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: Blair Harcourt Addison

Heard: June 5, 2019 in Toronto, Ontario
Decision: June 5, 2019
Reasons for Decision: October 18, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Cheryl Hamilton	Industry Representative
Matthew Prew	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Blair Harcourt Addison	)	Respondent, did not appear personally or by counsel

Background

1. As appears from the Affidavit of Service of Carlyle Murray, sworn January 23, 2019, and marked as an Exhibit in this proceeding, a copy of the Notice of Hearing, dated December 14, 2018, ("Notice of Hearing") was served personally on Blair Harcourt Addison ("the Respondent") on January 22nd, 2019.

2. Thereafter, and on January 29th, the first appearance in this proceeding was held before a public representative of the Central Regional Counsel of the Mutual Fund Dealers Association (the "Chair of the Hearing Panel"). The Respondent failed to attend the first appearance. Thereafter, and on February 27th, 2019, a continuation of the first appearance was held at the direction of the Chair of the Hearing Panel. The Respondent was duly served with Notice of the Continuation of the first appearance. Again, the Respondent failed to attend at the continuation of the first appearance. The Respondent failed to file a Reply to the Notice of Hearing.

3. During the continuation of the first appearance, following Submissions of Staff, the Chair of the Hearing Panel scheduled the Hearing on the merits (the "Hearing") in this matter to take place on June 5th, 2019 at 10:00 a.m. The Affidavit of Sofi Vasiliadis dated June 3rd, 2019, and marked as Exhibit 5 in this proceeding, confirms that the Respondent was duly served with notice of this Hearing to proceed on June 5th, 2019. In spite of that notice, the Respondent failed to attend the Hearing, either personally or by counsel.

The Contraventions

4. In the Notice of Hearing, it is alleged that:

> **Allegation #1**: Commencing on at least August 1, 2008, the Respondent misappropriated, or failed to account for, approximately $1,390,890 solicited or received from at least eight clients and six individuals, thereby failing to deal fairly, honestly, and in good faith with clients, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in business conduct or practice that is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.
>
> **Allegation #2**: Commencing on December 16, 2009, the Respondent borrowed approximately $107,302 from clients BH and IH, thereby engaging in personal financial

dealings with the clients, which gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member or ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #3: Between May 8, 2012 and September 30, 2014, the Respondent misled the Member and MFDA Staff during an investigation into his conduct, contrary to MFDA Rule 2.1.1.

Allegation #4: Commencing September 27, 2017, the Respondent failed to cooperate with MFDA Staff's investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

The Facts

5. The relevant facts are those set out in paragraphs 1 to 55 of the Notice of Hearing, which is attached as Appendix "A" to these Reasons. The extensive Affidavit of Laura Rowles, sworn May 21, 2019 and marked as Exhibit 6 to this proceeding, provided the evidence which confirmed the facts alleged in the Notice of Hearing.

6. In addition to Exhibit 6, being the Affidavit of Laura Rowles, the Panel had the benefit of the evidence set out in the Affidavit of JB, sworn May 16, 2019, marked as Exhibit 7, the Affidavit of BH, sworn May 1, 2019, marked as Exhibit 8, and the Affidavit of ED, sworn May 9, 2019 and marked as Exhibit 9, all of which further confirmed the facts set out in the Notice of Hearing.

Discussion

7. From May 26, 2005 to September 15, 2017, the Respondent was registered as a mutual fund salesperson (now known as dealing representative) with Desjardins Financial Security Investments Inc. ("DFSI"), a Member of the MFDA. At the time of the Hearing, the Respondent was not registered in the securities industry in any capacity.

8. The standard of proof in administrative proceedings, such as those instituted pursuant to MFDA By-law No. 1, is the 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 all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely 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.

Brauns (Re), 2013 LNCMFDA 68 at para. 15
F.H. v. McDougall, [2008] 3 S.C.R. 41 at paras 40, 45, 46 and 49

9. Accordingly, Staff bears the burden of proving the allegations against the Respondent on a balance of probabilities.

Brauns (Re), *supra* at para. 15
Section 24.1.1. of MFDA By-Law No. 1

The Respondent's Misappropriation

10. The standard of conduct codified by MFDA Rule 2.1.1 requires that Approved Persons deal fairly, honestly, and in good faith with clients; observe high standard of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. The Rule is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry. Again, the Affidavit of Laura Rowles, Exhibit 6 confirmed the allegations against the Respondent in this respect.

MFDA Rule 2.1.1.
Breckenridge (Re), 2007 LNCMFDA 38 para. 71

The Respondent's Personal Financial Dealing

11. The Affidavit of BH establishes that the Respondent engaged in personal financial dealing with a client, resulting in a conflict of interest, following which he failed to act appropriately. The Respondent borrowed the $107,351.80 from a client to purchase an investment property for himself and to pay legal fees, solely for his own benefit. The Respondent then failed to repay a substantial portion of the loan, i.e $87,351.80.

12. Hearing panels have repeatedly held that borrowing money from a client gives rise to a conflict of interest under MFDA Rule 2.1.4. As stated by the Hearing Panel in *Gaunt (Re)*:

> *A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness*.
>
> *Gaunt (Re)*, 2013 LNCMFDA 63 at para. 47
> *Latour (Re)*, 2016 LNCMFDA 195, at para. 38
> *Piper (Re)*, 2018 LNCMFDA 31, at para 12
> MFDA Rule 2.1.4

13. MFDA Rule 2.1.4 requires that an Approved Person disclose an actual or potential conflict to the Member, and together, the Member and the Approved Person address the conflict by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with MFDA Rules 2.1.4(c) and (d).

> MFDA Rule 2.1.4

14. Moreover, in this case, the Respondent did not disclose the borrowing from Mr. H to DFSI. To the contrary, the Respondent concealed the borrowing when DFSI questioned him in connection with the investigation into his borrowing from another client. Moreover, the Respondent did not "exercise …care and diligence in the circumstances to address the conflict or potential conflict of interest, in the best interest of the client." Instead, the Respondent renewed the borrowing twice on the basis that he could not repay the principal; forced Mr. H to discharge the security the Respondent had initially provided; failed on numerous interest payments; and failed to repay a substantial portion of the loan.

15. Finally, DFSI's policies and procedures prohibited its Approved Persons from borrowing from clients. Rule 2.5.1 requires Members to establish policies and procedures to ensure the handling of their business is in compliance with the By-laws, Rules, and Policies and applicable securities legislation. Approved Persons have a corresponding obligation to comply with those policies and procedures pursuant to Rule 1.1.2. As stated by the Hearing Panel in *Franco (Re)*:

The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.

Franco (Re), 2011 LNCMFDA 55 at para. 38
Frank (Re), 2015 LNCMFDA 75 at paras. 56-58
MFDA Rule 2.5.1
MFDA Rule 1.1.2

16. Accordingly, the Respondent's conduct contravened MFDA Rules 2.1.4. and Rule 1.1.2. In addition, by borrowing from a client and failing to repay the loan, the Respondent contravened the standard of conduct set out by MFDA Rule 2.1.1.

Latour (Re), supra, at para. 39

The Respondent Misled, both DFSI and the MFDA

17. At the time the Respondent had an outstanding loan from Mr. H, the Respondent was being investigated in connection with borrowing from another client who complained to DFSI. Both DFSI and the MFDA questioned the Respondent in connection with their investigations. The Respondent denied any personal financial dealing with any clients other than the one that complained.

18. Misleading the Member and the MFDA in the course of an investigation is plainly a contravention of the standard of conduct by MFDA Rule 2.1.1. By so doing, the Respondent undermined DFSI's ability to fulfil its supervisory role and ensure the handling of its business in compliance with the MFDA Rules. Similarly, the Respondent undermined the MFDA's ability to fulfil its regulatory mandate of investor protection.

Nunwelier (Re), 2012 LNCMFDA 46 at paras. 27-33
Pattison (Re), 2017 LNCMFDA 77 at para. 21-22
Crackower (Re), 2005 LNCMFDA 11 at para. 12.

19. As a consequence of the misconduct manifested in this case, DFSI and the MFDA did not know about the loan from Mr. H to the Respondent, they were prevented from taking steps to address the conflict of interest, which ultimately resulted in serious harm to Mr. H.

The Respondent Failed to Cooperate with Staff's Investigation

20. As set out in the Rowles Affidavit, the Respondent failed to respond to numerous correspondence from the MFDA seeking information concerning the matters that are subject of the proceeding. The Respondent then moved to a new address without advising the MFDA, preventing the MFDA from being able to reach the Respondent to request an interview. The Respondent therefore failed to cooperate with Staff's investigation.

21. 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.

22. The obligation to cooperate with the MFDA is a necessary corollary to the MFDA's duty to conduct such examinations and investigations, as the MFDA deems necessary, relating to matters of compliance with the MFDA's by-law, rules, or policies.

23. 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 MFDA By-law No. 1. The MFDA requires cooperation from Members and Approved Persons to investigate the conduct of registrants in the mutual fund industry and fulfil its regulatory mandate of investor protection. As stated by the Hearing Panel in *Vitch (Re):*

> *There can be no exception to that obligation. The fulfilment 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.*
>
> *Vitch (Re)*, 2011 LNCMFDA 63 at paras. 55-56
> *Tonnies (Re)*, supra, para. 41

Armani (Re), 2017 LNCMFDA 185 at paras. 8-10.

24. As a result of the Respondent's failure to cooperate, Staff could not determine the full nature and extent of the Respondent's misconduct, including whether the Respondent solicited other clients and individuals to invest in off-book investments, solicited, or obtained loans from other clients and individuals, or failed to account for monies provided to him by other clients and individuals.

Penalty

25. The primary goal of securities regulation is the protection of investors and fostering confidence in the capital markets and the securities industry. In *Tonnies (Re)*, the Hearing Panel recognized that its role when imposing sanctions is not the punishment of the Respondent, but rather restraining future misconduct in furtherance of these goals. The Hearing Panel stated:

> *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 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 at paras. 59, 60
> *Breckenridge (Re)*, supra at para. 74.

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

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

27. Hearing Panels have also previously considered the following factors when determining whether a sanction 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 activities;
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 in the jurisdiction;
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 activities to those who are permitted to participate in the capital markets; and
k) Previous decisions made in similar circumstances.

Tonnies (Re), supra at para. 48
Breckenridge (Re), supra at para. 77

28. Finally, the Hearing Panel should also refer to the MFDA's Sanction Guidelines. The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the factors upon which discretion can be exercised consistently and fairly. Many of the same factors

that are listed above, which have been considered in previous decisions of MFDA Hearing Panels are also reflected and described in the Guidelines.

> *Mutual Fund Dealers Association of Canada Sanction Guidelines*, dated November 15, 2018.

29. As found by the Hearing Panel in *Ng (Re)*, "misappropriation is among the most serious types of misconduct encountered by securities regulators …" The Respondent was in a position of trust with his clients, and as noted in the Affidavit from his clients, he exploited that trust to misappropriate funds for his own uses.

> *Ng (Re)*, supra at paras. 106-107
> Dilorenzo Affidavit, para. 6
> JB Affidavit, para. 30.

30. Similarly, the Respondent abused his position of trust to borrow funds from Mr. H and chose to prefer his own interests to that of a client's. The Respondent had Mr. H give up the security for the loan when it no longer served the Respondent's interests, and the Respondent failed to repay the loan notwithstanding that he was told about the negative impact his conduct was having on Mr. H and his wife.

> Emails from Mr. H to the Respondent, Exhibit 7 to the H Affidavit.
> *Tonnies (Re)*, supra at para. 31

31. Finally, the Respondent demonstrated a total disregard for the regulatory obligation he had, as an Approved Person. The Respondent misled DFSI and the MFDA in connection with a previous investigation, withholding critical information to secure a settlement. The Respondent further failed to cooperate with the investigation into his conduct in this matter. The comments of the Hearing Panel in *Dixon (Re)* apply equally to the Respondent:

> The Panel considered that the failure of the 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 a 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 operations, including the MFDA's mandate to protect the public.

Dixon (Re) 2017 LNCMFDA 247 at para 12
Nunweiler (Re), *supra* at para. 46

32. The Respondent was previously subject to an MFDA disciplinary proceeding in connection with personal financial dealings with a client, the very same conduct for which the Respondent is in part facing a disciplinary hearing again in this matter. As discussed above, the Respondent misled DFSI and the MFDA by failing to disclose his borrowing from Mr. H during the investigation of this earlier matter.

33. The Respondent has not demonstrated a recognition of the seriousness of his misconduct and the harm he caused his clients and others. The Respondent failed to cooperate in the MFDA investigation in this matter, and the Respondent has not responded in any manner to this proceeding.

34. In total, the clients and others affected by the Respondent's conduct suffered financial harm of at least $1,408,191.58. In addition, the client and others suffered stress and emotional suffering as a result of the Respondent's misconduct. While the clients and others were ultimately compensated by DFSI, this cannot ameliorate the breach of trust perpetrated by the Respondent.

35. The Respondent benefitted from the receipt of at least $1,843,718.58. While a portion of this was repaid to the clients and others, importantly, this was done solely to maintain the charade that the money he had been provided was invested so that he could continue to perform his scheme and extract additional funds.

36. 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.

37. The Respondent has caused significant damage to the integrity of the capital markets. The ability of mutual fund dealers to facilitate the participation of the public in the capital markets

requires that the investors trust mutual fund dealers with their money. The misappropriation of client and others' funds and the failure to appropriately address conflicts of interest undermines this trust, harming the mutual fund industry and the capital markets more broadly.

Ayala (Re), 2017 LNCMFDA 237 at para. 11

38. This harm is further aggravated in this case by the Respondent's disregard for the MFDA and its processes, which undermines its mandate of investor protection.

39. In addition, the Hearing Panel considered MFDA Staff's proposed sanctions, which were a permanent prohibition, a fine in the amount of at least $1,520,890.00, and reviewed the previous similar cases of Backer (Re), 2019 LNCMFDA 14; Latour (Re), 2016 LNCMFDA 195; McIntosh (Re), 2013 LNCMFDA 58; and Nunweiler (Re), 2012 LNCMFDA 46 submitted by MFDA Staff.

40. The Hearing Panel was also provided with a Bill of Costs for this case. MFDA Staff sought an award of costs of $14,700.00.

41. For all the above reasons, the Panel concluded that the contraventions committed by the Respondent are extremely serious. Accordingly, the following penalties were imposed upon the Respondent:

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

b) The Respondent shall pay a fine in the amount of $1,608,192.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1.

c) The Respondent shall pay costs in the amount of $14,700.00, 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 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 18th day of October, 2019.

"Frederick W. Chenoweth"
Frederick W. Chenoweth
Chair

"Cheryl Hamilton"
Cheryl Hamilton
Industry Representative

"Matthew Prew"
Matthew Prew
Industry Representative

DM 701547