



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: Nathan Eric Breukelman

Heard: April 26, 2018 in Toronto, Ontario

Decision: April 26, 2018

Reasons for Decision: June 8, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth)	Chair
Edward V. Jackson)	Industry Representative
Guenther W. K. Kleberg)	Industry Representative

Appearances:

Francis Roy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Nathan Eric Breukelman)	Respondent, not in attendance or represented
)	by counsel
)	

Background

1. By Notice of Hearing dated October 3, 2017, (“Notice of Hearing”) a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to hear evidence and submissions with respect to allegations against Nathan Eric Breukelman (“Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation No. 1: Between November 26, 2014 and April 21, 2015, the Respondent misappropriated a total of \$28,889.45 from client SM, thereby failing to deal fairly, honestly and in good faith with the client, failing to observe high standards of ethics and conduct in the transaction of business, and/or engaging in business conduct or practice unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation No. 2: Commencing August 8, 2016, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to s. 22.1 of MFDA By-law No. 1.

3. The Respondent was properly served with the Notice of Hearing set out above, as appears from the Affidavit of Service of Dennis Duclos, sworn October 7, 2017. In any event of that service, the Respondent did not deliver or serve a Reply to the Notice of Hearing at any time through the course of the proceedings, nor did the Respondent attend or participate at the first appearance held December 12, 2017. At that time, a hearing on the merits was ordered to take place on April 26, 2018, at 10:00 a.m., at 121 King Street West, Ste. 1000, Toronto, Ontario. Thereafter, notice of the date of the hearing on the merits was sent to the Respondent on December 19, 2017, by the MFDA Corporate Secretary’s Office. In spite of that notice, no one appeared at the hearing on the merits on behalf of the Respondent. Proof of service of the Notice of Hearing on the merits was established by the Affidavit of Terry Ash, dated April 26, 2018 and marked as Exhibit 5 in this proceeding.

The Facts

4. At the commencement of the hearing, Staff Counsel made a motion requesting that the Panel utilize the deeming provision of MFDA Rule of Procedure 8.4. As a result of the clear facts set out above, the Panel made the requested order deeming that the facts and allegations set out in the Notice of Hearing be regarded as proven.

5. The Panel noted that the facts, now deemed to be proven, were set out with particularity in paragraphs 1 to 20 of the Notice of Hearing, while the deemed proven allegations were set out on page 2 of the Notice of Hearing.

6. In addition to the deeming provisions of MFDA Rule of Procedure 8.4 and the order made pursuant to same, Staff relied on the Affidavit of Ian Smith, dated the 24th day of April, 2018, which was marked as Exhibit 4 in this proceeding. The Affidavit further verified the particulars of the allegations against the Respondent set out in paragraphs 1 to 20 in the aforementioned Notice of Hearing. Accordingly, based on the above order and the facts set out in Exhibit 4, the Panel concluded that Allegations No. 1 and 2 against the Respondent, had been proven.

Discussion

7. MFDA Hearing panels have consistently held that where an Approved Person solicits and accepts money from a client and fails to pay back or otherwise account for it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

Robert Roy Parkinson (Re), [2005] MFDA Ontario Regional Council File No. 200501, Hearing Panel Decision dated April 29, 2005 at p 18-19

Stephan Headley (Re), [2006] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006 at pp. 21-22

Michele and Jeffrey Longechamps (Re), [2010] MFDA Central Regional Council, File No. 200829, Hearing Panel Reasons for Decision dated September 22, 2010 along with accompanying Order dated January 28, 2010.

James Vilfort (Re), [2010] MFDA Central Regional Council, File No. 201021, Hearing Panel Reasons for Decision dated December 15, 2010 at para. 16

8. The Panel further considered that the MFDA has a duty to conduct examinations and investigations of a Member, Approved Person or any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that person's compliance with applicable securities legislation, the By-laws, Rules and Policies of the MFDA.

9. Further, the Panel was aware that the corresponding obligation of Approved Persons to cooperate with MFDA examinations and investigations is codified in s. 22.1 of MFDA By-law No. 1, which states:

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- a) To submit a report in writing with regard to any matter involved in such investigations;
- b) To produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) To attend and give information respecting any such matters;

...

And the Member or person shall be obliged to submit such report, to permit inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. ...

Section 22.1 of MFDA By-law No. 1.

Parkinson, supra,

10. The failure of an Approved Person to cooperate with an MFDA investigation by, among other things, complying with a request by an MFDA investigator made pursuant to s. 22.1 of the By-law is serious misconduct. It subverts the ability of the MFDA to perform its regulatory

function by fully investigating a matter and determining all of the facts and the full extent and implications of the underlying events. Further, the failure to provide information requested in an investigation undermines the integrity of the self-regulatory system and the effectiveness of its operations. It is also conduct that is unbecoming and detrimental to the public interest.

Parkinson, supra

11. Having made the above findings and having considered the case law set out above, the Panel turned its mind to the appropriate penalty in this particular case. The Panel accepted Staff Submission that the proposed penalties must reflect the seriousness of the Respondent's misconduct and must be consistent with the mandate of the MFDA, to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry.

Pezim v. British Columbia (Superintendent of Brokers), [1995] S.C.J. 58.

12. The Panel was also aware that Hearing panels frequently consider, when determining whether a penalty is appropriate, the following factors, among others:

- a) The seriousness of the allegations proved against the respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) Whether the respondent recognizes the seriousness of the improper activity;
- d) The harm suffered by investors as a result of the Respondent's activities;
- e) The benefits received by the Respondent as a result of the improper activity; and
- f) Previous decisions made in similar circumstances.

Parkinson, supra at p. 22
Headley, supra at pp. 25-26

13. The Panel finally considered the MFDA Penalty Guidelines and the extensive list of previous decisions to which Staff Counsel made reference.

14. In considering the above factors and submissions, the Panel was mindful that:

- a) The Respondent had violated two rules of the MFDA by:
 - i. Breaching the trust of client SM and misappropriating her funds;
 - ii. Flagrantly failing to cooperate with the investigation of the MFDA;
 - iii. By both his conduct and by his lack of response to the Notice of Hearing, had proven himself, to be ungovernable.

Accordingly, the Panel believed that both general and specific deterrents must be considered and the penalty must send a clear message to industry members and the public.

Result

15. For all the above reasons, the Panel ordered that:

- a) if at any time a non-party to these proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;
- b) the Respondent is permanently prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction, 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 in respect of Contravention #1, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- d) the Respondent shall pay a fine in the amount of \$50,000 in respect of Contravention #2, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- e) the Respondent shall pay costs of this proceeding in the amount of \$7,500 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 8th day of June, 2018.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

“Guenther W. K. Kleberg”

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