



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: Ken David Derksen

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Pacific Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on July 4, 2022 at 10:00 a.m. (Pacific), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Ken David Derksen (the “Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 6th day of May, 2022.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between November 2016 and May 13, 2020, the Respondent misappropriated or otherwise failed to account for client monies, contrary to MFDA Rules 2.1.1.

Allegation #2: Between November 2016 and May 13, 2020, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest that he failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4,¹ 2.1.1, 2.5.1 and 1.1.2.

Allegation #3: Commencing in June 2020, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From August 2007 to May 2020, the Respondent was registered in British Columbia as a dealing representative with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA.
2. On or about May 13, 2020, the Member terminated the Respondent as a result of the conduct described below, and he is not currently registered in the securities industry in any capacity.
3. At all material times, the Respondent carried on business in the Victoria, British Columbia area.

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Notice of Hearing pre-dated the amendment to this Rule, Allegation #2 concerns the alleged contravention of the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

Overview

4. As described in further detail below, the Respondent accepted access to a client's personal bank account in order to manage the client's financial affairs while the client traveled outside of Canada. The Respondent used this access to misappropriate at least \$155,800 of the client's monies. The Respondent has failed to repay or otherwise account for at least \$114,951 of the client's monies.

Background

5. At all material times, client JB was a client of the Member whose accounts were serviced by the Respondent.

6. Client JB maintained a Tax Free Savings Account, Registered Retirement Savings Plan account, Locked in Retirement Account, and a non-registered account at the Member (collectively, the "Accounts").

7. Commencing in or around 2016, client JB embarked on an extended period of travel outside of Canada, returning to Canada from time to time.

8. In or around April 2015, prior to leaving Canada, client JB provided the Respondent with the necessary information to enable the Respondent to access his personal bank account so that the Respondent could assist client JB with the handling of his financial affairs during the period when client JB planned to travel outside of Canada.

9. Between November 2016 and February 2019, the Respondent facilitated the redemption of approximately \$484,900 from client JB's Accounts at the Member, where the proceeds were deposited into client JB's personal bank account for client JB to withdraw from time to time while he was travelling outside of Canada. Periodically, the Respondent also executed wire transfers of monies from client JB's personal bank account to client JB in locations overseas.

10. Between November 2016 and February 2019, without client JB's knowledge or authorization, the Respondent accessed client JB's personal bank account via online banking, and on 71 occasions, electronically transferred at least \$155,800 from client JB's personal bank account into the Respondent's personal bank accounts.

11. Of the \$155,800 that the Respondent transferred to his own personal bank accounts from client JB's personal bank account, the Respondent:

- a) made payments in the total amount of \$40,849.43 to client JB or to other parties on client JB's behalf; and
- b) used the balance of the monies for the Respondent's personal benefit or failed to otherwise account for the client's monies.

12. In or around July 2019, client JB contacted the Respondent to determine the value of the holdings in his Accounts at the Member. The Respondent falsely represented to client JB that the value of his Accounts was higher than the actual value of the holdings in the Accounts.

13. In March 2020, when client JB met with the Respondent to request updated account statements and to discuss the value of the holdings in his Accounts at the Member, the Respondent disclosed to client JB that the value of the holdings in his Accounts was significantly lower than the value that the Respondent had previously reported to client JB.

14. In April 2020, client JB submitted a written complaint to the Member with respect to the decrease in value and alleged mismanagement of his Accounts by the Respondent.

15. The Member also reported client JB's complaint to the MFDA, which led to an investigation that brought to light the Respondent's conduct, as described above.

Allegation #1 – Misappropriation or Failure to Account for Client Monies

16. At all material times, the Member's policies and procedures prohibited its Approved Persons from misappropriating client money.

17. As described in paragraphs 10-11, above, between November 2016 and February 2019, the Respondent misappropriated \$155,800 from client JB's personal bank account, of which he has failed to repay or account for approximately \$114,951 of those monies.

18. By virtue of the foregoing, the Respondent misappropriated or otherwise failed to account for client monies, contrary to MFDA Rules 2.1.1.

Allegation #2 – Personal Financial Dealings with a Client

19. At all material times, the Member's policies and procedures prohibited its Approved Persons from engaging in personal financial dealings with clients.

20. The Respondent engaged in personal financial dealings with a client when he:

- a) accepted access to client JB's personal bank account from client JB in order for the Respondent to assist client JB in handling his financial affairs while he was outside of Canada, as described above at paragraph 8;
- b) accessed client JB's bank account to transfer monies to client JB for client JB's use and benefit, or to make payments on client JB's behalf, as described above at paragraphs 9 and 11a; and
- c) transferred at least \$155,800 from client JB's bank account into the Respondent's own personal bank accounts, as described above at paragraph 10.

21. The Respondent's conduct gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member, or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #3 – Failure to Cooperate with MFDA Staff's Investigation

22. In April 2020, the Member informed Staff of the MFDA ("Staff") of client JB's complaint regarding the Respondent's conduct, as described above at paragraph 15. Staff subsequently commenced an investigation into the Respondent's conduct.

23. On June 22, 2020, Staff sent a letter to the Respondent via email requesting, among other things, that the Respondent provide a written statement, as well as information and supporting documentation, regarding whether the Respondent misappropriated client JB's monies and had access to client JB's bank account (the "June 2020 Letter"). The Respondent did not respond to Staff's letter.

24. On July 8, 2020, Staff sent a follow-up email to the Respondent to obtain a response to the June 2020 Letter as well as requesting an additional written response and supporting documentation regarding his personal financial dealings with client JB (the "July 2020 Email"). The Respondent failed to respond to Staff's email.

25. On July 13, 2020, Staff sent another follow-up email to the Respondent to obtain a response to the June 2020 Letter and July 2020 Email. The Respondent failed to respond to Staff's email.

26. On November 4, 2020, Staff personally served a letter on the Respondent reiterating Staff's previous requests for information and documentation and informed the Respondent that a response should be delivered to the MFDA on or before November 20, 2020. Staff also placed the

Respondent on notice that if he failed to respond to Staff's requests for information and documentation Staff may seek authorization to commence enforcement proceedings against the Respondent for failing to cooperate with Staff's investigation. The Respondent failed to respond to Staff's letter.

27. On November 30, 2020 and again on December 3, 2020, Staff sent additional emails to the Respondent following Staff's previous requests and also informed the Respondent that he was required to attend an interview on December 17, 2020 to answer questions with respect to the matters under investigation. The Respondent failed to respond to the emails dated November 30, 2020 and December 3, 2020 and he failed to attend the interview that was scheduled to take place on December 17, 2020.

28. On June 23, 2021, Staff personally served a letter on the Respondent informing him that as a result of his failure to attend the interview scheduled on December 17, 2020, Staff would seek authorization to commence disciplinary proceedings against the Respondent on the basis that he failed to cooperate with Staff's investigation. The Respondent failed to respond to Staff's letter.

29. Due to the Respondent's failure to cooperate with Staff's investigation, Staff has not been able to determine the full nature and extent of the Respondent's conduct, including:

- a) the use and whereabouts of the monies that were transferred from client JB's bank account to the Respondent's bank accounts; and
- b) whether he engaged in similar conduct with additional clients or other individuals.

30. By virtue of the foregoing, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
Suite 850, 800 - 6th Avenue SW
Calgary, AB T2P 3G3
Attention: Justin Dunphy
Email: jdunphy@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file** a **Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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