



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: Peter Haralds Brauns

Heard: January 17, 2014, in Toronto, Ontario
Reasons for Decision (Penalty): February 4, 2014

**REASONS FOR DECISION
(Penalty)**

Hearing Panel of the Central Regional Council:

Mark J. Sandler
Janet Himmeroder
Greg Juby

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)	Senior Enforcement Counsel, Mutual Fund
)	Dealers Association of Canada
)	
Robert E. Houston, Q.C.)	Counsel for the Respondent
)	
)	

INTRODUCTION

1. In our Reasons for Decision (Misconduct) dated October 15, 2013, we found that Staff of the MFDA (“Staff”) had proven that Peter Haralds Brauns (the “Respondent”) engaged in the three particulars of misconduct identified in the *Amended* Notice of Hearing.

2. On January 17, 2014, we reconvened to hear penalty submissions. The Respondent represented himself at the earlier hearing. Mr. Houston very ably represented him at the penalty hearing.

3. At the conclusion of the penalty hearing, we made the following orders, with written reasons to follow:

- (a) The authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA is permanently prohibited, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- (b) Within 18 months, the Respondent shall pay a fine in the amount of \$850,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 but the amount of the fine shall be reduced by any amounts paid by the Respondent within 18 months of the date of this order to individuals referenced in the Amended Notice of Hearing (other than to JM, LJ or SE)¹ or to their representatives or to the beneficiaries of their estates as part of a settlement of a civil action or in satisfaction of any court imposed order (excluding amounts paid for costs or interest) or by other means as restitution for amounts loaned to the Respondent or invested in any company that was operated by the Respondent at the time when the money was invested; and
- (c) Within 12 months, the Respondent shall pay costs to the MFDA in the amount of \$30,000, pursuant to s. 24.2 of MFDA By-law No. 1.

4. These are our written reasons.

¹ We did not make specific reference to all three individuals when we announced our orders, but have modified the order slightly based on the draft order submitted by both parties, with which we agree.

The Facts

5. The allegations against the Respondent and our findings are set out in great detail in our earlier reasons. It is unnecessary to repeat them here. Our reasons on penalty should be read together with our earlier reasons.

6. The Respondent has no prior discipline history. He was well regarded in the community. He had served as a mutual funds salesperson for many years. He was heavily involved in the Latvian community and proud of his Latvian roots. This meant, amongst other things, that a number of his clients were of Latvian descent. It also explained, in part, his dream of building and operating a hotel in Latvia once the former Soviet Union's influence there waned.

7. Unfortunately for the Respondent and for others, including his client VK, the hotel project became such a preoccupation – perhaps an obsession – that he ignored the ethical standards that governed his conduct both before and after the MFDA assumed jurisdiction over his activities on March 8, 2002.

8. The most significant victim of his misconduct was VK, an elderly and unsophisticated widow. Virtually the entirety of her life savings was sunk into the hotel, either through loans to or investments in Cesis or loans to the Respondent personally. This is not a misappropriation case. Nor do we believe that the Respondent intended, when he first sought funds from VK, to deprive her of the funds she had accumulated over a lifetime. However, this serves little as mitigation here. His dream (which VK undoubtedly shared to some extent) prompted him to proceed despite his blatant conflict of interest. As Mr. Houston fairly conceded, nobody had to tell the Respondent, nor did any rule have to articulate, the impropriety of what he did. He caused VK to move from her secure investments to a highly speculative unsecured venture without appropriate independent legal advice, and without appropriate disclosure of how highly risky the venture was – indeed, the substantial risk that she could lose everything she had invested. Of course, the fact that he was in such a blatant conflict of interest was an important feature of the impropriety of his actions.

9. The situation was exacerbated by the conversion of her promissory notes to shares in a

company that was already experiencing serious cash flow problems. It was highly foreseeable, if not likely, that her shares would ultimately be next to worthless.

10. While much of the Respondent's conduct predated March 8, 2002, it extended well beyond that date. Accordingly, his misconduct was within the MFDA's jurisdiction. It was undisputed that we were entitled to take into consideration the totality of circumstances in determining the appropriate penalty.

11. Mr. Houston conceded, on behalf of the Respondent, that our findings of misconduct were justified and supported a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of or associated with any member of the MFDA. Indeed, he acknowledged that the jurisprudence made such a disposition virtually inevitable.

12. We agree. The misconduct here was serious. It extended over a lengthy period of time. It involved multiple clients and multiple breaches of the rules. Several of the Respondent's clients were particularly vulnerable. VK and her estate have suffered significant harm as a result of the Respondent's misconduct. There was no evidence that the Respondent's lifestyle was enhanced as a result of his misconduct; indeed, there was some evidence that he and his wife have lost a large sum of money from their own involvement in the hotel venture. Even if this is accurate, he of course benefitted in securing funds for his venture through his misconduct.

13. The Respondent might not have fully appreciated that he was engaging in misconduct in connection with his non-clients. We need not decide what his state of mind was in that regard. But he was certainly aware that much of his conduct in connection with the clients identified at this hearing was improper. He continued on nonetheless.

14. We are mindful of the various objectives reflected in the jurisprudence that inform penalty. Here, the objectives that figure most prominently are the need for general deterrence and the need to ensure public confidence in the markets and in this self-regulating profession. The penalty here must include a permanent prohibition.

15. At the penalty hearing, the Respondent requested that we defer the commencement of the

prohibition to enable him to meet with his many clients and ensure that they are protected. He admittedly knew when our earlier reasons were released on October 15, 2013 that he would have to wind up his practice. Nonetheless, he had not done so in the months before the penalty hearing. This fact, coupled with our finding that he engaged in serious misconduct that warrants a permanent prohibition, made it highly inadvisable to defer the commencement of the prohibition. Accordingly, we ordered that it commence immediately.

16. Staff also requested a fine in the amount of \$850,000, together with costs of \$30,000. Mr. Houston candidly advised us that a significant fine was called for, but that there was little prospect that even a substantially lower fine such as \$250,000 could be paid. In our view, any inability to pay the fine (while relevant) is trumped by the need to articulate the seriousness of the Respondent's misconduct, 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. In our view, a fine of \$850,000 is fit in the circumstances.

17. That said, we do not wish the payment of any fine to impede restitution to those affected by the Respondent's misconduct. We are aware, for example, that a civil case is scheduled to be heard in March 2014 that may or may not yield funds to the benefit of at least VK's estate or representatives. Accordingly, we have structured the fine so as to be reduced in the event that funds are paid by the Respondent either voluntarily, through settlement or through court order (excluding costs and interest that may be imposed) to any of those affected by the Respondent's misconduct as referred to in the Amended Notice of Hearing, with certain named exceptions. The Respondent has 18 months to pay the fine.

18. As earlier indicated, Staff also sought costs in the amount of \$30,000. Although this represents a substantial sum, it only partially covers the investigative and prosecution costs of the MFDA. Indeed, when measured against the actual costs, it is quite modest. We award costs in the amount of \$30,000. The Respondent has 12 months to pay those costs.

19. We are grateful to counsel for their assistance.

DATED this 4th day of February, 2014.

“Mark J. Sandler”

Mark J. Sandler,
Chair

“Janet Himmeroder”

Janet Himmeroder,
Industry Representative

“Greg Juby”

Greg Juby,
Industry Representative

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