



**Decision and Reasons**

**Case # 200502**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

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 BROWN-JOHN**

**DISCIPLINARY HEARING**

Heard: March 31, April 25, June 7, 2005

Panel Decision: June 27, 2005

Vancouver, BC

**DECISION and REASONS**

Hearing Panel:

|                                  |                         |
|----------------------------------|-------------------------|
| The Hon. Roger P. Kearns, FCIARB | Chair                   |
| Dawn Daughton                    | Industry Representative |
| Larry Neilsen                    | Industry Representative |

Appearances:

|                 |   |
|-----------------|---|
| William Donegan | For Mutual Fund Dealers Association of Canada |
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|                    |  |
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| Raymond Brown-John | Not in attendance personally or by counsel |
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## **1. The Allegations**

By Notice of Hearing dated January 21, 2005, the following allegations were made against RAYMOND BROWN-JOHN:

a) Between December 1999 and February 2003, the Respondent failed to deal, fairly, honestly and in good faith with his clients RG and MO by misappropriating from them the total amount of \$83,000, more or less, contrary to MFDA Rule 2.1.1.

b) Between May 2001 and February 2003, the Respondent preferred his own interests to those of his client RG and failed to exercise responsible business judgment influenced only by the best interests of his client RG by recommending that RG redeem certain mutual fund investments in the total amount of \$67,000 and lend the proceeds to him in the form of an unsecured personal loan, which loan the Respondent subsequently failed to repay, contrary to MFDA Rule 2.1.4.

c) Commencing on or about July 31, 2003, the Respondent failed to comply with requests by the MFDA to provide documents and information to the MFDA for the purpose investigating a complaint made against the Respondent by RG, contrary to section 22.1 of MFDA By-Law No. 1.

d) Commencing on or about September 22, 2003, the Respondent failed to carry out an agreement with the MFDA made on August 20, 2003 to provide the MFDA with copies of certain financial account statements on or before September 22, 2003, thereby engaging the jurisdiction of the Regional Council to impose a penalty on the Respondent pursuant to section 24.1.1(g) of MFDA By-Law No. 1.

## **2. Service**

The Notice of Hearing provided for a First Appearance before a Hearing Panel on March 2, 2005. RAYMOND BROWN-JOHN, the Respondent, did not appear nor file a Reply. The Panel directed a hearing on March 31, 2005, and that he be given further Notice. On March 31, he again did not appear. The Hearing Panel reviewed the materials in support of service and concluded that, while service had been achieved as provided in the Procedural Rules, it preferred personal service, and so directed. A further Hearing was set for April 25, 2005, and proof of service as directed was placed before the Panel. RAYMOND BROWN-JOHN again did not appear, but on April 22, 2005 he submitted a letter in which he did not undertake to attend the hearing. The Hearing Panel yet again adjourned the Hearing, this time until June 7, 2005, and directed that “. . . MFDA staff inform the Respondent that in the event the Respondent does not appear at the scheduled hearing on the merits, the Hearing Panel will likely proceed with the hearing on the merits in his absence. . .” This was done, but RAYMOND BROWN-JOHN did not appear.

Procedural Rules 13.5 (1) and 7.3(a) provide that where a Respondent fails to attend the Hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing

Panel may “ proceed with the hearing without further notice to and in the absence of the Respondent.”

Having regard to the circumstances, the Hearing Panel decided to proceed with the hearing without further notice and in his absence.

### **3. Evidence and Finding**

Having regard to Procedural Rules 7.3 (b), 1.6 (1), and 13.4 the Panel agreed to accept the evidence presented in affidavits from Indira Nadarajan, M.O. and R.G.. These in turn refer to certain appended documents, mainly bank records and cancelled cheques, and report conversations with RAYMOND BROWN-JOHN.

By direction of the Hearing Panel, M.O and R. G shall not be identified by name.

#### **Allegation 1**

The evidence is that RAYMOND BROWN-JOHN on May 9, 2002, executed an agreement in the form of Schedule G of the MFDA Membership Application Guide that he would comply with MFDA Rules and submit to the jurisdiction of the MFDA. From at least 1999 he was employed by Partners in Planning Financial Services Ltd. (PIP)

MO was born in 1930, and was a widow with no financial experience whose education ended at Grade 8. RG was born in 1936 and also was a widow with no financial experience. Her education ended at Grade 8. Both testified they relied utterly on RAYMOND BROWN-JOHN to guide them through what were to them utterly incomprehensible procedures in connection with their investment accounts with PIP.

RAYMOND BROWN-JOHN worked a series of frauds on MO. Starting on November 29, 1999, he had her sign redemption forms respecting her mutual fund investments, and then pocketed the funds after redemption. A review of Bank records confirmed that this fraud was repeated 15 times between Nov 29, 1999 and December 24, 2002, including a redemption for \$1600 on May 28, 2002, and another December 24, 2002 for \$1800. The total theft was \$38,166.68, and she and PIP agreed to a refund of \$38874.63 paid to MO by PIP after discovery in 2004. Thefts totaling \$3400 occurred after May 9, 2002.

RAYMOND BROWN-JOHN worked a series of similar frauds on RG. Starting on August 16, 2000, he had her also sign redemptions forms respecting her mutual fund investments, and then pocketed the funds after redemption. A review of Bank records confirmed that this fraud was repeated 12 times between August 16 and March 7, 2001, for a total theft of \$25,686. 31

RAYMOND BROWN-JOHN also worked a different series of frauds on RG. On 5 occasions between April 18, 2000, and January 18, 2003, he approached her for funds he said were needed for further investment. In each case he asked for cheques payable to him

personally, and then he pocketed the money. A review of Bank records confirmed that these thefts totaled \$19,324.83, including one on July 6, 2002, of \$2,827, and another on January 18, 2003 for \$4,382.64 for a total after May 9, 2002 of \$7,209.64. PIP has agreed to pay RG \$139,000 in repayment of this loss and that referred to under Allegation 2.

In total he took about \$83,000 in circumstances that amounted to a breach of MFDA Rule 2.1.1 (a) which provides that an Approved Person, such as RAYMOND BROWN-JOHN, deal “fairly, honestly, and in good faith with its clients”.

The Panel is satisfied that guilt has been made out on this evidence respecting Allegation 1, save that some of these thefts occurred before MFDA gained jurisdiction over him. It as a result is necessary to amend Allegation 1 to find RAYMOND BROWN-JOHN guilty of theft of \$10,609.64. The Panel nevertheless asserts that all of these thefts in fact occurred, and will be taken into consideration on the question of penalty.

### **Allegation 2**

Some time in May, 2001, RAYMOND BROWN-JOHN went to see RG in her home and asked her for a loan to buy a new house. He gave her a promissory note, and received, over the next few months, \$67,000. She also incurred deferred sales charges as a result of investment redemptions to provide him with funds. RAYMOND BROWN-JOHN has never repaid the loan. As of May 9, 2002, then, he owed funds to his client, which manifestly created a conflict of interest.

Allegation 2 has been made out. Rule 2.1.4(a) requires that if a conflict arises “. . . the member shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client . . .” He did and said nothing, and that was in breach of this Rule.

### **Allegation 3**

The MFDA investigation into RAYMOND BROWN-JOHN began on May 26, 2003. On July 31, MFDA wrote to demand bank statements from the period April 1, 2000 through February 1, 2003 be supplied by August 14, 2003. RAYMOND BROWN-JOHN failed to comply. This failure is a breach of section 22.1 of MFDA By-Law No. 1 despite the fact that he attended the MFDA offices with some of the requested material on August 20, 2003, and submitted to an examination. These facts are relevant only in terms of mitigation of penalty.

As has been repeatedly said, it is essential for professional self-regulation that the professional cooperate with the regulator. To fail in this regard is contrary to the public interest. See for example *Artesian v College of Physicians and Surgeons of Ontario* (1990) 73 O.R. (2d) 70.

#### **Allegation 4**

When he attended the MFDA offices on August 20, he also promised to submit all of the requested bank records by September 22. He defaulted in that undertaking, and this also amounts to an offence in breach of section 24.1.1(g) of MFDA By-Law No 1. The fact that he did send in some material on September 22, and promised more, is relevant to penalty, as is the fact he has never to this day supplied all of the demanded information.

#### **4. Penalty**

The penalty must re-affirm public confidence in the system, and to do this it must be seen to act as a general deterrent. Every member acts for highly susceptible investors, and the penalty must be sufficiently severe as to dissuade other members from any temptation to follow the predatory practices engaged in by RAYMOND BROWN-JOHN. Moreover, the public is entitled to be protected from any further predatory activities by him.

#### **Allegation 1**

This was gross breach of the trust of highly susceptible clients.

RAYMOND BROWN-JOHN has said he had serious business reverses during this period, which made him desperate. But the role of penalty is to dissuade others who may fall into the same difficulties. The same may be said of his reference to family problems and personal illness. He also raised in mitigation the fact that PIP took over his book of business after his dismissal. He did not, however, voluntarily dispose of this asset in order to help his victims. He lost it as a consequence of his behavior. There is little mitigation in this circumstance.

The Panel will make an Order creating a permanent prohibition on the authority of RAYMOND BROWN-JOHN to conduct securities related business in any form or capacity.

The Panel will also make an Order for the payment of a fine of \$150,000.

#### **Allegation 2**

We would impose the same penalties as for Allegation 1, but concurrently.

#### **Allegation 3**

In mitigation it must be said that RAYMOND BROWN-JOHN made some effort to cooperate within a week of the imposed deadline, and promised more. It is our impression that his statements confirmed much of his guilt, and this also must be considered in mitigation.

We impose a fine of \$10,000.

**Allegation 4**

While again RAYMOND BROWN-JOHN made some effort to perform his undertaking, there is no excuse for his failure to perform as promised.

We impose a fine of \$25,000.

“The Hon. Roger P. Kerans”  
The Hon. Roger P. Kearns, FCIARB  
Chair

“Dawn Daughton”  
Dawn Daughton

“Larry Neilsen”  
Larry Neilsen