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: William Cormylo

Heard: October 25, 2013 and April 28, 2014 in Calgary, Alberta
Decision and Reasons: August 12, 2014

DECISION AND REASONS

Hearing Panel of the Prairie Regional Council:

John D. James	Chair
Barbara Shourounis	Industry Representative
Richard Sydenham	Industry Representative

Appearances:

Faye Emmanuel	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada ("MFDA")
	)	
Landon Miller	)	Counsel to William Cormylo ("Cormylo")
	)	
	)	

INTRODUCTION

1. By way of a Notice of Hearing dated May 29, 2013, William Cormylo (the "Respondent") faces allegations as follows:

> **Allegation #1:** Between October 2006 and February 2011, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending, facilitating the sale of or making referrals in respect of investment products totalling at least $4,361,390 to at least 25 clients outside the Member, contrary to MFDA Rules 1.1.1(a), 2.4.2(b) and 2.1.1.
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> **Allegation #2:** Between October 2006 and February 2011, the Respondent had and continued in another gainful occupation which was not disclosed to and approved by the Member by selling, recommending, facilitating the sale of or making referrals in respect of investment products totalling at least $4,361,390 to at least 25 clients outside the Member, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

2. The hearing into the allegations was held on October 25, 2013. The Respondent did not attend nor did anyone on his behalf. Prior to the hearing and in compliance with MFDA *Rules of Procedure*, the Respondent had been provided with disclosure of the fruits of the MFDA's investigation as well as a list of witnesses that would be called by Staff of the MFDA ("Staff"). The Respondent did provide a form of written Reply to the allegations and indicated in that Reply that he did not intend to appear at the hearing.

3. Staff called a single witness at the hearing, Allison Howse, an investigator employed by the MFDA. The majority of her evidence was contained in an affidavit containing documents detailing the investigation into Cormylo's conduct as it related to the allegations. Included in the affidavit were two documents, a compliance audit conducted by Cormylo's then employer and Member firm, FundEX Investments Inc. ("FundEX"), and the transcript of an investigative interview of Cormylo conducted by the MFDA. At the investigative interview, the Respondent was represented by counsel. In both the compliance audit and the investigative interview,

Cormylo essentially admitted all of the facts necessary to find the allegations proven. The evidence, which we find proven as fact, is as follow:

(a) Cormylo was registered as a mutual fund salesperson with FundEX, an MFDA Member, in Alberta, British Columbia, and Newfoundland and Labrador from September 1, 2006, until April 5, 2012. He had previously been registered as a mutual fund salesman with several other firms dating back to 1986.

(b) In October 2006, Cormylo entered into an agreement with Certified Financial Savings and Mortgage Corp. ("Certified") in which he agreed to promote mortgage investment products offered by Certified to prospective investors in return for a 3% commission on any monies invested.

(c) Certified issued loans secured by mortgages registered against lands owned by Medallion Business Centre Development Corp. Between October 2006 and November 2010 Cormylo sold $1,690,988 worth of mortgage investments products in Certified to 19 different FundEX clients, earning at least $126,252 in commissions from these sales.

(d) None of this investment activity in Certified was approved by or known to FundEX. Cormylo took steps to shield the activity from FundEX.

(e) In March 2008, through his company Cormylo Ventures Inc., Cormylo entered into a referral agreement with Crossroads-DMD Mortgage Investment Corporation ("Crossroads") which provided that Crossroads would pay Cormylo a 5% referral fee on the total dollar amount of Class "B" preferred shares Crossroads sold to investors referred by Cormylo.

(f) Crossroads is described on its website as "a Calgary based firm that raises mortgage funds through an Offering Memorandum. When an investor makes a deposit, Crossroads invests the funds in a diversified portfolio of secured mortgages to homeowners, builders, renovators and developers."

(g) Between June 2008 and February 2011, Cormylo sold $2,124,900 worth of investments offered by Crossroads to 13 different FundEX clients and earned approximately $128,745 in commissions from those sales.

(h) The Crossroads investment products were not approved by FundEX, Cormylo's activities in selling the products or making referrals to Crossroads were unknown to FundEX and Cormylo took active steps to conceal his involvement with Crossroads from FundEX.

(i) In August 2008 Cormylo, through his corporation Cormylo Ventures Inc. entered into an agency agreement with Northern Premier Investments Ltd., Northern Premier Equities Inc., and Northern Premier Capital Inc. ("Northern Premier") in which he agreed to promote a number of different investment products offered by Northern Premier including undivided interests in 154 acres of land, Class B common shares and fixed rate redeemable bonds. Cormylo was to receive between 7 and 10 percent as commission for each sale of Northern Premier investment product.

(j) In October 2008 Cormylo sold $545,502 worth of investments in Northern Premier to three different FundEX clients. He received approximately $26,540 in commissions from these sales.

(k) None of the Northern Premier investment products sold by Cormylo were approved by FundEX and they were unaware of his involvement with Northern Premier as Cormylo had taken active steps to conceal the activity from them.

4. The MFDA Rules referenced in the two allegations against Cormylo are as follows:

Rule 1.1.1(a): **Members.** No member or approved person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on the for the account of the

Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and

(ii) such business conducted by and Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.

Rule 2.4.2(b): **Permitted Arrangements.** Referral arrangements may only be entered into on the following basis:

(i) the referral arrangement is only between a Member and another Member or between a Member and an entity that is (A) licensed or registered in another category pursuant to applicable securities legislation, (B) a Canadian financial institution for the purposes of National Instrument 14-101, (C) insurance agents or brokers, or (D) subject to such other regulatory system as may be prescribed by the Corporation;
(ii) there is a written agreement governing the referral arrangement prior to implementation;
(iii) all fees or other form of compensation paid as part of the referral arrangement, to or by the Member, must be recorded on the books and records of the Member, and
(iv) written disclosure of referral arrangements must be made to clients prior to any transactions taking place. The disclosure document must include an explanation or an example of how the referral fee is calculated, the name of the parties receiving and paying the fee, and a statement that it is illegal for the party receiving the fee to trade or advise in respect of securities if it is not duly licensed or registered under applicable securities legislation to so trade or advise.

Rule 1.1.1(c): The relationship between the Member and any person conducting securities related business on account of the member is that of:

(i) an employer and employee, in compliance with Rule 1.1.4,
(ii) a principal and agent, in compliance with Rule 1.1.5, or
(iii) an introducing dealer and carrying dealer, in compliance with Rule 1.1.6

Rule 2.1.1: **Standard of Conduct**. Each Member and each Approved Person of a Member shall:

(a) deal fairly, honestly and in good faith with its clients;
(b) observe high standard of ethics and conduct in the transaction of business;
(c) not engage in any business conduct of practice which is unbecoming or detrimental to the public interest; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

5. The facts as we have found them amply satisfy us that Cormylo breached each of the rules referenced in the allegations. He engaged, over a four year period, in "off book" transactions. All of the transactions were "securities related business" that were not approved by or known to the Member, FundEX, and therefore contrary to MFDA Rule 1.1.1(a). None of the "referral arrangements" complied with the requirements of MFDA Rule 2.4.2(b). The "off book" business of Cormylo was clearly another "gainful occupation" that was not known to or approved by the Member contrary to MFDA Rule 1.2.1(c)(iii). Being activity that was entirely unapproved and unsupervised by the Member or any other entity, it was clearly activity that was business conduct "unbecoming or detrimental to the public interest" as outlined in MFDA Rule 2.1.1(c).

6. As we indicated at the close of the Hearing on the Merits, we find that the evidence clearly satisfies the required standard of proof on a balance of probability on both allegations in the Notice of Hearing.

SANCTIONS

7. Having found both allegations to have been proven and given the severity of the sanctions, we were advised that MFDA Staff would be seeking against Cormylo, in October 2013 we adjourned the hearing as to sanction and requested that Cormylo be given notice of our decision as well as notice of the level of sanctions being sought against him. That was done and as a result, Cormylo, represented by legal counsel, attended and participated in the sanctions portion of the hearing on April 28, 2014.

8. Staff sought the following sanctions under s. 24.1.1 of MFDA By-law No. 1 relating to discipline of an Approved Person:

a) 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;

b) a global fine in the amount of $300,000; and

c) costs of $7,500.

9. On behalf of the Respondent Cormylo, counsel did not oppose either the imposition of a permanent prohibition on the Respondent or the quantum of the cost award sought. However, the position with respect to the quantum of fine was that the amount sought by Staff was overly punitive, did not take into account the many mitigating factors relating to the conduct found and most importantly did not take into account the very difficult personal and financial circumstances of Cormylo at the present time. Counsel for Cormylo urged us to impose a fine of $20,000.

10. Cormylo testified at the hearing and provided evidence as to his motivation in conducting the "off book" business which his counsel for the Respondent summarized for us as the result of "compassion and empathy with his clients who were facing significant financial difficulty as a result of the economic downturn." He also gave evidence as to his present financial circumstances which his counsel characterized as "precarious". The evidence presented both by Cormylo under oath and through documentary evidence as to his assets and liabilities, painted a picture of an individual with little likelihood of being able to pay a fine in the amount sought by Staff. Very little evidence was presented as to how he now finds himself in these circumstances.

11. Of importance is that both Staff and counsel for Cormylo agreed that the general principles underlying the MFDA penalty provisions are:

a) The protection of the investing public;

b) The integrity of the securities market;

c) Specific and general deterrence;

d) The protection of the MFDA's membership; and

e) The protection of the integrity of the MFDA's enforcement process.

12. We agree with counsel for Cormylo that a permanent prohibition will go a long way to

satisfy many of the underlying principles stated above, including protection of the investing public and specific deterrence. However, we do not agree that a permanent prohibition together with the modest fine suggested of $20,000 will accomplish general deterrence, maintain the integrity of the securities market or the integrity of the MFDA's enforcement process.

13. The most important consideration in the determination of the amount of the financial penalty necessary to address the requirements of general deterrence and the integrity of the securities markets is the seriousness of the misconduct. In determining the seriousness of the misconduct, the fundamental importance of MFDA Rule 1.1.1 must be recognized. As the Panel stated in Re: *Comeau* MFDA File No.201217 (December13, 2013) at page 8 of the decision:

> "The conduct of the Respondent in this matter is a serious regulatory violation in two significant respects. The MFDA rules and regulations are put in place for the protection of clients and are relied upon generally by the public to feel assured that there is oversight of the industry. It is necessary that there is confidence that the regulatory rules are followed, which include confidence that recommended trades by an Approved Person have received the scrutiny and approval of the Member firm."

14. The factual circumstances must also be considered in determining the seriousness of the misconduct. In this case, Cormylo conducted his "off book" business continuously between 2006 and 2011. It involved at least 25 different Member clients and investments totalling at least $3,902,388. Cormylo received benefits of over $280,000 as a result of this activity. Cormylo knew what he was doing was a clear breach of the Rules of the MFDA and he took deliberate steps to shield this activity from the Member. The number of clients, the duration of the schemes, the amount involved and the deliberate deception all put this misconduct in the most serious of categories.

15. Cormylo maintained that he was not motivated by self-interest but rather his actions were the result of "compassion and empathy with his clients who were facing financial difficulty as a result of the economic downturn." Given that his "off book" activity began in 2006, well before any evidence of the financial downturn of 2008 and 2009, we find this attempted justification without any merit. Even if it were true, making a decision to facilitate securities transaction entirely outside the regulatory scheme put in place to protect investors, provides no mitigation.

Maintaining that there was no fraudulent intent does not mitigate his actions. If such intent were present, no doubt he would have faced other allegations.

16. The previous MFDA sanction decisions put forward by Staff all provided that the fine should at least include the amount of financial gain achieved as a result of the "off book" activity. We agree that fundamental to any penalty intended to address the issue of general deterrence should be the principle that you cannot be seen to profit from your wrongdoing. We see disgorgement of profits, absent exceptional circumstances, as a starting point. We find support for this approach in the prior MFDA decisions referred to us by Staff. We refer specifically to the following decisions:

> Re: *Madjoub* (2010) MFDA Central Regional Council, MFDA File No. 201010, November 12, 2010;
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> Re: *Piett* (2012) Prairie Regional Council, MFDA File No. 201206, September 25, 2012;
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> Re: *Cavalli* (2013) LNCMFDA 82; and
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> Re: H*esselink* (2013) MFDA Central Regional Council File No. 201315, October 16, 2013.

17. Counsel for Cormylo put forward the personal financial circumstances as they existed at the time of the hearing as a circumstance which we should consider to justify the imposition of a fine of $20,000. We do not disagree that the personal circumstances of a Respondent can, in some circumstances, operate to mitigate what would otherwise be a fit penalty. However, we do not agree that the personal financial circumstances of a Respondent can operate to reduce a fine which is, in essence, a requirement that the person disgorge the profits of their illegal activity. Had there been a submission that the fine should far exceed the profits received it may have been appropriate to consider Cormylo's personal financial circumstances. That is not this case.

18. We would also comment on the cases put forward by counsel for the Respondent in support of a fine of $20,000. Five of the six cases put forward for consideration were panel considerations of Settlement Agreements entered into between the various Respondents and the

MFDA. We consider these determinations to be of little precedential value. There are myriad considerations and accommodations that can go into the creation of a Settlement Agreement and it is not unusual that none of these might be known to a panel adopting and implementing them. As such, their precedential value is limited.

19. We agree that Cormylo was cooperative with the investigation, that he understands the seriousness of his actions and is remorseful, and that he has no prior history of misconduct in his long securities related career. We find that all of those things have been taken into account by Staff in its position as to the appropriate fine which is, in reality, nothing more than a disgorgement of profit obtained from illegal activity.

20. In the result, we Order the following:

a) 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, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
b) a global fine in the amount of $300,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
c) costs of $7,500 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 12th day of August, 2014.

"John D. James"
John D. James
Chair

"Barbara Shourounis"
Barbara Shourounis
Industry Representative

"Richard Sydenham"
Richard Sydenham
Industry Representative

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