



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: Raymond Louis Blais

Heard: November 5, 2018 in Toronto, Ontario

Decision: November 5, 2018

Reasons for Decision: December 19, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart

Brigitte J. Geisler

Kenneth P. Mann

Chair

Industry Representative

Industry Representative

Appearances:

Francis Roy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Ellen Bessner)	Counsel for the Respondent
)	
)	
Raymond Louis Blais)	Respondent, in person
)	
)	

I. INTRODUCTION

1. By Notice of Hearing dated February 22, 2018, the Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding against Raymond Louis Blais (“Respondent”) pursuant to sections 20 and 24 of MFDA By-law No. 1.
2. MFDA Staff and the Respondent reached an agreement as to the facts which are contained in an Agreed Statement of Facts, dated October 29, 2018. The Respondent admitted that certain of those facts constituted misconduct for which he could be penalized pursuant to section 24.1 of MFDA By-law No. 1.
3. MFDA Staff submitted, and the Respondent did not oppose, that the appropriate penalty to impose on the Respondent includes a permanent prohibition on the Respondent’s authority to act and be registered as a mutual fund salesperson (now known as a dealing representative), pursuant to section 24.1(e) of MFDA By-law No. 1.
4. However, MFDA Staff and the Respondent disagreed on the quantum of financial penalties, including fines and costs, to be imposed on the Respondent pursuant to sections 24.1.1(b) and 24.2 of MFDA By-law No. 1.
5. MFDA Staff proposed that a fine of at least \$70,000 be imposed on the Respondent, as well as costs in the amount of \$5,000.
6. The Respondent opposed the imposition of any fine and costs. The Respondent has filed a notice to creditors of consumer proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (as amended) pursuant to which he claims to be insolvent. The Respondent therefore stated that he is unable to pay any amount towards either a fine or costs.
7. MFDA Staff and the Respondent therefore requested that the Hearing Panel determine the appropriate quantum of fines and costs to be ordered against the Respondent, if any.

II. AGREED FACTS

Registration History

8. From July 4, 2000 to May 16, 2013, the Respondent was registered in Ontario as a mutual fund salesperson with W.H. Stuart Mutuals Ltd. (“W.H. Stuart”), a former Member of the MFDA.
9. From May 17, 2013 to November 3, 2015, the Respondent was registered in Ontario as a mutual fund salesperson with Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA.
10. The Respondent is no longer registered in the securities industry in any capacity.

Respondent’s Securities Related Business Outside Member Firm

11. At all material times, the Respondent held online trading accounts in which he personally invested in various non-mutual fund securities, including precious metals equity securities. He also engaged in foreign exchange trading.
12. Commencing in at least 2003 and continuing to November 3, 2015, the Respondent:
 - a) arranged for at least 120 investors, including 81 clients,¹ to open online discount brokerage accounts (“Trading Accounts”) at financial institutions outside of W.H. Stuart and later Keybase;
 - b) proposed that the 120 investors deposit monies in the Trading Accounts either from savings or lines of credit (which he also recommended);
 - c) obtained the login information (including user names and passwords) for the Trading Accounts from the 120 investors; and
 - d) accessed the Trading Accounts using the login information provided by the 120 investors and processed trades in respect of non-mutual fund securities, including precious metals equity securities, and engaged in foreign exchange trading.

¹ 39 of the investors were not clients of Keybase. The Respondent stated that these individuals had purchased insurance policies through him or were spouses of Keybase clients for whom he was the dealing representative.

13. The Respondent proposed and processed trades in the Trading Accounts which were comparable to the trades processed by the Respondent in his personal online trading accounts.
14. The Respondent exercised discretion with respect to some or all elements of the trades that he processed for the 120 investors in the Trading Accounts, including the selection of which securities would be traded, the amounts of each security to be traded, the prices at which trades were executed, and the timing of those trades.
15. In addition to directly processing trades in the Trading Accounts, the Respondent also made trade suggestions to the 120 investors and advised them to execute trades in their Trading Accounts on their own.
16. The Respondent charged the 120 investors fees of at least \$70,000 for investment advice and for processing trades in the Trading Accounts as described above. These fees were paid to the Respondent personally and not to the Members with which he was registered.
17. In the event that the fees that the Respondent charged for servicing online trading accounts were not paid, the Respondent advised the 120 investors that he would discontinue servicing their Trading Accounts and deprive them of his service.
18. At all material times, the Respondent was not registered to provide advice or process trades in equity securities or conduct foreign exchange trading.
19. In addition, the Respondent was aware that he was not registered nor authorized to provide advice or facilitate trades in securities for the 120 investors, other than securities approved for sale and processed through the facilities of the Members with which he was registered.
20. None of the trades recommended and/or processed by the Respondent in respect of the Trading Accounts were carried on for the account or through the facilities of W.H. Stuart or Keybase and neither firm was aware of the Respondent's activities with respect to the Trading Accounts.
21. During the course of its investigation of the Respondent's activities, MFDA Staff did not receive, nor was it aware of, any complaints alleging investment losses arising from the Respondent's above-described activities. MFDA Staff was unable to determine the extent of

investment gains or losses incurred by the 120 investors, if any. The records or documents enabling such calculations were unavailable to MFDA Staff and, by the time of MFDA Staff's investigation, the Respondent no longer had access to such records or documents.

III. MISCONDUCT ADMITTED

22. By engaging in the conduct described above, the Respondent admitted that, between at least 2003 and November 3, 2015, he engaged in securities related business that was not carried on for the account or through the facilities of the Members he was registered with, by:

- a) arranging for at least 120 investors, including 81 clients, to open online discount brokerage accounts outside the Members; and/or
- b) proposing trades, processing trades or otherwise conducting acts in furtherance of trades with respect to securities for the accounts;

contrary to MFDA Rules 1.1.1 and 2.1.1, and the terms of his registration in the securities industry.

23. There were additional allegations in the Notice of Hearing to which the Respondent did not admit. MFDA Staff advised at the hearing that those allegations were being withdrawn.

IV. SUMMARY OF POSITIONS OF THE PARTIES

24. The positions of MFDA Staff and the Respondent are briefly summarized below.

MFDA Staff

25. MFDA Staff submitted that the contraventions by the Respondent of MFDA Rules 1.1.1 and 2.1.1 were serious, involving a breach of a MFDA Rule that is fundamental to the MFDA's mandate to enhance investor protection and strengthen public confidence in the mutual fund industry, and that the penalties proposed by MFDA Staff reflect the seriousness of the Respondent's misconduct.

26. MFDA Staff focused primarily on the importance of the deterrent effect of the proposed penalties. As to specific deterrence, MFDA Staff submitted that "the permanent prohibition from

the securities industry will shield the Respondent from future investors and MFDA Members, and the proposed substantial fine will prevent the Respondent from retaining any benefit of his misconduct.” As to general deterrence, Staff submitted that “the proposed penalties will clearly and unambiguously signal that engaging in misconduct similar to the Respondent’s conduct will not be tolerated.”

27. While MFDA Staff did not disclaim that the Respondent is insolvent, MFDA Staff expressed the view that inability of the Respondent to pay is “trumped” by the seriousness of his misconduct.

The Respondent

28. Counsel for the Respondent noted that the Respondent had agreed to the penalty of a permanent ban from the industry.

29. Counsel for the Respondent submitted that, due to the Respondent’s personal circumstances, the penalty should be a permanent prohibition only and should not include a fine because: the Respondent is not in a position to pay a fine as he is financially ruined and has made a proposal to creditors, and any fine would impact other creditors; a permanent bar from the industry is adequate to address the MFDA’s concerns, particularly investor protection and deterrence; the Respondent appreciates the seriousness of the contraventions and fully cooperated with MFDA Staff during the investigation and up to the hearing; and there was no evidence of client complaints or client harm.

V. REASONS

30. We find that the Respondent, between at least 2003 and November 3, 2015, engaged in securities related business that was not carried on for the account of or through the facilities of the Members with which he was registered, by:

- a) arranging for at least 120 investors, including 81 clients, to open online discount brokerage accounts outside the Members; and/or
- b) proposing trades, processing trades or otherwise conducting acts in furtherance of trades with respect to securities for the accounts,

contrary to MFDA Rules 1.1.1 and 2.1.1 and the terms of his registration in the securities industry.

31. According to section 24.1.1 of MFDA By-law No.1, a Hearing Panel that finds that an Approved Person has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA has the power to impose, among other things, a prohibition of the authority of the person to conduct securities related business, and a fine not exceeding the greater of: (i) \$5,000,000 per offence; and (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation.

32. In deciding on an appropriate sanction, we have also considered the MFDA Penalty Guidelines. We note that, as stated in the Staff Notice accompanying the Penalty Guidelines, “The Penalty Guidelines are not binding on a Hearing Panel and are intended only to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances.”

33. With respect to the type of penalty, the MFDA Penalty Guidelines note that the suspension of the authority of an Approved Person to conduct securities related business may be appropriate where, among other things, there have been numerous serious transgressions or there has been a pattern of misconduct. The Penalty Guidelines also note that,

“A fine will normally be appropriate where the Respondent has received a financial or other benefit, whether directly or indirectly, as a result of the misconduct. Generally, the amount of the fine should reflect, at a minimum, the amount of the financial benefit.”

34. With respect to a breach of MFDA Rule 1.1.1, the MFDA Penalty Guidelines suggest, among other things, a minimum fine of \$10,000, a suspension or permanent prohibition in egregious cases.

35. As has been noted in a number of previous cases, in exercising discretion to impose a penalty, a Hearing Panel should take into consideration the following :

- a) the protection of the investing public;
- b) the integrity of the capital markets;
- c) specific and general deterrence;

- d) the protection of the MFDA's membership;
- e) the protection of the integrity of the MFDA's enforcement process.

In the Matter of Kenneth Roy Breckenridge, [2007] Hearing Panel of the Ontario District Regional Council, MFDA File No. 200718, Decision dated November 14, 2007, at p. 21.

36. Hearing Panels frequently consider the following factors when determining an appropriate penalty:

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent's past conduct, including prior sanctions;
- c) the respondent's experience in the capital markets;
- d) whether the respondent recognizes the seriousness of his 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 need to deter not only those involved in the case being considered, but also any others who participate but generally capital markets from engaging in similar improper activity;
- i) the need to alert others to the consequences of inappropriate activities of those who are permitted to participate in the capital markets; and
- j) previous decisions made in similar circumstances.

Breckenridge, supra at pp. 21-22

We comment on each of those factors below.

37. The misconduct engaged in by the Respondent was very serious. MFDA Rule 1.1.1 creates a regime that is critical to investor protection and public confidence in the mutual fund industry. When the Respondent failed to comply with the rule it deprived his Member firms of the ability to: conduct due diligence on the securities to determine whether the securities should be sold to investors; supervise the sales and ongoing holdings to ensure that they were suitable for the

investors and that regulatory requirements had been met; and assess whether there were any actual or potential conflicts of interest.

38. Of particular concern to us is the magnitude of the Respondent's misconduct, given that it was carried out over an extended period of time, from at least 2003 to November 3, 2015, and involved at least 120 investors. Furthermore, he was aware that he was not registered nor authorized to provide advice or facilitate trades for the investors, other than securities approved for sale and processed through the facilities of his Member firms.

39. It is also of concern that the Respondent received fees of at least \$70,000 in respect of his improper activity and that he had advised the investors that if they did not pay his fees he would discontinue servicing their subject accounts.

40. As regards client harm, MFDA Staff was not aware of any complaints alleging investment losses arising from the Respondent's misconduct and did not have access to the necessary information to determine whether there were losses. However, the Respondent's actions exposed the investors to increased risk as they did not have the protection of the Member firms' supervision.

41. The Respondent was a registrant in the mutual fund industry for fifteen years and ought to have known the rules applicable to his role and the importance of complying with them.

42. The Respondent had no prior disciplinary history. However, we do not consider this a significant mitigant, given the length of time during which the misconduct occurred.

43. In our view, the key mitigating factor is that the Respondent clearly recognized the seriousness of his improper activity, accepted responsibility for it and demonstrated remorse. He fully cooperated with the MFDA in its investigation, appearing at an interview, providing evidence, admitting to the facts and contraventions, agreeing to a permanent ban and entering into an Agreed Statement of Facts. He also drove from Sudbury to Toronto to appear at the hearing.

44. We have a concern that, given the Respondent's past serious contraventions over a prolonged period of time, there is risk to investors if he were to continue to operate in the capital markets.

45. We are of the view that it is necessary to impose a serious penalty to reflect the seriousness of the contraventions to clearly alert other capital market participants that this kind of misconduct will not be tolerated.

46. MFDA Staff referred us to several cases similar to the case at hand where a respondent had engaged in an outside business activity and received a benefit therefrom, as support for their position that the proposed fine is appropriate.

47. *In The Matter of Metz Mohammed Majdoub*, [2010] Hearing Panel of the Central Regional Council, MFDA File No. 201010, Panel Decision dated November 12, 2010, following a hearing which the respondent did not attend, the respondent was found to have engaged in securities related business that was not carried on for the account of, or through the facilities of, the Member with which he was registered. The respondent and his employees, between January and September, 2005, had facilitated investments of at least \$840,000 by 19 individuals who lost all, or most of, the money they invested. For those transactions the respondent received \$120,000 in commission. There was also a finding that the respondent had engaged in a dual occupation which had not been disclosed to, and approved by, his Member firm. In the circumstances the Hearing Panel determined that a permanent prohibition and a fine of \$120,000, equivalent to the commission paid to the respondent, plus costs was appropriate.

48. *In the Matter of Lorne Piatt*, [2012] Hearing Panel of the Prairie Regional Council, MFDA File No. 201206, Panel Decision dated September 25, 2012, the respondent had, between November 2008 and April 2009, recommended or facilitated the sale, to at least ten clients of his Member firm, of three investment products that were not approved for sale by his Member firm and were conducted through an arrangement with another firm. To fund the investments the clients sold all, or substantially all, of the mutual funds in their accounts at the Member firm and incurred deferred sales charges (“DSCs”) of approximately \$107,000. The total investments were \$3,067,720. The respondent earned approximately \$157,000 from the transactions and later reimbursed two clients \$38,233 of the DSCs incurred. None of the clients filed complaints. The respondent had cooperated in the MFDA’s investigation. After a hearing on the merits, the Hearing Panel found that the respondent had carried on a securities related business not for the account of the Member or through its facilities and had breached MFDA Rule 2.1.1 in failing to respond fully

and accurately to inquiries from the Member firm. The Hearing Panel imposed a permanent prohibition and a fine of \$175,000 plus costs. With respect to the fine, the Hearing Panel noted at page 16,

“Our reasoning with respect to the fine takes into account that the Respondent benefitted in commissions by approximately \$118,000. If deterrence is a factor, any fine must exceed the gain and we have determined that a fine which is 50% greater than the commissions earned is an appropriate deterrent in this case.”

49. Staff also referred us to several cases in support of their position that the Hearing Panel should impose a fine, notwithstanding the Respondent’s impecuniosity. Those cases involved serious breaches which were different from the current case.

50. *In the Matter of George William Popovich*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201240, Panel Decision on Penalty dated May 27, 2015, the Hearing Panel noted at page 8, in connection with imposing a permanent prohibition on the respondent,

“We are mindful of the fact that the Respondent has no prior disciplinary record despite his lengthy involvement in the industry. We are also mindful of his personal and family circumstances, as well as the passage of time since his misconduct occurred. However, these facts are overwhelmed by the seriousness of his misconduct.”

In connection with also imposing a fine, the Hearing Panel stated at page 10,

“In our view, a fine of \$100,000 takes into consideration the totality of circumstances, including an admittedly imprecise calculation of the Respondent’s anticipated compensation, his personal and financial circumstances, some evidence (albeit limited) of financial difficulties, and the fact that we are permanently prohibiting him from ever practicing in this industry.”

51. *In the Matter of Peter Haralds Brauns*, [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201203, Panel Decision on Penalty dated February 4, 2014, the Hearing Panel stated at page 5,

”In our view, any inability to pay the fine (while relevant) is trumped by the need to articulate the seriousness of the Respondent’s conduct, and to at least impose a fine that bears some relationship to the benefit obtained as a result of the misconduct and/or the loss to those affected.”

52. *In the Matter of Steven Thomas Bott*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201601, Panel Decision dated April 18, 2017, the respondent had declared bankruptcy. The Hearing Panel imposed a permanent prohibition on the authority of the respondent to conduct securities related business (also noting the respondent's failure to file a Reply or appear at the hearing) and a fine of \$25,000 which was greater than the benefit retained by the respondent, while commenting that any fine was unlikely to be collected.

53. Counsel for the Respondent referred us to the case of *In the Matter of Bill Hsueh*, [2012] Hearing Panel of the Central Regional Council, Panel Decision dated May 1, 2012, in support of the Respondent's position that, due to his personal circumstances, the penalty should be a permanent prohibition only and not include a financial penalty. In that case the respondent had, between May 14 and September 15, 2008, engaged in securities related business that was not carried on for the account and through the facilities of his Member firm in respect of one client and failed to appropriately inform the client of the status of her investments, and had subsequently failed to appropriately handle complaints from the client. The client lost a substantial amount of the funds she had invested with the respondent. During the relevant time and up to the date of the hearing the respondent had been suffering from mental health issues and was experiencing financial difficulties. The respondent did not receive any compensation in respect of the improper conduct. In the circumstances, the Hearing Panel accepted the settlement and concluded that the penalty of a permanent prohibition proposed in the Agreed Statement of Facts was reasonable.

54. Counsel for the Respondent also referred us to the case of *In the Matter of Jeffrey Mushaluk*, [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201545, Panel decision dated November 10, 2016. Counsel for the Respondent noted that the penalty imposed in that case was less than what MFDA Staff was seeking in this case in respect of infractions that counsel submitted were more egregious. In that case the respondent had, between August 2012 and May 2013, engaged in securities related business that was not carried on for the account, and through the facilities, of his Member firm and had acted outside his registration as a mutual fund salesperson. The case involved at least 29 clients who invested in a junior mining company and lost a substantial amount of money, although there was no evidence of client complaints. It did not appear that the Respondent had retained any financial benefit from the subject transactions. The Hearing Panel ordered a one year ban and a fine of \$25,000 plus costs.

55. Counsel for the Respondent did not refer us to any prior cases in which a respondent retained a financial benefit from the improper activities and no fine was imposed. In our view, that was a significant distinguishing factor in the case at hand.

56. We have determined that in the circumstances, and as agreed by the parties, pursuant to section 24.1 (e), there should be a permanent prohibition on the Respondent's authority to conduct securities related business, and be registered, as a dealing representative.

57. As regards, a fine, we are of the view that, as reflected in the MFDA Penalty Guidelines and previous cases, the Respondent should generally be required to pay a fine at least equal to the financial benefit he obtained from the improper activity, which in this case would be at least \$70,000. While we have considered the Respondent's financial circumstances, that is not a significant factor in our penalty decision, given the seriousness of the misconduct and our view that the Respondent should not be permitted to retain a financial benefit from that misconduct. However, we also believe it is important to encourage respondents to cooperate fully with the MFDA in the investigation and hearing processes, which the Respondent has clearly done in this case. In light of the Respondent's extensive cooperation, and also having regard to the permanent prohibition and, to a lesser extent the Respondent's financial circumstances, we have determined that an appropriate fine is \$50,000.

58. We believe that the penalty imposed will serve the purposes of, in particular, the protection of the investing public and specific and general deterrence. It will prevent any future misconduct by the Respondent that could be harmful to investors and should deter other mutual fund participants from engaging in similar conduct.

59. With respect to costs, MFDA Staff requested costs of \$5,000, while counsel for the Respondent asked that costs be reduced to \$4,250, submitting that some of Staff's costs could have been avoided had she, as Respondent's counsel, been notified of certain matters. We have agreed to reduce the order for costs to \$4,500.

DATED this 19th day of December, 2018.

"Joan Smart"

Joan Smart
Chair

"Brigitte J. Geisler"

Brigitte J. Geisler
Industry Representative

"Kenneth P. Mann"

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