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: Steven Thomas Bott

Heard: April 5, 2017 in Toronto, Ontario
Decision and Reasons: April 18, 2017

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Guenther W. K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

H. C. Clement Wai	)	Counsel for the Mutual Fund Dealers Association of Canada
Steven Thomas Bott	)	Not in attendance nor represented by Counsel

Background

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada ("MFDA"). The hearing was held on Wednesday, April 5, 2017. Steven Thomas Bott, ("Respondent"), did not appear at the Hearing or by teleconference. Nor was he represented by counsel. He did not file a reply to the alleged misconduct and had not participated in the earlier set-date teleconference. At the conclusion of the Hearing, the Panel reserved its decision. This is our decision and the reasons for the decision.

2. The Respondent was registered in Ontario from February 18, 2009 to February 27, 2015 as a mutual fund salesperson (now known as a Dealing Representative) with Sun Life Financial Services (Canada) ("Sun Life Financial"), a member of the MFDA. The Respondent operated out of the Kingsville, Ontario, office, in southwestern Ontario. On February 27, 2015 his employment with Sun Life Financial was terminated as a result of his alleged misconduct. He has not been registered in the securities industry in any capacity since February 27, 2015.

Alleged Misconduct

3. Proceedings against the Respondent were commenced by a Notice of Hearing, dated November 24, 2016.

4. The MFDA alleged the following violations of the By-laws, Rules or Policies of the MFDA:

> **Allegation #1**: Between May 16, 2013 and February 27, 2015, the Respondent was indebted to a client in the amount of approximately $14,050 and was a joint owner of a bank account with the client, thereby engaging in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest between the Respondent and the client that the Respondent failed to address by the exercise of responsible business

judgment influenced only by the best interests of the client, contrary to MFDA Rules 1.1.2, 2.1.1, 2.1.4 and 2.5.1.

5. Because the Respondent did not appear at the Hearing or file a Reply, the Panel is entitled to accept as proven the facts alleged and conclusions drawn by the Staff in the Notice of Hearing. (See Rule 8.4 and 7.3 of the MFDA Rules of Procedure.). Nevertheless, counsel for the MFDA took us through the extensive materials filed at the Hearing and we are completely satisfied that the facts that the MFDA alleges are correct. The key question, to be discussed below, is whether the proposed penalty is the right one.

6. In brief, the Respondent borrowed $16,500 from Client SS, then 72 years old, who had been an insurance client of the Respondent at Sun Life Financial, and shared a joint bank account with Client SS for the purposes of repaying the loan.

7. As set out in the Notice of Hearing, Client SS and the Respondent executed two agreements, namely a Financial Loan Agreement and an Interest on Loan Agreement. To facilitate the repayment of the loan and interest payments, the Respondent and Client SS opened a joint bank account into which the Respondent was to deposit monies towards repayment of the loan and interest.

8. On about May 16, 2013, Client SS became a mutual fund client of Sun Life Financial through the Respondent and another Approved Person and thus Client SS's dealings with the Respondent became subject to MFDA Rules.

9. In an interview conducted by the MFDA via Skype on October 29, 2015, the Respondent acknowledged that he had borrowed money from Client SS, as alleged in Allegation 1 and did not disclose this fact to the Member.

Borrowing from Clients

10. At all material times, Sun Life Financial prohibited its Approved Persons from borrowing funds from clients. This is in line with similar MFDA Rules. See MFDA Rule 2.1.4 which provides:

a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member;

b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interest of the client and in compliance with Rules 2.1.4(c) and (d);

c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest; and

d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

11. Since at least October 2005, there has been an MFDA Staff Notice on "Personal Financial Dealings with Clients" (MSN-0047). The Notice states, in part: "Borrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of a client." See also, *Re Arnold Tonnies* [2005] MFDA File No. 200503.

12. The Respondent did not disclose to Sun Life Financial that he had borrowed money from Client SS which he continued to owe, or that he was the joint owner of a bank account with Client SS.

13. There were several later adjustments in the terms of payment of the loan. Again, the Respondent did not disclose to Sun Life Financial that he had entered into the new agreements with Client SS.

14. As of May 15, 2015, the Respondent owed $15,391 to Client SS. Since then, he has failed to make further payments to Client SS. The Respondent filed a Notice to Creditors of a Consumer Proposal in July 2014 and has since declared bankruptcy. (There had been an earlier bankruptcy in about 2007.) In this recent bankruptcy, a secured creditor has been paid in full, but others, including Client SS, have not and are not likely to be fully compensated, if at all compensated.

15. A number of the Respondent's insurance clients had also loaned funds to the Respondent, but are not included in the MFDA allegations because they only purchased insurance and not mutual funds from the Respondent. And so, those transactions do not come under the jurisdiction of the MFDA.

Proposed Penalty

16. Staff sought the following sanctions against the Respondent:

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 amount of at least $50,000, 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 amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1.

17. The Panel agrees that costs of $5,000 are appropriate in this case.

18. Similarly, the Panel agrees that a permanent prohibition on the authority of the Respondent to conduct securities related business is the correct penalty in the circumstances of this case. There were a number of occasions when the payment arrangements with Client SS were changed when the Respondent could have disclosed the matter to his supervisor. Moreover, although this appears to be only one incident, the fact that there were a number of similar loans by persons that purchased insurance suggests to us that there was a pattern to the conduct. These other loans also indicate that, although the Respondent said in his interview with the MFDA that the idea of a loan was initiated by Client SS, it seems to us that Client SS's statements in the material that the idea was initiated by the Respondent is the better interpretation of what took place.

19. The case is particularly egregious because the Respondent did not enter a Reply or appear at the Hearings. This alone could be a reason for barring the Respondent from the industry, an industry that depends on cooperation and trust. As Counsel submitted: "MFDA Hearing Panels have consistently imposed permanent prohibitions on individuals whose conduct suggests that they are ungovernable."

20. The permanent prohibition will achieve the MFDA's mandate of investor protection, as the Respondent will no longer be able to operate in the securities industry and it will at the same time deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants, and foster public confidence in the securities industry.

21. We struggled with the question of whether a $50,000 penalty would be appropriate and concluded that it should be half that amount -- $25,000. We point out that, considering the Respondent's present financial condition, whatever fine is imposed, it is unlikely to ever be collected. Deterrence is important, but by imposing the severe penalty of a permanent prohibition we will be providing general deterrence to others and creating a situation where specific deterrence of the Respondent is unnecessary.

22. The non-binding MFDA penalty guidelines suggest a penalty of at least $10,000 for Personal Financial Dealings, far below the suggested penalty. The cases that were cited to us vary widely and depend on the specific facts of each case. We observed, however, that there appears to be a general tendency by Panels for the fine to bear some relationship to the sum borrowed and not repaid. In the present case however, it is over three times the sum borrowed from Client SS.

23. We have not taken into account in setting the fine, the amounts borrowed from persons dealing only in insurance. The MFDA does not have jurisdiction over these cases. That is a matter for the insurance regulatory agency. In any event, no evidence was before us relating to whether borrowing from clients by insurance agents is treated as seriously as it is in the securities field.

24. We therefore order a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member; a fine of $25,000; and costs of $5,000.

DATED this 18th day of April, 2017.

"Martin L. Friedland"

Martin L. Friedland, C.C., Q.C.
Chair

"Guenther W. K. Kleberg"

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