and factors the Hearing Panel should consider. These considerations and factors can be found set forth in paragraphs 12 - 17 of the Enforcement Counsel's written submissions.

5. Reference was also made by Enforcement Counsel to the MFDA Penalty Guidelines which are not mandatory nor binding on the Hearing Panel. These Guidelines match what Enforcement Counsel submits is the proper penalty.

6. The Panel agrees that the penalty sought is correct. The falsification of documents is very serious. This conduct can lead to failed supervision, inaccurate audits, improper information in

new accounts and compromised accuracy of clients' information.

7. The misconduct of failing to cooperate with an investigation is also very serious. This failure prevents a proper and full investigation of alleged misconduct and the extent of the same. This failure also prevents the investigators from determining if other sales persons are involved or if other clients have been affected. In essence the MFDA cannot properly assess the full nature and extent of the misconduct.

8. We find in the Respondent's explanation given at the time of the hearing as to the reasons for his failure to be clear evidence of a lack of cooperation. There is no recognition of the seriousness of the misconduct. The Respondent does not express remorse nor does he accept responsibility for his intentional conduct.

9. There are numerous decisions dealing with failing to cooperate which have resulted in penalties of a permanent prohibition and a \$50,000 fine. The Panel sees no reason to depart from those rulings. The Panel should impose the same penalty to ensure that sales persons will recognize the serious necessity of cooperation.

10. The penalty therefore will be as follows:

- (a) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member;
- (b) a fine in the amount of \$50,000; and
- (c) costs in the amount of \$5,000.

DATED this 17th day of January, 2013.

“John B. Webber”
The Hon. John B. Webber, Q.C.,
Chair

“David W. Kerr”

David W. Kerr,
Industry Representative

“T. Hugh McNabney”

T. Hugh McNabney,
Industry Representative