



**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: Anthony Paul Dorzek**

Heard: January 24, 2017, in Toronto, Ontario  
Reasons for Decision: March 1, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth  
Paige A. Wadden  
Joe Yassi

Chair  
Industry Representative  
Industry Representative

Appearances:

H.C. Clement Wai                    )  
  )  
  )

Counsel for the Mutual Fund Dealers  
Association of Canada

Anthony Paul Dorzek                )

Respondent, did not attend and was not  
represented by Counsel

## BACKGROUND

1. On September 19th, 2016, a Notice of Hearing was issued by the Corporate Secretary's Office of the Mutual Fund Dealers Association of Canada (the "MFDA") commencing a disciplinary proceeding against Anthony Paul Dorzek (the "Respondent"). A copy of the Notice of Hearing was made Exhibit 1 in this proceeding and is attached to these Reasons as Schedule "A". The Notice of Hearing set out the following allegations:

Allegation #1: Between 2010 and December 2014, the Respondent solicited and accepted approximately \$20,000 from client DB for investment in a real estate business, which investment was not approved by the Member or processed through its facilities, thereby engaging in securities related business outside the Member, contrary to MFDA Rules 1.1.1 and 2.1.1.

Allegation #2: Between 2010 and December 2014, the Respondent engaged in personal financial dealings with client DB when he solicited and accepted approximately \$20,000 from client DB for investment in a real estate business and co-mingled his own monies with the client's investment, thereby engaging in conduct giving rise to a conflict of interest which the Respondent failed to disclose and/or ensure was addressed by the exercise of responsible business judgment influenced only the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1;

Allegation #3: Commencing in September 2011, the Respondent misappropriated or failed to account for, at least \$10,000 of the monies that he solicited and accepted from client DB for investment in a real estate business, thereby failing to deal fairly, honestly and in good faith with client DB and to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 2.1.1 and 2.1.4;

Allegation #4: Commencing in or about May 2015, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. The Respondent failed to file a Reply to the Notice of Hearing. The Respondent also failed to attend the First Appearance in this matter, which was scheduled for November 22, 2016, although properly served substitutionally with the Notice of Hearing in accordance with Rules 4.2(d) and 4.8(1) of the MFDA Rules of Procedure.

3. At the First Appearance on November 22, 2016, among other things, it was ordered that a hearing of this matter, on its merits, would take place on January 24, 2017, commencing at 10:00 a.m. (eastern). The Respondent was served with a copy of the Order setting the above date for the hearing. Service of the Order on the Respondent was made pursuant to paragraph 3 of the Order. Service on the Respondent was confirmed by the Affidavit of Josie Mulder, dated December 20, 2016, which was marked as Exhibit 3 at the Hearing.

4. In addition to failing to file a Reply to the Notice of Hearing and failing to appear at the First Appearance on November 22, 2016, the Respondent failed to attend at the Hearing on the merits properly scheduled for January 24, 2016, nor did anyone appear on the Respondent's behalf.

5. Rule 8.4 and Rule 7.3 of the MFDA Rules of Procedure, make it clear that where a Respondent fails to serve and file a Reply to a Notice of Hearing or where a Respondent fails to attend a hearing on the merits on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:

*Accept the facts alleged and conclusions drawn by the corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively, of MFDA By-Law No. 1.*

6. Accordingly, as a result of the Respondent's failure to file a Reply and his failure to attend, the Panel ordered that it would accept the facts alleged and conclusions drawn by the

Corporation in the Notice of Hearing, as proven and proceed to impose penalties and costs as described in sections 24.1 and 24.2 of MFDA By-Law No. 1.

7. In doing so, the Panel accepted the facts, allegations and conclusions set out in the Notice of Hearing, including the following:

## **NATURE OF THE MISCONDUCT**

### Allegation #1

6. The Respondent solicited and accepted approximately \$20,000 from client DB for investment in a real estate business, which investment was not approved by the Member or processed through its facilities, thereby engaging in securities related business outside the Member.

7. Conducting outside business activity without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to determine whether there are any issues related to: (a) conflicts of interest; (b) potential client servicing issues; (c) standards of conduct; (d) nature of the activity; (e) risk management issues; and (f) ability to supervise.

### Allegation #2

8. The Respondent engaged in personal financial dealings with client DB when he solicited and accepted approximately \$20,000 from client DB for investment in a real estate business and co-mingled his own monies with the client's investment, thereby engaging in conduct giving rise to a conflict of interest which the Respondent failed to disclose and/or ensure was addressed by the exercise of responsible business judgment, influenced only the best interests of the client.

### Allegation #3

6. Commencing in September 2011, the Respondent misappropriated, or failed to account for, at least \$10,000 of the monies that he solicited and accepted from client DB for investment

in a real estate business, thereby failing to deal fairly, honestly and in good faith with client DB and to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 2.1.1 and 2.1.4.

#### Allegation #4

7. Commencing in or about May 2015, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of the MFDA By-Law No. 1.

8. The Respondent has not attended an interview with Staff. The initial request for an interview was made in May 2015. An Approved Person's failure to cooperate with Staff's investigation subverts or frustrates the MFDA's ability to perform its regulatory investigative function and undermines the integrity and effectiveness of a self-regulatory system.

9. As a result of the Respondent's failure to cooperate, Staff was unable to determine whether the purported investment exists and the full extent of the Respondent's conduct.

10. The complainant DB was injured at work in June 2010 and as a result, was rated at a 30% total disability by Workplace Safety and Insurance Board ("WSIB"). The \$10,000 represented most of the money he received from the WSIB as a settlement. DB has not been compensated by either the corporate Member or by the Respondent.

11. The Respondent had substantial experience in the capital markets and had been employed as a mutual fund sales person/dealing representative since 2007. The Respondent had no past disciplinary history with the MFDA. The Respondent was terminated by the Member FundEx Investments Inc. ("FundEx") on December 19, 2014 and has not been registered by the MFDA since.

12. Having accepted the facts alleged and the conclusions drawn by the Corporation in the Notice of Hearing and as set out above, the Panel concluded that Allegations 1, 2, 3 and 4 against the Respondent had been proven. The Panel then proceeded to consider penalty.

### **DISCUSSION RE PENALTY**

13. In coming to its conclusion with respect penalty, the Panel considered the allegations and conclusions drawn by the Corporation in the Notice of Hearing, the Submissions of Staff and the law to which it was referred. In addition, the Panel considered the MFDA Penalty Guidelines.

14. The Panel considered that when determining the appropriate sanctions to be imposed, a Hearing Panel should consider:

- (a) The protection of the investing public;
- (b) The integrity of the securities markets;
- (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 processes.

*In the Matter of Arnold Tonnies, Hearing of the Prairie Regional Council, MFDA File No. 200503 ("Tonnies), Hearing Panel Decision dated June 27, 2005 at p. 22*

15. The Hearing Panel was mindful of the factors that Hearing Panels frequently consider when determining whether a penalty is appropriate, including the following:

- (a) The seriousness of the allegations proved against the Respondent;
- (b) The Respondent's past conduct, including prior sanctions;
- (c) The Respondent's experience and level of activity in the capital markets;
- (d) Whether the Respondent recognizes the seriousness of the improper activity;
- (e) The harm suffered by investors as a result of the Respondent's activities;
- (f) The benefits received by the Respondent as a result of the improper activity;

- (g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) Previous decisions made in similar circumstances.

*Headley (Re), 2006 LNCMFDA 3, at para. 85*

16. The Panel was also mindful of the fact that MFDA Hearing Panels have consistently imposed permanent prohibitions on individuals whose past conduct suggests that they are ungovernable. The Panel concluded that the conduct of the Respondent, including the allegations found against him, and in particular, his failure to cooperate with the investigation, demonstrate that the Respondent was ungovernable.

## RESULT

17. For all the reasons set out above, the panel concluded that the appropriate penalty to be imposed on the Respondent was as follows:

- a) a permanent prohibition on the authority 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(c) of MFDA By-Law No. 1;
- b) a fine in the amount of \$75,000.00 pursuant to s. 24.1.1(b) of MFDA By-Law No. 1;
- c) costs attributable to conducting the investigation and hearing of this matter in the amount of \$10,000 pursuant to s. 24.2 of MFDA By-Law No. 1.

**DATED** this 1<sup>st</sup> day of March, 2017.

“Frederick W. Chenoweth”

Frederick W. Chenoweth  
Chair

“Paige A. Wadden”

Paige A. Wadden  
Industry Representative

“Joe Yassi”

Joe Yassi  
Industry Representative

## Schedule "A"

Notice of Hearing

File No. 201676



**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: Anthony Paul Dorzek**

---

### **NOTICE OF HEARING**

---

**NOTICE** is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room at the MFDA offices, located at 121 King Street West, Suite 1000, Toronto, Ontario on November 22, 2016 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Anthony Paul Dorzek (the "Respondent").

**DATED** this 19<sup>th</sup> day of September, 2016.

"Sarah Rickard"

---

Sarah Rickard  
Director of Regional Councils

Mutual Fund Dealers Association of Canada  
121 King Street West, Suite 1000  
Toronto, ON M5H 3T9  
Telephone: 416-945-5143  
Facsimile: 416-361-9781  
Email: [corporatesecretary@mfd.ca](mailto: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 2010 and December 2014, the Respondent solicited and accepted approximately \$20,000 from client DB for investment in a real estate business, which investment was not approved by the Member or processed through its facilities, thereby engaging in securities related business outside the Member, contrary to MFDA Rules 1.1.1 and 2.1.1.

**Allegation #2:** Between 2010 and December 2014, the Respondent engaged in personal financial dealings with client DB when he solicited and accepted approximately \$20,000 from client DB for investment in a real estate business and co-mingled his own monies with the client's investment, thereby engaging in conduct giving rise to a conflict of interest which the Respondent failed to disclose and/or ensure was addressed by the exercise of responsible business judgment influenced only the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

**Allegation #3:** Commencing in September 2011, the Respondent misappropriated, or failed to account for, at least \$10,000 of the monies that he solicited and accepted from client DB for investment in a real estate business, thereby failing to deal fairly, honestly and in good faith with client DB and to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 2.1.1 and 2.1.4.

**Allegation #4:** Commencing in or about May 2015, the Respondent failed to cooperate with MFDA Staff during the course of an investigation 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 April 12, 2007 to September 30, 2011, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.
2. From September 30, 2011 to December 19, 2014 when he was terminated as a result of the events described below, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.
3. At all material times, the Respondent conducted business in Oakville, Ontario.
4. The Respondent has not been registered in the securities industry in any capacity since December 19, 2014.

### **Background**

5. Client DB was a childhood friend of the Respondent. In about 2007, client DB became a client of Investors Group and the Respondent was the mutual fund salesperson assigned to service his accounts at Investors Group.
6. In about 2010, the Respondent solicited and accepted approximately \$10,000 from client DB purportedly for investment in a real estate business. The Respondent represented to client DB that, among other things:
  - (a) the investment would pay client DB a guaranteed rate of return of 10-15% over a period of 6 months;

- (b) client DB's investment would be pooled with the Respondent's own investment of approximately \$15,000; and
- (c) the Respondent personally knew the principal of the real estate business.

7. Client DB delivered a cheque to the Respondent in the amount of \$10,000 payable to the Respondent personally in respect of the investment.

8. The Respondent did not provide client DB, nor did client DB otherwise receive, any documentation in respect of the investment.

9. Following the expiry of the six month investment term, the Respondent repaid the principal of the client DB's \$10,000 investment together with a payment representing a 12½% return on the investment.

10. In about September 2011, the Respondent again approached client DB with respect to an opportunity to invest in the same real estate business described above. The Respondent advised client DB that his monies would be secured against real estate and pooled with the Respondent's own investment.

11. On October 5, 2011, the Respondent sent an email to client DB stating:

If you are interested in the private investment offer again, I will need to know by tomorrow at some point and the funds will need to post by Thursday at which time I have a meeting to set up the deal. It will pay out on the same basis (a return of 10% to 15% but I'm thinking closer to the 10% mark which is still amazing!) as the previous time except that the money has to vest for 6 months and not 3 months; the main reason for the timing is due to current market conditions and the availability of shorter returns has diminished.

12. On or about October 8, 2011, client DB provided a cheque to the Respondent in the amount of \$9,850 payable to the Respondent personally in respect of client DB's investment. At

that time, the Respondent owed client DB \$150 for a personal matter and client DB understood that the Respondent would be adding this amount to client DB's investment, which would bring client DB's total investment to \$10,000.

13. The Respondent did not provide client DB, nor did client DB otherwise receive, any documentation in respect of the investment.

14. In about December 2011, client DB transferred his accounts from Investors Group to FundEX. At all material times, the Respondent was the mutual fund salesperson assigned to service client DB's accounts at FundEX.

15. In about April 2012 (shortly before the expiry of the six month term of the investment), client DB advised the Respondent that he wanted to redeem his investment as he required the monies he had invested in order to pay personal expenses.

16. The Respondent did not respond to client DB's request to redeem his investment until on or about May 29, 2012 (after the expiry of the six month term of the investment) when he sent an email to client DD stating: "I completely forgot about the investment since I had my buddy roll mine again for another 6 months. I will contact him today."

17. On or about June 8, 2012, the Respondent sent an email to client DB stating:

I heard back from him yesterday and he rolled over all the funds. Unfortunately, when I made the request I didn't specify not to separate your 10k plus interest; I only said I wanted to roll my funds.

I didn't get back to you yesterday because I requested that he (made him) check to see what could be done to unlock the funds or have them paid out separately. However, because these are locked in term investments (your funds are completely secure as the investments are always asset backed) he was unable which he told me from the get go but I desperately asked that he try his best which he promises he did but at this time he remains unsuccessful. He is going to

approach the matter again on Monday with another person at the capital management company.

If I had the cash in the bank, I would just pay you today but I have all of mine invested through him until the end of the next term (Oct 15). However, if he is unsuccessful next week, I should have some additional business over the next couple of months... maybe less and will pay you as I get the additional business. If this is the route I have to take, not only will I pay you ASAP but once the investments come due I will also pay you the ROI is (*sic*).

I'm so very sorry for my screw up; my stomach (*sic*) has been in knots since yesterday when I heard what I had done.

18. On June 15, 2012, the Respondent sent another email client DB stating:

I just heard back on your investment and he was unsuccessful in getting them to move on the policy of no withdrawals until the end of the term. I AM SO SORRY. As I said before, because this was my fumble (even if it was his, I would do the same as you put your faith in me) I am going to work on getting you this money asap from money earned on new business going forward. In the meantime, your money is securely invested.

19. Between June 2012 and December 2013, the Respondent communicated with client DB about the status of his investment.

20. In or about December 2013, the Respondent advised client DB that the Respondent may not be able to recover client DB's investment.

21. Client DB made numerous requests to the Respondent for documentation and information regarding his investment. The Respondent failed to respond to these requests.

22. The Respondent has failed to account for the monies he purportedly invested on client DB's behalf in the real estate business described above.

23. The Respondent did not disclose his activities with respect to client DB's investments described above to Investors Group or FundEX.

24. The investments offered by the Respondent described above were not investments which were approved for sale by Investors Group or FundEX, and the investments were not processed through the facilities of Investors Group or FundEX.

**Allegation #1: Securities Related Business Outside the Member**

25. By virtue of the foregoing, the Respondent solicited and accepted approximately \$20,000 from client DB for investment in a real estate business, which investment was not approved by the Member or processed through its facilities, thereby engaging in securities related business outside the Member, contrary to MFDA Rules 1.1.1 and 2.1.1.

**Allegation #2: Personal Financial Dealings**

26. By virtue of the foregoing, the Respondent engaged in personal financial dealings with client DB when he solicited and accepted approximately \$20,000 from client DB for investment in a real estate business, and co-mingled his own monies with the client's investment, thereby engaging in conduct giving rise to a conflict of interest which the Respondent failed to disclose and/or ensure was addressed by the exercise of responsible business judgment influenced only the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

**Allegation #3: Misappropriation or Failure to Account for Client Monies**

27. By virtue of the foregoing, the Respondent misappropriated, or failed to account for, at least \$10,000 of the monies that he solicited and accepted from client DB for investment in a real estate business, thereby failing to deal fairly, honestly and in good faith with client DB and to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 2.1.1 and 2.1.4.

#### **Allegation #4: Failure to Cooperate**

28. On May 13, July 9, July 27 and September 3, 2015, MFDA Staff sent letters to the Respondent requesting his attendance at an interview, pursuant to section 22.1 of MFDA By-law No. 1.

29. On July 29, 2015, August 5, 2015, September 3, 2015 and November 6, 2015, MFDA Staff left voicemail messages for the Respondent requesting that he contact MFDA Staff to schedule an interview, pursuant to section 22.1 of MFDA By-law No. 1.

30. Despite MFDA Staff's repeat attempts to contact him, the Respondent has failed to respond to MFDA Staff and attend an interview with MFDA Staff.

31. By failing to respond to MFDA Staff and attend an interview, the Respondent has frustrated MFDA Staff's ability to investigate the full nature and extent of the Respondent's activities and to determine the whereabouts of the monies that are owed to client DB.

32. By virtue of the forgoing, the Respondent has failed to attend an interview requested by MFDA Staff during the course of an investigation, 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;
- (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 (20) 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  
121 King Street West, Suite 1000  
Toronto, ON M5H 3T9  
Attention: H. C. Clement Wai  
Fax: 416-361-9073  
Email: [cwai@mfd.ca](mailto:cwai@mfd.ca)

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

- (a) providing four (4) 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 (1) copy of the **Reply** to the Office of the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Office of the Corporate Secretary permits otherwise; or
- (c) transmitting one (1) electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at [corporatesecretary@mfd.ca](mailto: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.**