



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

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: Brian Somerset Campbell

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Hon. Roger Kerans FCIArb, CArb	Chair
Holly Millar	Industry Representative
Cecilia Wong	Industry Representative

Appearances:

Jason D. Bennett, Esq.)For the Mutual Fund Dealers Association of)Canada
Brian Somerset Campbell)No appearance or representative

Preliminary Matters

These are the Reasons for Decision of the Hearing Panel for the order made against Brian Somerset Campbell on June 16, 2008, in default of his appearance, respecting complaints raised against him by the Mutual Fund Dealers Association by a Notice dated March 5, 2008, and personally served upon him on April 30, 2008.

Campbell was also personally served on April 30, 2008, with a copy of an Order of this Panel dated April 22, 2008 directing that this Hearing would take place at 10 am on June 16, 2008.

At the Hearing, Campbell failed to appear notwithstanding that the Panel waited until 10:30 am. The Panel then, pursuant to Rule 7.3 of the MFDA Rules of Procedure, proceeded with a Hearing despite his failure to attend or send a representative.

Allegations against Campbell

Allegation #1: Commencing in or about 2002, the Respondent conducted trades in the accounts of clients of the Member without first obtaining instructions from the clients for each trade made, thereby engaging in discretionary trading beyond the terms of his registration as a mutual fund salesperson, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in or about 2002, the Respondent collected portfolio management fees from clients of the Member in respect of trades made by the Respondent in the accounts of the clients, thereby accepting remuneration from persons other than the Member in respect of business carried out by the Respondent on behalf of the Member, contrary to MFDA Rule 2.4.1.

Allegation #3: Commencing in or about 2002, the Respondent engaged in discretionary trading in the accounts of clients of the Member and collected portfolio management fees from those clients, thereby engaging in portfolio management activity contrary to the express terms and conditions imposed on his registration as a mutual fund salesperson by the British Columbia Securities Commission, contrary to MFDA Rule 2.1.1.

Allegation #4: On March 13, 2006, the Respondent had in his possession 68 blank pre-signed forms, contrary to MFDA Rule 2.1.1, specifically:

(i) 63 blank pre-signed trade execution forms which he obtained and maintained for the purpose of conducting discretionary trading in client accounts; and

(ii) 5 blank pre-signed new account application forms which he obtained and maintained for the purpose of altering know-your-client information to suit trades he conducted in client accounts.

Allegation #5: On September 26, 2006 and February 14, 2007, the Respondent made false or misleading statements to the MFDA during the course of an investigation, contrary to MFDA Rule 2.1.1.

Allegation #6: Commencing February 2007, the Respondent failed to produce for inspection and provide copies of documents and other information relevant to matters being investigated by the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

Evidence

Luis Margolles, an investigator with MFDA, gave extensive evidence to the Panel, consisting of two affidavits, and affirming oral testimony. This evidence amply supported all of the allegations.

We particularly note that Mr. Campbell claimed to Mr. Margolles that, until 2004, he was unaware that he had no licence for portfolio management. On the contrary, the British Columbia Securities Commission, by letter to him dated April 25, 2001, said “Brian Campbell agrees to not conduct any portfolio management activity, including any discretionary trading, under its current registration as a mutual fund representative.” Notwithstanding this clear direction, he regularly engaged in portfolio management activity on behalf of more than one client.

We note also that he engaged in trades for investors without first obtaining specific written instructions for each trade made, contrary to rule 2.3.2 of the MFDA.

In addition, he regularly received fees from investors for portfolio management and for trading activity without authority or permission, contrary to rule 2.4.1 of the MFDA.

In addition, he failed to keep proper books and records respecting trades as required by rule 2.3.3. On the contrary, he obtained, kept, and used, blank new account application forms and trade execution forms all pre-signed by clients.

Finally, he made false and misleading statements to Mr. Margolles, and never complied with his undertakings.

Findings

We found Mr. Campbell guilty as to all six allegations.

In general terms, Mr. Campbell did not deal fairly, honestly and in good faith with his clients and engaged in activity that was detrimental to the public interest, which are all standards required of him under rule 2.1.1.

Disposition

Because he chose not to appear, Mr. Campbell offered no ameliorating circumstances. We do note, however, that he apparently did not steal from investors, although taking unauthorized payments is a very serious matter. We note also that some investors were not unhappy with him.

It's often been said that the public interest, in these circumstances, is best served by "removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets." That rule applies in this case.

We should also take into consideration the protection of the investing public, the integrity of the securities markets, including the limitations on a licence as a mutual fund salesman, specific and general deterrence, protection of the MFDA membership, and the protection of the dignity of the MFDA enforcement process.

We emphasize that the first four counts all are separate matters, each alone deserving of separate and substantial dispositions, which is why the fines imposed are more in total than that suggested by counsel.

The Order that was made was in fulfillment of these principles, and provided as penalties what follows:

(a) 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, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

(b) a fine in the amount of \$50,000 in respect of Allegation 1 in the Notice of Hearing, pursuant to s. 24.1.1(b) of By-law No. 1;

(c) a fine in the amount of \$50,000 in respect of Allegation 2 in the Notice of Hearing, pursuant to s. 24.1.1(b) of By-law No. 1;

(d) a fine in the amount of \$50,000 in respect of Allegation 3 in the Notice of Hearing, pursuant to s. 24.1.1(b) of By-law No. 1;

(e) a fine in the amount of \$50,000 in respect of Allegation 4 in the Notice of Hearing, pursuant to s. 24.1.1(b) of By-law No. 1;

(f) a fine in the amount of \$50,000 in respect of Allegations 5 and 6 in the Notice of Hearing, pursuant to s. 24.1.1(b) of By-law No. 1; and

(g) costs in the amount of \$7,500, pursuant to section 24.2 of By-law No. 1.

Dated this 26th day of June, 2008.

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

“Holly Millar”
Holly Millar, Industry Representative

“Cecilia Wong”
Cecilia Wong, Industry Representative