



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: David Bruce Emery

Heard: February 26, 2015, in Toronto, Ontario
Reasons for Decision: March 19, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney
Kenneth Mann
Colleen Waring

Chair
Industry Representative
Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of
)	Canada
)	
David Bruce Emery)	In person and not represented by Counsel
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) concerning a disciplinary proceeding in respect of David Bruce Emery (the “Respondent”).
2. At the commencement of the hearing, Staff of the MFDA (“Staff”) filed the Affidavit of Karen Mills, MFDA Investigator, attesting to the misconduct of the Respondent.¹
3. The Respondent admitted the misconduct alleged by the MFDA.

RULING

4. The Hearing Panel rules as follows:

Between June 22, 2010 and October 5, 2011, the Respondent referred eight (8) individuals, at least three (3) of whom were clients, to a company that sold mortgage investment products and received at least \$16,750 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 and 13.8 of National Instrument 31-103.

5. The Hearing Panel reserved on the issue of penalty and advised that it would issue its decision and written reasons in due course.

PENALTY HEARING

6. The Respondent testified that he had examined four of the authorities given to him by Staff and found that the average fines levelled therein were 27.89% of the gross earnings from the transactions engaged in by the respondents and that the average costs award was \$2,000.00.

¹ Exhibit 4

He then applied these calculations and suggested that a fair fine in his case would be \$4,670.00 and costs of \$2,000.00.

SUBMISSIONS OF THE MFDA

7. Staff asked for the following penalty:
 - a) a fine of \$20,000.00 to \$25,000.00;
 - b) costs of \$10,000.00;
 - c) a suspension of three to six months from conducting securities related business while in the employ of or associated with any MFDA Member pursuant to section 24.1.1(e) of MFDA By-law No. 1.

8. Staff argued that the Respondent had selected the cases to support his analysis of the fine to be imposed. In doing so, he ignored the other cases which, if analyzed, would have produced a vastly different result.

9. In any event, Staff said that previous cases of this kind have no precedential value as each case has its unique set of facts.

10. Staff said that the fine should not be a “cost of doing business” and at least should equal the earnings of the Respondent from his misconduct. He said that this “disgorgement principle” is routinely applied by Hearing Panels.

11. In fairness, Staff listed the following mitigating factors:
 - a) There were no client complaints.
 - b) The Respondent has not been the subject of previous discipline by the MFDA.
 - c) The Respondent cooperated with Staff in its investigation.

ANALYSIS AND REASONS

12. The Hearing Panel rejects the analysis of the Respondent. It was selective and self-serving.

13. The Hearing Panel agrees with Staff for the MFDA that previous cases have no precedential value as each case, especially those involving a settlement agreement, bear their own unique set of facts.

14. The Hearing Panel agrees that the “disgorgement principle” is usually applied. But it is not applied universally. Indeed, in three of the 13 cases filed by the MFDA at the hearing it was not applied.² Moreover, in a recent case, where the Hearing Panel approved a settlement agreement, it was not applied.³

15. This is a relatively small case. The Respondent is 70 years old. He works from his home in Arthur, Ontario. He is not currently employed in the securities industry and is unlikely to be engaged in that business in the future.

16. The Hearing Panel considered all of the facts including the mitigating factors listed above in trying to craft a reasonably appropriate penalty.

17. In the unique circumstances here, the Hearing Panel has unanimously adopted a two-stage penalty.

ORDER

18. The Respondent shall, within thirty (30) days of this judgment:

² *Andrews (Re)*, [2014] Hearing Panel of the Central Regional Council, File No. 201324, Hearing Panel Decision dated May 6, 2014; *Chin (Re)*, [2014] Hearing Panel of the Central Regional Council, File No. 201361, Hearing Panel Decision dated October 10, 2014; *Irwin (Re)*, [2010] Hearing Panel of the Central Regional Council, File No. 200915, Hearing Panel Decision dated April 28, 2010.

³ *Bulloch (Re)*, [2015] Hearing Panel of the Central Regional Council, File No. 201417, Hearing Panel Decision dated January 15, 2015.

- a) pay a fine of \$7,500.00;
- b) pay costs of \$2,500.00;
- c) for a period of three (3) months be suspended from conducting securities related business while in the employ of or associated with any MFDA Member pursuant to section 24.1.1(e) of MFDA By-law No. 1.

19. Should the Respondent fail to pay the fine and costs to the MFDA within thirty (30) days of this judgment, then the penalties shall automatically be increased as follows:

- a) The Respondent shall pay a fine of \$25,000.00.
- b) The Respondent shall pay costs of \$10,000.00.
- c) The Respondent shall for a period of six (6) months be suspended from conducting securities related business while in the employ of or associated with any MFDA Member pursuant to section 24.1.1(e) of MFDA By-law No. 1.

20. If at any time a non-party to this proceeding requests production of, or access to, the record of this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 19th day of March, 2015.

“Terrance A. Sweeney”

Terrance A. Sweeney
Chair

“Kenneth Mann”

Kenneth Mann
Industry Representative

“Colleen Waring”

Colleen Waring
Industry Representative

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