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: Gurmeet Singh Bagga

Heard: September 14, 2020 by electronic hearing in Toronto, Ontario
Decision (Penalty) and Reasons: September 23, 2020

DECISION (PENALTY) AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Guenther W.K. Kleberg	Industry Representative
Tim Pryor	Industry Representative

Appearances:

David Barbaree	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Gurmeet Singh Bagga	)	Respondent, in attendance

I. BACKGROUND

1. This is a hearing under Section 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). An electronic hearing was held on September 14, 2020. An Agreed Statement of Facts dated September 11, 2020 ("Agreed Statement of Facts") entered into between Staff of the MFDA and Gurmeet Singh Bagga ("Mr. Bagga" or the "Respondent") is available on the MFDA website and will not be set out in detail here. The Respondent appeared electronically and was not represented by counsel. At the conclusion of the hearing, we reserved our decision as to sanctions. This is our decision and the reasons for our decision.

2. The Respondent became registered in Ontario as a mutual fund salesperson (now known as a dealing representative) in 2008. From September 17, 2012 to June 23, 2014 he was registered in Ontario as a dealing representative with Sterling Mutuals Inc. ("Sterling Mutuals"), a Member of the MFDA. From May 20, 2015 until October 17, 2017 he was a dealing representative with Shah Financial Planning Inc., a Member of the MFDA. At all material times, the Respondent carried on business in the Brampton, Ontario Area. The Respondent is not currently registered in the securities industry in any capacity.

II. AGREED STATEMENT OF FACTS

3. On April 12, 2014, while registered with Sterling Mutuals, the Respondent completed his certification as a mortgage agent.

4. On or about April 24, 2014, the Respondent became licensed with the Financial Services Commission of Ontario ("FSCO") as a mortgage agent and without obtaining the prior approval of Sterling Mutuals began working as a mortgage agent with T1CM Principal Secured Mortgages Inc. ("T1PSM"), a company licensed with FSCO as a mortgage broker.

5. T1PSM had a referral arrangement with, among others, Terrasan 327 Royal York Rd. Limited ("Terrasan"), whose principal asset was a residential condominium development in Toronto, which was marketed to investors as "On the Go Mimico".

6. On or about April 28, 2014, the Respondent recommended, sold, or facilitated the sale of a syndicated mortgage investment associated with On the Go Mimico to individual MM.

7. The following day, April 29, 2014, the Respondent informed Sterling Mutuals that he had completed his certification as a mortgage agent and submitted a request to Sterling Mutuals for approval to engage in outside business activity working as a mortgage agent. He did not disclose to Sterling Mutuals his involvement with T1PSM.

8. The same day, Sterling Mutuals sent the respondent an e-mail and requested that he provide information in order for Sterling Mutuals to assess whether to approve his outside business activity, including the name and address of the mortgage broker he would be doing business through, his title and a description of his duties. The Respondent did not reply to this request until June 4, 2014 for possible reasons that will be discussed later.

9. Although the respondent had not received approval from Sterling Mutuals to engage in outside business activities as a mortgage agent, the Respondent continued to act as a mortgage agent for T1SPM and continued to engage in activities in furtherance of the sale of syndicated mortgages.

10. On or about May 6, 2014, the Responded recommended, sold, or facilitated the sale of syndicated mortgage investments to GB as well as to NS and SS.

11. In total, while registered with Sterling Mutuals, the Respondent recommended, sold, or facilitated the sale of three syndicated mortgage investments, totaling approximately $128,000 to four individuals (the "Investors"). The syndicated mortgage investments had a two-year term, with an option to renew for a third year, after which the principal was to be repaid to the Investors.

12. Starting in or about June 2014, while registered with Sterling Mutuals, the Respondent received fees totaling approximately $12,800 from T1PSM to compensate him for his activities in furtherance of the sale of syndicated mortgage investments.

13. On June 6, 2014, Sterling Mutuals advised the Respondent that it could not approve his activity as a mortgage agent unless the Respondent confirmed that he was aware of the prohibition against conducting securities related activities outside of the dealer, including offering syndicated mortgages, and confirmed that he would not refer, sell, or advise in syndicated mortgages. It is not clear why this prohibition was not stated by the Member on April 29, 2014.

III. RESPONDENT'S MISCONDUCT

14. The Respondent did not inform Sterling Mutuals that he:

a) had engaged in outside business activities as a mortgage agent with T1PSM starting on or about April 24, (prior to obtaining approval from Sterling Mutuals);
b) recommended, sold or facilitated the sale of syndicated mortgage investments to four individuals while registered with Sterling Mutuals that had not been processed for the account of the Member or through the facilities of the Member; and
c) had received fees totaling approximately $12,800 from T1PSM.

15. The Respondent admits in paragraph 47 of the Agreed Statement of Facts the following misconduct:

a) between about April 2014 and June 23, 2014, he engaged in securities related business that was not carried on for the account of the Member or conducted through its facilities by recommending, selling, or facilitating the sale of syndicated mortgage investments, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 2.5.1, or 1.1.2, and
b) between about April 2014 and June 23, 2014, he engaged in an unapproved outside business activity by working as a mortgage agent for a mortgage brokerage without receiving prior approval from the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.1.1, or 1.1.2.

16. There is no question that the conduct was improper. MFDA Rules provide that all securities related business must be carried on for the account of the Member, and through the facilities of the Member; and all revenues, fees or consideration in any form relating to any business engaged in by the Member must be paid or credited directly to the Member and recorded on the books of the Member. See MFDA Rule 1.1.1.

17. Syndicated mortgages are securities and transactions in respect of them come within the definition of securities related transactions. See *Re Cheung* File No. 201808. An Approved Person cannot sell syndicated mortgages under a mortgage broker license outside the Member. See MFDA Bulletin #0583-P, dated November 12, 2013, which states:

> "Members and Approved Persons are reminded that syndicated mortgages are securities and that transactions in respect of them come within the definition of securities related business, as set out under By-law No. 1. As a result, transactions engaged in by Approved Persons in respect of such securities must be done through the Member, in accordance with the requirements of Rule 1.1.1, and are subject to all applicable MFDA Rules. An Approved Person cannot sell syndicated mortgages under a mortgage broker license outside the Member."

18. The rules, regulations and decisions by Hearing Panels make it clear that these rules are to protect the public as well as the Member. Investment products should be approved by the Member and transactions recorded on the books of the Member. If this is not done, the Member cannot properly supervise the Approved Person. Supervision is the backbone of the system of securities regulation. See *Re Cheung* File No. 201808 at paragraphs 16-18.

19. Another Panel put it well in *Re Qi* File No. 201253 at paragraph 11:

> "Conducting securities related business or outside business activity without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to supervise the transactions and to assess the suitability of the transactions for the investors. The misconduct can have dire consequences for the investors involved as the off-book investments may not be suitable for the investors or even legitimate investments. The misconduct may bring the Member or the Mutual fund industry into disrepute."

20. The On the Go Mimico project failed. Terrasan ceased all payments of distributions to investors with respect to their syndicated mortgage investments. On September 5, 2018, the Superintendent of Financial Services imposed an administrative penalty on T1PSM and revoked its mortgage broker license. In 2019, the Ontario Superior Court of Justice issued a distribution order that, among other things, approved a distribution by the receiver to investors in the syndicated mortgage associated with the On the Go Mimico project based on their pro rata interest in the project. In respect of the Investors, the Court ordered a distribution of approximately 82% of their respective principal investments.

IV. THE PENALTY

21. Our task is to determine the appropriate penalty on the facts of this case.

22. The conduct is serious, but there are some mitigating factors.

23. The Respondent has not previously been the subject of MFDA disciplinary proceedings and "has cooperated fully with Staff during the course of the investigation." (Paragraphs 44 and 45 of the Agreed Statement of Facts.)

24. The Respondent signed the Agreed Statement of Facts, admitting to contraventions of MFDA Rules. By doing so, the Respondent has demonstrated some degree of recognition of the seriousness of his misconduct. By admitting his wrongdoing, the Respondent has also saved the MFDA and its potential witnesses the time and expense of conducting a longer contested hearing.

25. The four clients did not complain about the Respondent's conduct. The Respondent's conduct accidentally came to light in 2017, when the Respondent was with another MFDA dealer, Shah Financial Planning Inc., and the MFDA was conducting a compliance review. The Respondent at that time told the reviewer about his earlier involvement with syndicated mortgage investments.

26. Moreover, the Respondent claims that he did not know that syndicated mortgages were securities. Ignorance of the law is, however, no excuse. Salespersons are required to be familiar with and adhere to the Rules of the MFDA. But ignorance of the rules should not be irrelevant in assessing the penalty. The MFDA does not claim that he acted surreptitiously and completely behind the back of his Member. As MFDA counsel argued in his written submissions, "the Respondent acted recklessly by pursuing an outside business activity without Member oversight…" MFDA counsel in his oral submissions used such language as "not a wilful attempt to hide his conduct" and noted that the Respondent was "forthright."

27. Because we are bound by the Agreed Statement of Facts, we are unable to determine the precise knowledge that the Respondent had with respect to his conduct. Paragraph 6 of the Agreed Statement of Facts states: "Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents." The parties have, however, agreed to some additional facts being disclosed, but not all of the facts that the Respondent wished to raise at the Hearing.

28. Both parties desire that the Panel decide the appropriate penalty. The Respondent was not represented by counsel at the hearing or in the negotiation of the Agreed Statement of Facts and

so, in fairness to him, we have given wider scope to the Respondent in his final arguments than might be allowed in other hearings by interpreting some of his submissions as "arguments" and not as "facts".

29. In his submissions, for example, he states that he did not know that it was the policy of the Member not to allow its Approved Persons to sell syndicated mortgage investments. He stated in his Reply, dated March 31, 2020:

> "I followed the rule of getting the mortgage license before soliciting a product, informed the dealer as per the requirement. If I had the slightest of clue that the member could refuse selling a regulated product for which I was licensed just because of their internal policy, I would have resigned even before getting the license or moved to a dealer who would have allowed it as I did when I came to know about their policy."
>
> This has the ring of truth and we have taken it into account in assessing the penalty, although not in determining whether his conduct breached the rules. He should have asked for and received the Member's consent before soliciting participation in the mortgage syndication investments.

30. Similarly, we are not able to determine the truth of the Respondent's claim that the email requesting details about his syndicated mortgage involvement went astray for over a month. Paragraph 18 of the Agreed Statement of Facts simply states:

> "Between April 29, 2014 and June 4, 2014, the Respondent did not reply to the e-mail request from Sterling Mutuals for additional information concerning his proposed outside business activities as a mortgage agent. The Respondent states that he missed or was not aware of the April 29 email from Sterling Mutuals until he received a call from a Sterling Mutuals representative on or about June 4, 2014 asking him to reply to the email."
>
> This could be true. These things happen. Because it is mentioned in the Agreed Statement of Facts, we have to some extent taken this possibility into account.

31. We have examined the many cases cited by counsel for the MFDA. Each depends on its specific facts.

32. A Bill of Costs for $16,700 was provided by counsel for the MFDA to the Hearing Panel.

33. Our conclusion is that the penalty should be as follows:

a) a one year prohibition from the date of this decision on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-Law No. 1;
b) a fine of $20,000 pursuant to s.24.1.1(b) of the MFDA By-law No. 1; and
c) costs of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1.

34. The one-year prohibition is not out-of-line with some of the recent cases cited to us. See, for example, *Re Uy* 2018 LNCMFDA87; *Re Griegson* MFDA File No.201884; and *Re Bédard* MFDA File No. 201932.

35. The fine is almost double the $12,800 earned by the Respondent in the three transactions.

36. A one-year prohibition and a $20,000 fine will provide a reasonable measure of general deterrence and show the seriousness of the conduct.

37. The hearing was completed on September 14, 2020. The Panel arrived at the above decision and signed off on our reasons for the decision at the end of that week. We were about to send the document to the MFDA on September 18, 2020 when an email unexpectedly arrived from the MFDA Director of Hearings Administration containing supplementary arguments and case law prepared by MFDA counsel in the case. We then examined the material and concluded that there was nothing in the material that would cause us to change our decision or the reasons for our decision as we had drafted them.

38. The Panel therefore finds that the allegations set out in paragraph 15 have been proven and orders that the Respondent be subject to the following:

a) a one year prohibition from the date of this order on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-Law No. 1;
b) a fine of $20,000 pursuant to s.24.1.1(b) of the MFDA By-law No. 1; and

c) costs of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 23rd day of September, 2020.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Guenther W.K. Kleberg"
Guenther W.K. Kleberg
Industry Representative

"Tim Pryor"
Tim Pryor
Industry Representative

DM 769196