



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: Walter John Dixon

Heard: October 11, 2017 in Toronto, Ontario

Decision: October 11, 2017

Reasons for Decision: November 13, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth

Chair

Guenther W. K. Kleberg

Industry Representative

Appearances:

Francis Roy

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Counsel for the Mutual Fund Dealers
Association of Canada

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)

Walter John Dixon

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Not in attendance or represented by counsel

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BACKGROUND

1. By Notice of Hearing dated July 25, 2017 (“Notice of Hearing”), a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to hear evidence and submissions with respect to the allegations against Walter John Dixon (“Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation #1: Commencing November 6, 2015, the Respondent has failed to cooperate with the MFDA’s investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

3. By Order of the Hearing Panel dated September 12, 2017, the Respondent was determined to have been served with the Notice of Hearing and notified of the within proceedings.

4. The Respondent, following service of the Notice of the Hearing, failed to deliver or serve a Reply to the Notice of Hearing, failed to attend the first appearance in this matter held September 12, 2017, and failed to attend, or be represented at the Hearing of the above allegations held on October 11, 2017, although duly served with notice of all proceedings.

5. On the 11th day of October, 2017, being the date of the Hearing on the merits, one of the three Panel members was unable to attend the Hearing because of a death in the family. Accordingly, pursuant to s. 19.9 of MFDA By-law No. 1, the remaining Panel members made an order that the Hearing on the merits might proceed with a two-member hearing panel.

6. At the Hearing, the Staff of the MFDA (“Staff”) filed the Affidavit of Lucy Alfenore sworn October 5, 2017 containing the facts and documents on which Staff relied. The same was marked as Exhibit 4.

THE FACTS

7. The Affidavit of Lucy Alfenore, marked as Exhibit 4, disclosed, that:
- a) the Respondent became registered in the mutual fund industry in January of 1990 and was registered as a mutual fund sales person in Ontario and British Columbia until May 17, 2015. The Respondent was last registered from June 1, 2011 to May 17, 2015 with IPC Investment Corp. (“IPC”) in Ontario and British Columbia.
 - b) on or about January 13, 2015, Staff commenced a review of the Respondent as a result of a complaint it received from a client of IPC (the “Complaint”). The Complaint alleged that the Respondent and the incorporated entity through which he conducted his mutual fund business, Wealthcare Financial Group (“Wealthcare”), charged excessive service fees and did not inform the client that, in addition to the service fees it charged them, Wealthcare earned commissions and fees in respect of mutual fund trades in the client’s accounts;
 - c) in addition to the client’s concerns, the Complaint also raised in the mind of Staff, that the Respondent may have contravened MFDA Rule 2.1.4 by soliciting and accepting remuneration from clients for mutual fund business which should have been payable to the Member only;
 - d) on May 21, 2015, Staff sent a letter to the Respondent informing him that it had completed its initial review of this matter and had escalated it to the MFDA Investigations Group;
 - e) on November 6, 2015, Staff sent a letter to the Respondent, by regular mail and registered mail, advising that he was required to attend an interview with Staff regarding the Complaint. Staff requested that the Respondent contact them no later than November 16, 2015 to schedule an interview. The Respondent did not contact Staff as requested;
 - f) between December 2, 2015 and April 21, 2016, Staff made numerous attempts to secure the Respondent’s attendance and participation at an interview in order to

obtain a statement concerning the Complaint and the activities of the Respondent as a mutual fund sales person. These attempts included letters delivered by regular mail, registered mail and process servers, as well as communications by email and telephone;

- g) in the aforementioned communication, Staff informed the Respondent that he could be the subject of a discipline proceeding pursuant to s. 22.1 of MFDA By-law No. 1 if he failed to attend an interview as requested;
- h) the Respondent periodically communicated with Staff until March 22, 2016, but failed to attend at an interview with Staff as repeatedly requested;
- i) it was clear that the Respondent's failure to attend at an interview had frustrated MFDA Staff's ability to determine the full nature and extent of the Respondent's conduct and to fully investigate the Complaint of the client.

MISCONDUCT: LAW AND FINDING

8. Staff made the panel aware that the relevant rules and provisions with respect to misconduct were:

- a) MFDA Rule 2.1.1 (*standard of conduct*);
- b) MFDA Rule 2.2.1 ("*Know-Your-Client*") and suitability); and
- c) Section 22.1 of MFDA By-law No. 1 (*MFDA Staff investigations*).

9. Pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations into the conduct, business or affairs of an Approved Person as it considers necessary or desirable in connection with any matter relating to compliance by the Approved Person with:

- a) the By-laws, Rules or Policies of the MFDA;
- b) any securities legislation applicable to such persons; or
- c) the by-law rules, regulations and policies of any self-regulatory organization.

10. The Panel considered that the corresponding obligations of Approved Persons to cooperate with MFDA examinations and investigations is codified in s. 22.1 of MFDA By-law No. 1, which states:

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- a) to submit a report in writing with regard to any matter involved in such investigation;
- b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) to attend and give information respecting any such matters.

...

and the Member or person shall be obliged to submit such report, to permit inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submissions by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation ...

11. These obligations are consistent with the duties owed by all members of self-governing professions.

See Artinian v. College of Physicians and Surgeons of Ontario (1990), 73 O.R. (2d) 704 (Div. Ct.), where the Divisional Court held at para. 9, that “Fundamentally, every professional has an obligation to co-operate with his self-governing body.”

Parkinson (Re), [2005] MFDA Ontario Regional Council, File No. 200501, Hearing Panel Decision dated April 29, 2005 (“Parkinson”)

12. The Panel considered that the failure of an Approved Person to cooperate with an MFDA investigation by among other things, not complying with a request by an MFDA investigator made pursuant to s. 22.1 of the By-law is serious misconduct. It subverts the ability of the MFDA to perform its regulatory function by fully investigating a matter and determining all of the facts. Further, the failure to provide information requested in an investigation undermines the integrity of the industry’s self-regulatory system and the effectiveness of its operations, including the MFDA’s mandate to protect the public.

Parkinson, supra.

Headley (Re), [2006] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006 (“Headley”)

Westgard (Re), [2009] Hearing Panel of the Prairie Regional Council, MFDA File No. 200937 (“Westgard”), Hearing Panel Decision dated July 15, 2010.

13. The Respondent’s conduct in this case had prevented the MFDA’s Investigation Staff from determining the full nature and extent of his activities, including his role in setting up the fee structure used by Wealthcare, representations he may have made to clients about fees, and the nature of his and Wealthcare’s compensation. It was clear that by engaging in the conduct described above, commencing November 6, 2015, the Respondent had failed to attend an interview and to provide a statement as requested by MFDA Staff during the course of an investigation, all of which was contrary to s. 22.1 of MFDA By-law No. 1. Accordingly, the Hearing Panel concluded that the misconduct alleged in Allegation No. 1 had been proven.

PENALTY: LAW AND FINDING

14. The Panel considered that Approved Persons carry on a business which is based upon the trust of their clients and that clients rely upon them to act in compliance with MFDA rules and regulations. Therefore, the penalties imposed for failing to do so should reflect the gravity of the breach and the importance of the maintenance of the trust of clients and the public generally in Approved Persons of the MFDA; the penalties should “help to re-establish the trust of the public”.

Hill & Crawford Investment Management Group Ltd. And Albert Rodney Hill (Re), [2009] MFDA Central Regional Council, MFDA File No. 200834, Hearing Panel Decision dated June 23, 2009 [“Hill & Crawford”].

15. The Panel further considered that factors frequently considered when determining whether a penalty is appropriate include the following:

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent's past conduct, including prior sanctions;
- c) whether the respondent recognizes the seriousness of the improper activity;
- d) the harm suffered by investors as a result of the respondent's activities;
- e) the benefits received by the Respondent as a result of the improper activity; and
- f) previous decisions made in similar circumstances.

Parkinson, supra.

Headley, supra.

16. The Panel also considered that an additional source of factors to be taken into account when determining the appropriate penalties to be imposed in disciplinary proceedings is the MFDA Penalty Guidelines. The Panel was cognizant that the Penalty Guidelines were guidelines only and were for the purpose of assisting Hearing Panels, MFDA Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. In failure to cooperate cases, the Penalty Guidelines recommend a minimum fine of \$50,000.00 and permanent prohibition.

17. As discussed above, the Respondent's misconduct is serious. He has continuously and repeatedly disregarded requests from Staff and refused to attend at an interview notwithstanding Staff's efforts to offer him reasonable accommodations to enable him to do so.

18. The penalty imposed hereafter by this Panel is consistent with the Penalty Guidelines and falls within the reasonable range established by previous decisions made in similar circumstances, including:

Headley, supra.

Gerard H. Brake and Mavis E. Brake (Re), [2009] MFDA Prairie Regional Council, File No. 200804, Penalty Reasons for Decision dated February 19, 20109.

Westgard, supra.

19. Furthermore, the Panel considered that the penalty imposed would prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry.

Cartaway Resources Corp. (Re), [2004] 1 S.C.R. 672 (“Cartaway”).

In the Matter of Arnold Tonnies, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005.

In the Matter of Raymond Brown-John, [2005] MFDA File No. 200502, Decision of the Pacific Regional Council dated June 27, 2005.

Brake, supra.

20. Accordingly, for all the reasons set out above, the Hearing Panel imposes the following penalties and costs upon the Respondent:

- a) a permanent prohibition from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) a fine in the amount of \$50,000.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- c) costs of this proceeding in the amount of \$7,500.00 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 13th day of November, 2017.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

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