

Notice of Hearing

File No. 202045



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: Paul Anthony Dwyer

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on October 29, 2020 at 10:00 a.m. (Mountain), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Paul Anthony Dwyer (“Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 20th day of August, 2020.

“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: In March 2018, the Respondent submitted for processing to the Member two trades for which he stood to earn commissions, after being informed by his Branch Manager that the trades would not be approved, thereby engaging in conduct that fell below the standard of conduct required of Approved Persons, and that gave rise to a conflict or potential conflict of interest which he failed to address by the exercise of responsible business judgement influenced only by the interest of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

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 October 2007 to July 2018, the Respondent was registered in Alberta, British Columbia, Manitoba, and Ontario as a mutual fund salesperson (now known as a dealing representative¹) with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA.
2. The Member terminated the Respondent on or about July 11, 2018 as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.
3. At all material times, the Respondent conducted business in the Calgary, Alberta area.

¹ In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

Allegation #1 - Submitting Trades After Being Informed by the Branch Manager That They Would not be Approved and Conflict of Interest

4. At all material times, client KM was a client of the Member. Commencing in February 2011, the Respondent was the Approved Person responsible for servicing the accounts of client KM.
5. In July 2013, client KM's health deteriorated and trusteeship over her assets was granted by court order to client KM's grandnephew, SE, who was designated as the trustee for client KM.
6. Pursuant to the court order, SE was authorized to make financial decisions on behalf of client KM.
7. In or around October 2014, client KM ceased being a client of the Member.
8. In or around early 2018, the Respondent had discussions with SE, as trustee for client KM, about transferring client KM's accounts back to the Member to be serviced by the Respondent.
9. In or around February 2018, SE completed Know-Your-Client ("KYC") and account opening forms on behalf of client KM as trustee in order to open a Non-Registered Account and Tax Free Savings Account ("TFSA") with the Member (collectively the "Trustee Accounts"). SE signed transfer authorization forms to transfer client KM's assets held at another financial institution into the Member in cash.
10. On or about February 16, 2018, SE instructed the Respondent to use the cash proceeds from the transfer-in to purchase an income mutual fund in each of the Trustee Accounts when the client's monies arrived from the other financial institution.
11. On March 23, 2018, SE informed the Respondent that client KM had passed away that day.
12. On March 23 and 24, 2018, the Respondent contacted his branch manager (the "BM"), and informed him that SE told him that client KM had passed away, and that the monies from the other financial institution to complete the purchases in the Trustee Accounts were still in transit.
13. Between March 24 and March 28, 2018, the Respondent sought approval from the BM to process the trades in the Trustee Accounts. The BM informed the Respondent that the trade would

not be approved under the circumstances, as client KM was deceased and her assets now had to be moved into an estate account.

14. On March 28, 2018, the Member received client KM's assets in cash from the other financial institution in compliance with the requests that had been completed by SE in February 2018, as described above in paragraph 9.

15. After being informed by the BM that the trades would not be approved, the Respondent submitted two mutual fund purchase forms in the amounts of approximately \$1,120,000 and \$40,000 to process trades in client KM's non-registered and TFSA accounts, respectively, based on the instructions that the Respondent had received from SE on February 16, 2018.

16. The Respondent received commissions of approximately \$16,279 as a result of the purchase transactions.

17. On or about March 29, 2018, during the trade review process, the BM froze the mutual fund purchases that the Respondent had submitted pending review and contacted the Member's head office compliance staff for further directions.

18. In or around June 2018, the Member reversed the trades in client KM's accounts, as well as the commissions received by the Respondent.

19. By engaging in the conduct described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, as well as conduct which gave rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgement influenced only by the interest of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

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
Prairie Regional Office
Suite 850, 800 – 6th Ave 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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