

**Decision and Reasons (Motion)**

**File No. 201231**



**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: Ayokunnu Are**

**DECISION AND REASONS (MOTION)**

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders, Q.C.  
Brigitte Geisler  
Robert C. White

Chair  
Industry Representative  
Industry Representative

Appearances:

Charles Toth	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada (“MFDA”)
	)	
Joseph Bird	)	Advisor to the Respondent
	)	

1. About ten (10) days after the hearing of closing submissions on the merits in this matter, the Respondent brought a motion with accompanying material to remove the Chair of the panel based upon allegations that the Chair:

- (a) Was sleeping during a portion of the submissions;
- (b) Held pre-conceived and incorrect views as to the proper law to be applied to determine a principal issue in the hearing;
- (c) Made demeaning remarks to the advisor for the Respondent; and
- (d) Accepted submissions by MFDA on the issue of relevance of certain documents.

2. Staff of the MFDA (“Staff”) filed a motion record and written submissions on the motion. The Respondent filed extensive reply submissions in which he strongly advocated the need for an evidentiary hearing to determine the issue of whether the Chair was sleeping.

3. Under Rule 6 of the Rules of Procedure of the MFDA, a motion may be conducted as an oral hearing, a written hearing or an electronic hearing. The moving party may propose how the hearing is to be conducted and the motion shall be heard in that form unless a responding party objects or the panel determines otherwise (Rule 6(2)). In this case, the Respondent asks for an oral hearing.

4. The motion presents some difficulty as it centres on the conduct of the Chair. The motion cannot be determined by the remaining two panel members as a properly constituted panel must include a public representative (section 19.9 of MFDA By-law No. 1) and the Chair is the only public representative on this panel. After considering the matter and the material furnished, the panel decided that the motion could be dealt with on the assumption that the Chair was asleep during the alleged period. It should be made clear the Chair denies that he was asleep at any time during the hearing.

5. The Respondent made extensive written submissions in his original documentation and in his reply. Staff has also made extensive submissions and in its motion record has provided a full transcript of the hearing on the morning of May 23, 2014. As the one factual issue (whether the

Chair was sleeping) is no longer a factor, the panel considers there is no longer any need for any evidentiary hearing as requested by the Respondent. Under Rule 6 of the MFDA Rules of Procedure, the panel determines that the motion shall be conducted as a written hearing.

6. Even if the Chair was asleep, he now has the opportunity to review the transcript of the hearing on May 23, 2014 in the motion record of Staff. The transcript consisted of oral submissions following a 102 page brief of written submissions by the Respondent (Staff had also filed 83 pages of submissions). The situation might be different if a transcript consisted of evidence and the credibility of a witness was an issue where not only his words but also his demeanor was important. The panel fails to see how the Respondent has been prejudiced in any way.

7. A review of the transcript does not reveal any bias or impropriety on the part of the Chair. On questions of law and evidence, a panelist is entitled to dialogue with counsel and even disagree with him. When, as here, counsel relies on authorities which he does not describe, quote from or provide copies of, criticism is not improper. The transcript falls far short of showing bias or any other improper conduct.

8. The motion is dismissed with costs to be dealt with at the end of the proceedings. The Hearing Panel met on September 5, 2014 and decided to dismiss the motion on the basis set out above. These written reasons follow.

**DATED** this 16<sup>th</sup> day of October, 2014.

“Edward Saunders”

The Hon. Edward Saunders, Q.C.  
Chair

“Brigitte Geisler”

Brigitte Geisler  
Industry Representative

“Robert C. White”

Robert C. White  
Industry Representative

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