



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: Anthony Ladislao Ayala

Heard: August 16, 2017 in Toronto, Ontario

Decision: August 16, 2017

Reasons for Decision: November 16, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, QC

Chair

Robert Christianson

Industry Representative

Brian Nowak

Industry Representative

Appearances:

H.C. Clement Wai

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Anthony Ladislao Ayala

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Respondent, In person

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I. INTRODUCTION

1. By Notice of Hearing dated January 2, 2017, the Mutual Fund Dealers Association of Canada (“MFDA”) alleged misconduct against Anthony Ladislao Ayala (“Respondent”).

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

Allegation #1: In about December 2014, the Respondent misappropriated approximately \$13,395 from clients PF and JZ, thereby failing to deal fairly, honestly and in good faith with clients PF and JZ, and observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

Allegation #2: In about December 2014, the Respondent falsified client signatures on account forms in order to process a series of unauthorized transactions in respect of clients PF and JZ, thereby failing to deal fairly, honestly and in good faith with clients PF and JZ, and observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 2.3.1 and 2.1.1.

3. The Notice of Hearing was for a first appearance to be held in the matter on March 9, 2017. In the event, that appearance took place on April 4, 2017 at which time the matter was adjourned to August 16, 2017 for a hearing on the merits for which two days were reserved.

4. At the first appearance on April 4, 2017, the Respondent was directed to file a Reply to the Notice of Hearing by the end of April 2017. This did not occur until late on August 15, 2017, when a brief Reply was delivered. It is reproduced in its entirety below:

Allegation #1 – I deny that I misappropriated funds from clients PF and JZ

Allegation #2 – I deny that I falsified client signatures on account forms to process unauthorized transactions

Particulars

4. I deny this allegation

8-12 I deny these statements

13-16 I deny I withdrew from these accounts, and cannot recall if I made those exact deposits. If the statements say so that was provided to the MFDA investigations team, then I can acknowledge them

17-19 I deny I falsified the client's signatures on transaction and maintenance forms and subsequent withdraws

II. THE AGREED STATEMENT OF FACTS

5. The following day, August 16, 2017, at the opening of the hearing, Staff of the MFDA ("Staff") filed an Agreed Statement of Facts which the Hearing Panel was advised had been negotiated and agreed to over the previous evening. The salient parts of the Agreed Statement of Facts are as follows:

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 AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV 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. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

IV. AGREED FACTS

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

Registration History

7. From May 8, 2014 to March 12, 2015, the Respondent was registered in Ontario as a Dealing Representative (formerly known as a mutual fund salesperson) with TD Investment Services Inc. (“TDIS”), a Member of the MFDA.

8. TD terminated the Respondent on March 12, 2015, as a result of the events described below. The Respondent has not been registered in the securities industry in any capacity since he was terminated by TD.

9. At all material times, the Respondent conducted business at a TD branch located in London, Ontario (the “Branch”). The Branch also operated as a bank branch for TD Canada Trust (“TD Bank”).

Overview

10. The Respondent misappropriated approximately \$25,000 monies from dormant or inactive accounts of TDIS clients and TD Bank clients, including \$13,395 from TDIS client PF and client JZ as described in greater detail below.

Client PF and JZ

11. Client PF and client JZ are not related to each other.

12. On September 2, 2002, client PF opened a Registered Retirement Savings Plan account (“RRSP Account”) with TDIS and invested monies in mutual funds. From September 2, 2002 to December 2014, client [PF’s] RRSP Account was inactive with the exception of the re-investment of the distributions generated by the mutual funds held in the account. As of December 5, 2014, client PF’s RRSP Account had a balance of approximately \$4,515.

13. From August 2001 to December 2014, client JZ held an RRSP Account with TDIS which was inactive with the exception of the re-investment of the distributions generated by the mutual funds held in the account. As of December 5, 2014, client JZ’s RRSP Account had a balance of approximately \$8,886.

14. On or about December 5, 2014, the Respondent falsified the signatures of clients PF and JZ to open TD Bank accounts in the names of the clients, which the Respondent controlled. Clients PF and JZ were not aware that the Respondent had opened TD Bank accounts in their names. TDIS and TD Bank were not aware that the TD Bank account for clients PF and JZ were under the control of the Respondent and were opened without the knowledge or authorization of clients PF and JZ.

15. On or about December 5, 2014, the Respondent processed a change in the client addresses associated with the TDIS RRSP Accounts held by clients PF and JZ. The change of address prevented clients PF and JZ from receiving account statements or other notifications of the unauthorized transactions processed by the Respondent.

16. From December 5 to 10, 2014, the Respondent falsified the client signatures of clients PF and JZ on Transaction and Account Maintenance Forms, which updated their investor profiles and changed their Know Your Client ("KYC") information for their RRSP Accounts. Clients PF and JZ were not aware of that the Respondent engaged in this activity.

17. On or about December 10, 2014, the Respondent falsified client PF's signature on Transaction and Account Maintenance Form and processed a redemption of \$4,000 from client PF's RRSP Account. The redemption generated net proceeds of \$3,600 (after the deduction of the withholding tax) which were deposited into client PF's TD Bank account that was under the Respondent's control.

18. On or about December 10, 2014, the Respondent falsified client JZ's signature on Transaction and Account Maintenance Form and processed a redemption of \$8,882.51 from client JZ's RRSP account. The redemption generated net proceeds of \$7,108.38 (after the deduction of the withholding tax) which were deposited into client JZ's TD Bank account that was under the Respondent's control.

19. On or about December 15, 2014, the Respondent withdrew \$1,400 in cash from client JZ's TD Bank account and deposited \$1,000 in cash into his personal TD Bank account.

20. On or about December 15, 2014, the Respondent withdrew \$1,400 in cash from client PF's TD Bank account and deposited \$1,000 in cash into his personal TD Bank account.

21. On or about December 17, 2014, the Respondent withdrew \$1,400 in cash from client JZ's TD Bank account and deposited of \$1,000 into his personal TD Bank account.

22. On or about December 18, 2014, the Respondent withdrew \$900 in cash from client JZ's TD Bank account. Immediately thereafter, the Respondent withdrew \$1,400 in cash from client PF's TD Bank account. On December 19, 2014, the Respondent deposited \$2,600 in cash into [sic] personal TD Bank account.

23. On December 22, 2014, the Respondent withdrew \$1,000 in cash from client JZ's TD Bank account. Immediately thereafter, the Respondent withdrew \$800 in cash from client PF's TD Bank account. That day, the Respondent deposited \$368 in cash into his personal TD Bank account and \$732 into his TD credit card account.

24. On or about December 23, 2014, the Respondent withdrew \$1,000 from client JZ's TD Bank account.

25. On or about December 29, 2014, the Respondent falsified client PF's signature on Transaction and Account Maintenance Form and processed a redemption of \$512.65 from client PF's RRSP account. The redemption generated net proceeds of \$461.38 (after the deduction of the withholding tax) which were deposited into client PF's TD Bank account that was under the Respondent's control. No further activity occurred in this account.

26. In about February 2015, TDIS became aware of the Respondent's conduct and commenced an investigation. TDIS terminated the Respondent on March 12, 2015 and reimbursed clients PF and JZ for the monies misappropriated by the Respondent (including \$9,300 which the Respondent deposited into his personal TD Bank account and TD credit card account).

Misconduct Admitted

27. By engaging in the conduct described above, the Respondent admits that:

- a) In about December 2014, the Respondent misappropriated approximately \$13,395 from clients PF and JZ, thereby failing to deal fairly, honestly and in good faith with clients PF and JZ, and observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.
- b) In about December 2014, the Respondent falsified client signatures on account forms in order to process a series of unauthorized transactions in respect of clients PF and JZ, thereby failing to deal fairly, honestly and in good faith with clients PF and JZ, and observe high standards of ethics and

conduct in the transaction of business, contrary to MFDA Rules 2.3.1 and 2.1.1.

III. FURTHER FACTS

6. It is to be noted that the Agreed Statement of Facts does not contain the usual provision limiting the Hearing Panel to the facts set out in the Agreed Statement unless agreed to by both parties. Instead, as Staff advised us, the parties agreed that further facts could be provided by Staff for the purpose of ensuring that the Hearing Panel had a full understanding of the matter.

7. Perhaps the most significant fact which the Hearing Panel learned from the material filed by Staff obtained from the Respondent's blogs on social media was that there was no seeming purpose for the theft of clients' money other than expenditures for personal consumption. Another significant fact was that there has been no promise to repay the funds stolen.

8. One further fact relates to the Respondent's cooperation or lack thereof in Staff's investigation. While the Respondent apparently appeared to be examined, as required, he did not cooperate. Instead, he feigned lack of memory of everything. This was obviously simply a ruse to avoid acknowledging what was obvious and which, at the last moment, he admitted in what was an obvious and vain attempt to obtain credit for cooperating with Staff.

9. Staff and the Respondent did not agree on the penalties to be imposed. Staff asked for the following penalties in its written submissions:

- a) A permanent prohibition on the authority to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) A fine in the range of \$50,000 to \$100,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- c) Costs attributable to conducting the investigation and hearing of this matter in the range of \$7,500 to \$10,000, pursuant to s. 24.2 of MFDA By-law No. 1.

10. On the other hand, the Respondent made no submissions with respect to penalties, expressly leaving it to the Hearing Panel to decide the matter. In the course of the hearing, the Respondent said as follows:

To be honest, at the end I don't know. I ... I know what I've done is wrong. I know I need to answer for that and pay for that so I'm willing to accept what the Panel says is appropriate. I can only go by these cases that he's provided, but obviously, you will be better at determining where I fit amongst that range compared to these other cases. I don't know if there's any actual value I can provide you in making that, um, those numbers up.

IV. REASONS AND DECISION

11. A fundamental purpose of regulation of the securities industry in Canada is the protection of the investor who has entrusted his or her investment to a Member or Approved Person. At the top of the regulatory objectives is that of ensuring that such investment advisors do not appropriate their clients' funds for their own purposes, ever. That objective must be secured, for without it there can be no viable investment business. Any conduct that derogates from that most important principle must be dealt with in the most severe fashion. People who fail to adhere to this absolute rule cannot be allowed to continue in the industry as they constitute threats not only to their clients but the securities industry as a whole.

12. The language of the Ontario Securities Commission in *Re Mithras Management Ltd. et al.* (1990), 13 O.S.C.B. 1600 is most apposite to this case:

...[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.

13. Several previous decisions of industry tribunals, including an MFDA tribunal (*Re Parkinson*, [2005] MFDA Case No. 200501), have found the following factors should be taken into account in determining the appropriate sanctions to impose:

- a) The protection of the investing public;
- b) The integrity of the securities market;
- c) Specific and general deterrents;
- d) The protection of the governing body's membership; and
- e) The protection of the integrity of the governing body's enforcement processes.

14. While in no way binding on the Hearing Panel, the MFDA Penalty Guidelines were of significant help in determining the appropriate penalties in this case:

FORGERY/FRAUD/THEFT/MISAPPROPRIATION/MISAPPLICATION	
<p>This category involves deceptive activities intended to deprive a person of property or rights.</p> <p>Forgery is the creation of a false document with the intent that it be acted upon as the original or genuine document, where the victim is deprived of property or rights.</p> <p>Fraud is generally defined as an act of deceiving and misrepresenting, more specifically an intentional distortion of truth in order to induce another to part with something of value or to surrender a legal right.</p> <p>Theft is the taking of property, not rightfully in one's possession, for personal use and exploitation.</p> <p>Misappropriation is where a person has a right to be in possession of the property but puts it to his/her own benefit.</p> <p>Misapplication of Funds is where funds in the rightful possession of an Approved person or Member are put to an improper purpose for the benefit of a third party.</p>	
SPECIFIC FACTORS TO CONSIDER	PENALTY TYPES & RANGES
<ol style="list-style-type: none"> 1. Nature of circumstances and conduct. 2. Client knowledge/consent. 3. Loss to client (s). 4. The Respondent's intent. 5. Whether the Respondent was unjustly enriched and obtained/attempted to obtain a financial benefit from the fraudulent conduct. 6. Whether the Respondent concealed or attempted to conceal the activity from the Member or the MFDA. 	<p>Member:</p> <ul style="list-style-type: none"> • Fine: Minimum of \$100,000. • Interim order pursuant to s. 24.3 of MFDA By-law No. 1. • In almost all cases termination of Membership will be sought. • Fine should include the amount of any financial benefit to the Respondent. <p>Approved Person:</p> <ul style="list-style-type: none"> • Fine: Minimum of \$25,000. • In almost all cases a permanent prohibition will be sought. • Fine should include the amount of any financial benefit to the Respondent.

15. In the Hearing Panel's view there are simply no mitigating factors of any import. The Respondent didn't cooperate with Staff's investigation. He made no offer of recompense and he has shown no remorse. He delayed acknowledging wrongdoing until the very last moment, obliging Staff to plan and prepare for a two day hearing which was rendered unnecessary by his belated reversal on the night before the hearing. And after all that, he left it to the Hearing Panel to decide the penalty, apparently in the forlorn hope that we would be less severe than the sanctions sought by Staff.

16. In a very real sense, when a Hearing Panel is faced, as is the case here, with a clear case of theft, not to speak of forgery and fraud as well, guidelines such as the MFDA Penalty Guidelines are really not needed as the major sanction is obvious. The Respondent is clearly a person who should not be a licensed participant in the capital markets. He is a danger to clients and to allow him to continue would itself be damaging to the integrity of the capital markets. We therefore imposed a permanent prohibition against the Respondent.

17. With respect to the fine, Staff asked for a fine in the range of \$50,000 to \$100,000. We concluded that the midpoint was in keeping with fines imposed in similar cases. We therefore imposed a fine of \$75,000.

18. Costs of between \$7,500 and \$10,000 were asked for by Staff. The Hearing Panel decided to adopt the higher number based on its review of comparable cases and the failure to cooperate. We awarded \$10,000.

19. In summary therefore, on August 16, 2017 the Hearing Panel imposed the following sanctions on the Respondent:

- a) 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*;
- b) The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- c) The Respondent shall pay a fine in the amount of \$75,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and

- d) The Respondent shall pay costs in the amount of \$10,000 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 16th day of November, 2017.

“John Lorn McDougall”

John Lorn McDougall, QC
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Brian Nowak”

Brian Nowak
Industry Representative

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