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: Gabriel Richard Frank

Heard: June 26, 2015 in Toronto, Ontario
Reasons for Decision: August 28, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore Q.C.	Chair
Linda J. Anderson	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Shelly Feld	)	For the Mutual Fund Dealers Association of Canada
Gabriel Richard Frank	)	Not in attendance nor represented by Counsel

1. We have come to a decision. I am going to give our decision and reasons orally. I will then ask for a transcript of the oral decision and reasons, which we will amend to make sure it reads properly. The amended transcript will then be formatted as our written decision and reasons [*this document*] that will constitute the written reasons of the panel.

2. We determine that the appropriate penalties are a fine of $400,000, costs of $10,000, and the permanent prohibition from the industry suggested by Staff of the MFDA ("Staff").

3. The conduct in the case before us is one of the most egregious that we have dealt with. The word 'egregious' has sometimes been used in overkill in other MFDA cases to refer to less seriously abusive and unacceptable conduct than that of the Respondent's in our case. In this case, we are not using the word in overkill.

4. This Respondent is ungovernable. This Respondent, by his conduct with his employer, engaged in undisclosed conflicts of interest, personal financial dealings, borrowing from clients, lying to clients about the use of proceeds, and using the proceeds for his own personal business and benefit.

5. He failed to adhere to the policies and procedures of his employer, including those relating to the improper use of leverage.

6. He lacks an understanding of leverage and demonstrated this in trying to excuse some of his conduct.

7. He did not cooperate in earlier investigations of his conduct by his employer and did not cooperate in the investigation in this case by MFDA Staff.

8. He has demonstrated that he is a menace to the financial services industry in general.

9. We came to the figure of $400,000 for the fine, although staff had recommended a minimum fine of $200,000.

10. We did this by looking at: the minimum known amount that was not repaid to clients, namely $170,000; that he retained the benefit of not paying any interest; that the client involved in the borrowing by the Respondent had lost opportunity that had some monetary value; and, that other clients appeared to have been involved with improper borrowing by the Respondent.

11. Although it is difficult to put a monetary amount on all this, there should be some deterrent element in the fine reflecting the seriousness of all this.

12. Taking all these considerations into account, we felt that $400,000 would be appropriate. During the hearing, Staff confirmed to us that in Staff's view that would be appropriate, notwithstanding the original suggestion of $200,000.

13. We make our decision knowing that the Respondent has had financial difficulties, that he does not seem to be able to manage his own affairs financially, and that the prospects of payment are not very likely.

14. We considered all the cases referred to us by Staff with respect to penalties.

15. In *Re Brauns*, 2014 LNCMFDA 9, the MFDA Panel writes: "Staff also requested a fine in the amount of $850,000, together with costs of $30,000. Mr. Houston [*respondent's counsel*] candidly advised us that a significant fine was called for but that there was little prospect that even a substantially lower fine such as $250,000 could be paid. In our view, any inability to pay the fine, while relevant, is trumped by the need to articulate the seriousness of the Respondent's misconduct and to at least impose a fine that bears some relationship to the benefit obtained as a result of the misconduct and/or the loss of those affected. In our view, a fine of $850,000 is fit in the circumstances."

16. For the same reason, we are of the opinion that $400,000 is the appropriate figure, notwithstanding the likelihood that this will be a difficult amount to collect.

17. With respect to costs, we are satisfied that $10,000 is reasonable, taking into account the history of the investigation, the timeline and the activities that were undertaken by Staff and the uncooperative approach of the Respondent.

18. In conclusion, the Respondent has demonstrated repeatedly that he is ungovernable. He has shown a serious and repeated disregard for the rules and regulations of his employer and a callous disregard for the public. He is not trustworthy. He has poor understanding of the rules and regulations applicable to him and of the nature and purpose of financial services in general.

19. Based on the Respondent's conduct in this case, any future employer in another financial service business would be showing reckless disregard for its clients and the public if it were to retain his services.

DATED this 28th day of August, 2015.

"Paul M. Moore"

Paul M. Moore, Q.C.
Chair

"Linda J. Anderson"

Linda J. Anderson
Industry Representative

"Kenneth P. Mann"

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Industry Representative

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