

Decision and Reasons (Misconduct)

File No. 201410



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: Sital Singh Harjinder Dhillon

Heard: November 14, 2014 and March 6, 2015 in Toronto, Ontario
Decision and Reasons (Misconduct): August 19, 2015

**DECISION AND REASONS
(Misconduct)**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth
Leo M. Hill
Greg Stoeckl

Chair
Industry Representative
Industry Representative

Appearances:

H. C. Clement Wai

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Counsel for the Mutual Fund Dealers
Association of Canada

Pathik Baxi

Counsel for the Respondent

BACKGROUND

1. By Notice of Hearing dated the March 4, 2014 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 the allegations against Sital Singh Harjinder Dhillon (the “Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleges as follows:

Allegation #1: Between May and June 2010, the Respondent made leveraged investments in two client accounts without the knowledge or approval of the Member, thereby failing to comply with the Member's policies and procedures regarding leveraging and interfering with the ability of the Member to supervise trading activity in the clients’ accounts, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

3. At the hearing, staff of the MFDA (“Staff”) called Daniela Capozzolo, Senior MFDA Investigator and Dino DeRosa, Chief Compliance Officer with W.H. Stuart Mutuals Limited (“W.H. Stuart”) at the relevant time. Both were cross-examined by the Respondent’s representative. Respondent's counsel called the Respondent to testify and he was cross-examined by Staff. Nine (9) documents, including relevant correspondence between the MFDA and the Respondent were marked as Exhibits.

THE FACTS

4. The Respondent was registered as a mutual fund sales person with W.H. Stuart commencing in February 1999, until the Respondent resigned in August 2010. During much of that time, the Respondent maintained a branch office in Weston, Ontario. From November 1, 2010 until his resignation on June 27, 2012, the Respondent was registered in Ontario as a dealing representative with Queensbury Strategies Inc. The Respondent is not currently registered in the securities industry in any capacity. During cross-examination, however, the Respondent expressed his wish to return to the industry.

5. At all material times, W.H. Stuart's Policies and Procedures Manual ("PPM") required Approved Persons to send all Investment Loan Applications to head office for review and approval before an Approved Person was permitted to proceed with a leveraged investment in a client's account. The PPM further required that the Approved Person complete and submit a Leverage Review Worksheet and provide certain supporting documents, along with the Investment Loan Application. The PPM provided that "all leverage strategies will be reviewed and either approved or rejected by W.H. Stuart's supervisory staff".

6. Once an Investment Loan Application was reviewed and approved by W.H. Stuart supervisory staff, W.H. Stuart's head office staff would send the Investment Loan Application directly to the lending institution. Approved Persons were not permitted to send loan applications directly to a lending institution without W.H. Stuart's prior approval.

7. It was evident from the Respondent's answers given during cross-examination that he was familiar with, and understood, the PPM and the provisions set out above. Exhibit 7 was an Acknowledgement and Certification dated December 30, 2004, which was signed by the Respondent and confirmed that he had read and understood the entire PPM in place on that date.

8. In or around August 2009, the MFDA completed a compliance examination of W.H. Stuart. The 2009 compliance audit identified a number of deficiencies that pertained to the Respondent's leveraging practices. As a result of the 2009 compliance audit, W.H. Stuart was required to take immediate corrective action with respect to the manner in which the Respondent conducted his leveraging practice.

9. At a later date, Staff investigation determined that between May and June 2010, the Respondent had, after initially submitting Investment Loan Applications and trade processing forms for two client accounts to W.H. Stuart for review and approval, proceeded to send the documents directly to a lending institution, which approved the Investment Loan Applications and processed the purchase of mutual funds for clients' accounts without W.H. Stuart's acknowledgement or approval.

10. In the case of each of the two client accounts, W.H. Stuart subsequently did not approve the leveraged investment.

11. The Respondent's general practice was to periodically increase the amount of a client's loan by an amount equal to all or most of the growth value of the client's account.

12. Specifically with respect to the clients ASR and CKA, both were clients of W.H. Stuart and the Respondent was the mutual fund sales person who serviced their accounts. On May 12, 2010, the Respondent prepared an Investment Loan Rewrite Application to increase the client's investment loan by \$7,840. The Respondent submitted the Investment Loan Application and accompanying trade processing forms to W.H. Stuart's head office for review and approval. On May 14, 2010, a Compliance Officer at W.H. Stuart sent two emails to the Respondent requesting further information relating to the proposed leveraged investment. The Respondent failed to reply to either request. Instead, without the knowledge or approval of W.H. Stuart's head office staff, the Respondent sent the clients' Investment Loan Rewrite Application and trade processing forms directly to B2B (the lending institution).

13. On or about May 26, 2010, B2B approved the Investment Loan Application and Processed Trade Orders to purchase mutual funds for the clients' accounts in an approximate amount of \$7,840. There was correspondence between the Compliance Officer at W.H. Stuart and the Respondent on May 31 and June 4, 2010, pursuant to which the Compliance Officer requested further clarification relating to the trade, and the Respondent, without advising he had already sent the Application to B2B, provided the Compliance Officer with a completed leverage review worksheet.

14. On June 4, 2010, the Compliance Officer sent an email to the Respondent advising him that W.H. Stuart had declined to approve the trade. W.H. Stuart instructed the Respondent to immediately contact B2B to reverse the trade and to provide W.H. Stuart with a letter explaining why he processed the trades without approval. The trades were not reversed, and the Respondent

at no time provided W.H. Stuart with a letter explaining why he had processed the trades directly through B2B without W.H. Stuart's approval.

15. Secondly, and specifically with respect to the client RKA, they were clients of W.H. Stuart and the Respondent was the mutual fund sales person responsible for their account. The Respondent prepared an Investment Loan Rewrite Application to increase the client's existing investment loan by \$2,608. The Respondent submitted the Investment Loan Application and the accompanying trade processing forms to W.H. Stuart's head office for review and approval. From May 28, 2010 to June 15, 2010, W.H. Stuart's compliance department requested further information about the proposed trade and the Respondent provided some detail.

16. Without the knowledge or approval of W.H. Stuart, the Respondent sent another set of the client's Investment Loan Application and other forms directly to B2B. On or about June 16, 2010, B2B approved the Investment Loan Application and processed trade orders to purchase mutual funds for the client's account in the approximate amount of \$2,608.00. On June 22, 2010, W.H. Stuart's compliance staff became aware the Respondent had processed the Investment Loan Application and trades directly through B2B without first receiving W.H. Stuart's approval.

17. The Respondent, at one juncture during his cross-examination, confirmed that he knew neither of the above trades had been approved. His testimony also confirmed that he knew the PPM required approval by W.H. Stuart before the investment application could be sent to the lender. The Respondent attempted to justify his actions by stating that he was simply following an unexplained W.H. Stuart computerized instruction, which he described as "online investment instructions". He further advised that he had been told by W.H. Stuart's Chief Compliance Officer, Mr. DeRosa that he could send Rewrite Loan Applications directly to the lender if W.H. Stuart had not provided an approval within three hours of the loan being submitted to W.H. Stuart on the S21C system. Mr. DeRosa categorically denied this assertion.

18. The evidence of Mr. DeRosa was given in a straightforward credible fashion and was corroborated by documentary evidence, including emails, correspondence and transactional

records. In contrast, the Respondent's testimony was at times contradictory, tangential and frequently self-serving. The Respondent was frequently unresponsive to questions and had difficulty responding directly to questions. The Respondent, in his Reply and In Chief advised that he was following W.H. Stuart's "online investment instructions" and repeated the alleged three hour rule, which he alleged were his instructions from Mr. DeRosa. In cross-examination, however, he provided an entirely new defence and gave evidence that both trades had been orally approved by Mr. DeRosa. It was instructive to note that in the numerous correspondence had between W.H. Stuart and the Respondent around the time of the trades, the Respondent at no time mentioned the three hour rule, the oral approval of both trades by Mr. DeRosa, or the fact that he had sent the Investment Loan Application directly to B2B at earlier times. Accordingly, where there is a conflict between the evidence provided by Mr. DeRosa and the Respondent, the Hearing Panel prefers the evidence of Mr. DeRosa.

THE LAW

19. MFDA Rule 2.5.1 requires each MFDA Member to establish, implement and maintain policies and procedures to ensure that handling of its business is in accordance with MFDA By-laws, Rules and Policies and applicable securities legislation. At all material times, W.H. Stuart had such rules and regulations, which were detailed in its Policy and Procedure Manual with which the Respondent was familiar.

20. MFDA Rule 1.1.2 requires each Approved Person who conducts or participates in any securities related business in respect of a Member must comply with the by-laws and rules of that Member. Accordingly, as an Approved Person, the Respondent was required to comply with the supervisory policies and procedures of W.H. Stuart, including the PPM.

21. The following cases cited by Staff stand for the proposition that a Respondent's failure to comply with the policies and procedures of the Member constitutes a breach of the standard of care and the MFDA Rules.

In the Matter of Michael Franco, [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Reasons for Decision dated May 6, 2011 (“*Franco*”) at para. 38, Staff’s Book of Authorities at Tab 2;

In the Matter of Arnold Tonnies, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005 (“*Tonnies*”) at pp.18-19, Staff’s Book of Authorities at Tab 4.

In the Matter of Luc Marc Andre Laverdiere, [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 200936, Hearing Panel Decision dated May 12, 2010, Staff’s Book of Authorities at Tab 5.

THE RESULT

22. In coming to its conclusion, the Hearing Panel has considered all of the evidence presented by both Staff and the Respondent, their respective submissions and the case law to which we have been referred. In doing so, the Panel has, in particular, considered the evidence of the Respondent, which was given for the purpose of justifying the Respondent's conduct. The Hearing Panel finds the evidence of the Respondent in that respect to be less than credible. Accordingly, the Panel is unanimously of the view that a finding of misconduct, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1, as set out in allegation number one in the Notice of Hearing, has been proven against the Respondent.

23. The Hearing Panel asks that at the time of counsels’ next attendance before the Panel to speak to penalty, both counsel attend with written submissions.

DATED this 19th day of August, 2015.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Leo M. Hill”

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Industry Representative

“Greg Stoeckl”

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