



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: Brenda Marie Douglas

Heard: September 5, 2018 in Toronto, Ontario
Decision: September 5, 2018
Reasons for Decision: October 9, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

W. A. Derry Millar
Cheryl Hamilton
Brian Nowak

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Brenda Marie Douglas)	Respondent, not in attendance or represented
)	by counsel
)	

I. INTRODUCTION

1. The Staff of the Mutual Funds Dealers Association of Canada (“Staff”) issued a Notice of Hearing in respect of Brenda Marie Douglas (“Respondent”) dated February 15, 2018, which alleged the following:

Allegation #1: Between about November 2011 and April 2012, the Respondent misappropriated approximately \$31,636.78 from a client, thereby failing to deal fairly, honestly and in good faith with the client, and engaging in business conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in February 2017, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into her conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. On April 23, 2018, the first appearance was held by teleconference. The Respondent did not appear and participate in the teleconference. At the first appearance, the Hearing Panel determined that the Respondent was properly served with the Notice of Hearing. The Respondent advised the Manager, Hearings Administration of the MFDA by email dated April 22, 2018 that she would not be calling in on April 23, 2018 as “I have already pleaded guilty to the fraud in criminal court and I do not have any phone call anyway.”

3. The Respondent did not file a Reply to the Notice of Hearing.

4. The Manager, Hearings Administration, sent the Respondent by email dated July 23, 2018, a copy of the Hearing Panel’s Order from the first appearance which ordered that the hearing on the merits would take place before the Hearing Panel in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on September 5, 2018, commencing at 10:00 a.m. (Eastern). The Respondent did not appear at the hearing on the merits on September 5, 2018.

5. Rule 7.3 of the MFDA Rules of Procedure (“Rules”) provides that where a Respondent fails to attend a hearing on the date, time and location specified in the Notice of Hearing, the Hearing Panel may (a) proceed with the hearing without further notice to and in the absence of the Respondent; and (b) 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. As noted above, the Respondent did not appear at the first appearance of the date, time and location specified in the Notice of Hearing nor at the hearing on the merits fixed by order of the Hearing Panel on the date of the first appearance.

6. Rule 8.4 of the Rules provides that where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may, among other things, (a) proceed with the hearing without further notice to and in the absence of the Respondent; and (b) 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.

7. The Hearing Panel proceeded with the hearing on the merits in the absence of the Respondent as provided in the Rules.

8. In addition to the deemed acceptance of the facts and conclusions in the Notice of Hearing as provided for in Rules 7.3 and 8.4, Staff filed at the hearing the Affidavit of Mike Ford sworn August 16, 2018¹ which set out the facts in support of the Notice of Hearing.

9. At the hearing, we made a finding of misconduct with respect to both allegations in the Notice of Hearing and proceeded to determine the penalty. With respect to the penalty, we ordered:

- a) the Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

¹ Exhibit 4.

- b) the Respondent shall pay a total fine in the amount of \$100,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, consisting of the following:
 - i. a fine in the amount of \$50,000 in respect of allegation #1 in the Notice of Hearing; and
 - ii. a fine in the amount of \$50,000 in respect of allegation #2 in the Notice of Hearing;
- c) the Respondent shall pay costs of this proceeding in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

10. These are our reasons for our findings of misconduct and penalty.

II. FACTS

11. From October 2010 to June 3, 2014, the Respondent was registered in Ontario as a dealing representative with Scotia Securities Inc. (“SSI”), a Member of the MFDA.

12. Client BH is the Respondent’s father. He is a retired firefighter. At the time when the conduct described below took place, Client BH was approximately 70 years old. Prior to the death of his wife in 2006, Client BH’s wife handled all of the banking and financial affairs for the couple. After his wife passed away, Client BH accepted the Respondent’s assistance to look after his financial affairs.

13. In January 2011, a joint bank account (the “Joint Bank Account”) was opened in the names of the Respondent and her father, Client BH, at Scotiabank, the bank affiliate of SSI.

14. The Respondent had opened the Joint Bank Account without the knowledge, authorization or approval of Client BH.

15. In August 2011, Client BH held a RRIF account at CIBC Securities Inc. (the “Existing RRIF Account”).

16. On or about August 3, 2011, the Respondent asked her colleague JG to open a new RRIF account at SSI for Client BH (the “New RRIF Account”) and asked JG to transfer the balance of the Existing RRIF Account to the New RRIF Account. The New RRIF Account was then opened and two mutual fund transfers were processed from the Existing RRIF Account to the New RRIF Account in the total amount of \$30,932.16.

17. Between November 23, 2011 and March 5, 2012, the Respondent asked JG to process three redemption transactions (the “Redemptions”) in Client BH’s New RRIF Account and to arrange for the proceeds from the Redemptions to be deposited into the Joint Bank Account. Based upon the Respondent’s requests, but without having met or communicated with Client BH, JG processed the Redemptions, and approximately \$17,433.39 was redeemed from Client BH’s New RRIF Account and deposited into the Joint Bank Account.

18. On April 17, 2012, an additional redemption was processed in the New RRIF Account in the amount of approximately \$14,203.39, constituting the remaining balance in the account. The proceeds from the April 17, 2012 redemption were also deposited into the Joint Bank Account.

19. The redemptions described above were processed without the knowledge, authorization or approval of Client BH. The total value of the unauthorized redemptions was approximately \$31,636.78.

20. After the net proceeds from the unauthorized redemptions described above were deposited into the Joint Bank Account, the Respondent withdrew these amounts from the Joint Bank Account without the knowledge, authorization or approval of Client BH. The Respondent thereby misappropriated approximately \$31,636.78 from Client BH.

21. Client BH was reimbursed by Scotiabank for his loss.

22. Commencing in February 2017, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into her conduct. Among other things, the Respondent:

a) failed to provide to the investigator copies of her bank statements for all bank accounts in her name or under her control for the period January 1, 2011 to June 30, 2014 as requested in the investigator's letter dated January 12, 2017 which was personally served on the Respondent on January 28, 2017;

b) failed to attend an interview with Staff on February 27, 2017 as requested in the investigator's letter dated January 12, 2017. On February 27, 2017, the Respondent sent an email to the investigator stating:

“In regards to the letter you sent asking for my attendance at an interview today Feb.27.2017. I will not be able to attend this interview as when the envelope was dropped off the person did not specify what is what about and as such I did not open it until just recently.

If you can send me a couple of other dates for the interview so I can schedule with my work as I do not have the ability to take time off and will have to work around my shift work.”

- c) On February 27, 2017, the investigator emailed the Respondent requesting that she provide a copy of the criminal charges brought against her by March 3, 2017, provide the bank statements requested by March 6, 2017, attend an interview on March 16, 2017, and confirm by March 3, 2017 that she would attend the interview.
- d) The Respondent failed to provide the criminal charges or confirm that she would attend the interview by March 3, 2017.
- e) On March 5, 2017, the Respondent advised the investigator by email that she would attend the interview on March 16, 2017.
- f) The Respondent failed to provide the bank statements by March 6, 2017. On March 6, 2017, the investigator emailed the Respondent requesting that she provide the bank statements, criminal charges and a copy of any court order made at her last court appearance by March 8, 2017.
- g) The Respondent by email dated March 15, 2017 advised the investigator that upon the instruction of counsel, “I will not be attending any meetings at this time.”
- h) The Respondent failed to attend the scheduled interview on March 16, 2017.

- i) Since March 15, 2017, the Respondent's only communication to Staff was her email to the Manager, Hearings Administration, dated April 22, 2018, referred to above, in which she advised she would not attend the first appearance in this matter.
- j) The Respondent has not provided Staff with the documents requested from her nor has she attended an interview with Staff to give information concerning the matters under investigation in accordance with her regulatory obligations.

III. FINDINGS OF MISCONDUCT

23. By virtue of section 24.1.4 of MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA notwithstanding the fact that such individual has ceased to be an Approved Person and the MFDA is entitled to commence disciplinary proceedings against an Approved Person up to five years from the date upon which the individual ceased to be an approved Person. Here, the Respondent was an Approved Person with SSI until June 3, 2014. The Notice of Hearing dated February 15, 2018, commencing this proceeding was within the five-year period for disciplinary proceedings.

Allegation #1 – Misappropriation

24. There is no question that the Respondent misappropriated funds from her father, Client BH, and that the misappropriation of client funds is inconsistent with the standard of conduct set out in Rule 2.1.1. Misappropriation is a serious breach of trust, causes harm to the clients affected, and undermines the reputation and integrity of the securities interest.

25. Based on the facts set out above, we made our finding at the hearing that Allegation #1, Misappropriation, had been made out and that the Respondent had contravened MFDA Rule 2.1.1.

Allegation #2 - Failure to Cooperate

26. Approved Persons have an obligation to cooperate with an investigation commenced by the MFDA under section 21 of MFDA By-law No. 1. Section 22 of MFDA By-law No. 1 sets out

the obligation of Approved Persons to, among other things, produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated and to attend and give information respecting any such matters. The obligation extends to being examined under oath.

27. The failure of Approved Persons to cooperate with an investigation hinders the MFDA's ability to investigate the conduct of registrants in the mutual fund industry and prevents the MFDA from fulfilling its regulatory mandate to protect the public.

28. The Respondent had an obligation to provide Staff with information and attend an interview with Staff when requested to do so. Notwithstanding that the Respondent stated that she would not attend the March 16, 2017, interview on the advice of counsel, she had an obligation to attend the interview whether or not her counsel advised her not to attend.²

29. The Respondent failed to attend the interview and failed to provide the information requested by Staff. It is clear that the Respondent failed to cooperate. As a result of her failure to cooperate, Staff has been unable to determine the full nature and extent of her conduct including whether she misappropriated additional monies from Client BH or other individuals.

30. Based on the facts set out above, we made our finding at the hearing that Allegation #2, Failure to Cooperate, had been made out and that the Respondent had contravened section 22.1 of MFDA By-law No. 1.

IV. PENALTY

31. In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:³

² *Vatanchi and Ho (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201430, Panel Decision dated August 4, 2015, at paragraph 12.

³ *Tonnies (Re)*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005, at para. 22.

- 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.

32. Hearing Panels when determining whether a penalty is appropriate often consider the following:⁴

- 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.

33. When considering the appropriate penalty, Hearing Panels may consider the MFDA Penalty Guidelines which recommend the following penalties with respect to the conduct at issue in this proceeding:

⁴ *Tonnies (Re)*, *supra*, at para 23.

Standard of Conduct: minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; permanent prohibition in egregious cases.

Misappropriation: minimum fine of \$25,000; permanent prohibition in almost all cases.

Failure to Cooperate: minimum fine of \$50,000; permanent prohibition.

34. In considering the appropriate penalties, we took into account the factors set out above and the following submissions of Staff:

- a) misappropriating client funds encompasses a serious breach of trust, causes real harm to the affected client, and undermines the reputation and integrity of the securities industry;
- b) in misappropriating funds from Client BH, the Respondent used her position at SSI to target her own father, who was elderly and financially unsophisticated. The Respondent's conduct was so outrageously outside the bounds of the conduct required by an Approved Person that significant penalties are warranted;
- c) the Respondent's misconduct allowed her to wrongfully obtain Client BH's retirement savings without his knowledge. Client BH did not suffer a loss because Scotiabank/SSI reimbursed Client BH for his losses as a result of the Respondent's conduct;
- d) had the Respondent not been sentenced to pay restitution in the related criminal proceeding, Staff would have sought a fine in respect of allegation #1 that is greater than the proposed range of \$25,000 – \$50,000;
- e) while the Respondent pled guilty in the related criminal proceeding, in response to the MFDA's investigation and disciplinary proceeding, the Respondent has not shown remorse for her actions. She failed to attend an interview, failed to provide Staff with documents relevant to its investigation, did not file a Reply, and has not otherwise participated in this proceeding;
- f) although the Respondent has no past disciplinary history with the MFDA, this factor should be given very little weight in light of the seriousness of the misconduct at issue in this proceeding;

- g) the Respondent poses a significant risk to other investors and the market at large if she is allowed to return to the industry. Her misconduct was egregious and deliberate and her failure to cooperate with Staff's investigation demonstrates that she is ungovernable. A permanent prohibition is necessary to protect investors;
- h) the proposed penalties will prevent the Respondent from causing any further harm to clients and will deter others in the capital markets from engaging in similar activity;
- i) the proposed penalties are appropriate based on previous decisions made in similar circumstances.

35. In our view, the permanent prohibition for the conduct engaged in by the Respondent is appropriate as the public must be protected from Approved Persons who misappropriate client funds and fail to cooperate with a MFDA investigation into the conduct.

36. We also agree that the conduct should attract substantial fines. The Respondent misappropriated her father's retirement funds. Her father was an unsophisticated and vulnerable investor who relied on the Respondent to assist him. At the time of the misappropriation, Client BH, her father, was 70 years old and had lost his wife a few years earlier. His wife had looked after all of their finances. The Respondent acted in an egregious fashion without regard to her father's welfare. Such conduct must be condemned. In our view, the appropriate penalty for the misappropriation, in addition to the permanent prohibition, is a fine of \$50,000.

37. Failure to cooperate with an investigation by the MFDA limits the ability of Staff to properly investigate complaints and to carry out its mandate to protect the investing public. All those involved in the mutual fund industry regulated by the MFDA must know and understand that they have an obligation to cooperate with an MFDA investigation and that failure to do so will attract substantial fines and a permanent prohibition from participating in the industry. We agree that a fine of \$50,000 is appropriate in this case in addition to the permanent prohibition.

38. Staff sought costs of \$7,500. Staff provided us with a costs outline which more than justifies the amount claimed. We agree that costs should be awarded and that \$7,500 is an appropriate amount.

DATED this 9th day of October, 2018.

“W. A. Derry Millar”

W. A. Derry Millar
Chair

“Cheryl Hamilton”

Cheryl Hamilton
Industry Representative

“Brian Nowak”

Brian Nowak
Industry Representative

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