



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: Geoffrey Gaunt

Heard: July 30, 2013
Decision and Reasons: September 20, 2013

DECISION and REASONS

Hearing Panel of the Atlantic Regional Council:

The Hon. D. Merlin Nunn, Q.C.,
Susan Nixon
Scott M. Kay

Chair
Industry Representative
Industry Representative

Appearances:

Maria L. Abate)
)

For the Mutual Fund Dealers Association
of Canada

Geoffrey Gaunt)
)
)

Not in Attendance personally or by
Counsel

1. This matter arose by a MFDA announcement of the commencement of disciplinary proceedings in respect of the Respondent dated November 27, 2012 relating to the following allegations:

Allegation # 1: Between March 2007 and January 28, 2008, the Respondent engaged in personal financial dealings with client CD when he requested and received from client CD a series of loans totaling approximately \$26,000 to pay personal expenses, thereby creating a conflict or potential conflict of interest between the interests of the Respondent and the interests of client CD which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client, contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1.

Allegation # 2: Between March 2007 and January 28, 2008, the Respondent failed to comply with the policies and procedures of the Member regarding conflicts of interest with clients when he accepted a series of loans totaling approximately \$26,000 from client CD to pay personal expenses, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

Allegation # 3: Between October 8, 2009 and November 1, 2010, the Respondent failed to report to the Member two consecutive criminal charges against him, one of which he pled guilty to and the other of which was subsequently withdrawn, contrary to section 4.1(d) of MFDA Policy No. 6.

2. The First Appearance in this matter was conducted by teleconference between the full Panel members and Ms. Maria Abate, for the MFDA, and Geoffrey Gaunt, the Respondent, on January 28, 2013. During that teleconference the parties agreed upon July 30, 2013 as the Hearing Date and Halifax, Nova Scotia as its location.

3. As well, the time for filing a Reply was set as on or before June 28, 2013 and two documents were marked as Exhibits. Exhibit 1 contains the Notice of Hearing dated November, 2012 providing: (i) the date for the First Appearance as January 28, 2013; (ii) the three Allegations; and (iii) the Particulars relating to each Allegation.

4. Exhibit 2 is the Affidavit of Service of Josie Mulder.

5. Though service on the Respondent is not an issue here, I must point out that initial service of documents upon him between November 30 and December 7, 2012 was not easy, as he apparently deliberately avoided any attempt to effect service. Finally, the Notice of Hearing and letter of Ms. Abate was left at the door of his last known address. His participation in the First Appearance teleconference removes any doubts that he was not served the initial documents.

6. Further, the Respondent did file a Reply (Ex. 3) dated June 28, 2013. This Reply is quite important here and it states, in its entirety, as follows:

"June 28, 2013

Ms. Abate

As requested I am submitting a reply to my case, however not really having a good understanding of this process it would make sense to me to let stand the evidence I have voluntarily put forward at the initial hearing in Halifax. I did see in your letter to me if I had questions regarding preparing the reply I could contact you so if I am putting my case in jeopardy by doing this I would request you contact me to discuss this and perhaps allow me a short extension once we have spoken.

I apologize for this being at the last moment, however, I am busy as well and it sometimes can be easier to put off unpleasanties."

7. The letter was signed by the Respondent and it set forth his residence address, which was the site of all attempts to effect service, and referred to seeing Ms. Abate's letter.

8. I must indicate that his reference to an initial hearing at Halifax is in error, as there were no earlier hearings by this Panel. I believe the Respondent is referring to an interview with MFDA staff during the investigative stage of this matter, including documentary evidence he was shown at that time.

9. Significant in the Reply is his decision:

"to let stand the evidence I have voluntarily put forward".

10. He does not deny the Allegations brought against him in the Notice of Hearing.
11. The "letting stand" comment in his Reply indicates he takes no issue with any admissions to the Allegations he provided to MFDA staff during the investigation stage of this matter and to the documentary evidence collected by staff and shown to him.
12. Those facts, once established, would enable the Panel to accept as proven any and all facts alleged or conclusions drawn by staff in the Notice of Hearing.
13. There is no doubt that this Reply is most inadequate in any compliance with Rule 8.2 of the MFDA Rules of Procedures and the MFDA staff interpret it as an admission under that rule. The Reply contains no denial of any fact alleged against him.
14. Rule 8.3(1) provides:

"A Hearing Panel may accept as proven any facts alleged or conclusions drawn by the Corporation in the Notice of Hearing that the Respondent does not specifically deny in the Reply in accordance with Rule 2.1(ii) and (iii)."
15. With all facts alleged and conclusions drawn admitted and none contested, there is no issue for the Panel to decide other than to make the determination that all relevant matters alleged in the Notice of Hearing have been proven and to determine matters relating to penalty and costs.
16. Added to all the foregoing, the Respondent did not appear, nor did anyone representing him appear at the Hearing on the July 30, 2013 date at the location provided in the Notice of Hearing at the time set. The Panel did provide extra time before the commencement of the Hearing in case the Respondent was just late.
17. When he did not show up, Rule 7.3, relating to Failure to Attend Hearing, comes into play.

7.3 *Failure to Attend Hearing*

- (1) Where a Respondent fails to attend the hearing on the date and at the 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.

18. While the Panel could have directly accepted the facts alleged and conclusions drawn as having been proved and move to consideration of penalty, MFDA Counsel submitted a request to proceed with the hearing in the absence of the Respondent to provide the evidence to prove the allegations made. She indicated that some of the issues in this matter have not arisen in any earlier disciplinary decisions and a Panel decision on these allegations would be helpful in the industry.

19. Rules 1.6(1) and 1.6(2) of the MFDA Rules of Procedure relating to the Panel's power re the admissibility of evidence provide:

1.6 Admissibility of Evidence

- (1) Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and not bound by the technical or legal rules of evidence.
- (2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.

20. As well, Rule 13.4 provides:

13.4 Evidence by Sworn Statement

- (1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or a document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

21. Exhibit 2, the affidavit of Josie Mulder, sworn on December 11, 2012 provides the information relating to Service on the Respondent of the Notice of Hearing with the attached letter of Maria L. Abate with the MFDA Rules of Procedures and the MFDA Guide to the Disciplinary Hearing Process.

22. As indicated earlier the Panel accepts this evidence and is satisfied the Respondent was indeed served with the required information.

23. The Hearing commenced with evidence on the facts alleged in the Notice of Hearing being provided by David Forestieri, who testified under oath. He is a Case Assessment Officer with 6 years' experience with the Mutual Fund Dealers Association of Canada. His testimony related to Exhibit 4, a large book containing 16 varied sections (Tabs).

24. Tab 1 is the Event Report Form containing the complaint against the Respondent of CD resulting in the witness being assigned to deal with this filed complaint.

25. Tab 2 shows the Respondent's work record as a mutual fund sales person for Quadrus Investment Services Ltd. from September 28, 2009 to November 1, 2010 when his employment was terminated for the following reasons:

"Reason is failure to disclose two criminal charges (sexual assault and sexual exploitation) laid against him in August 2010, as well as his failure to provide information to Quadrus regarding him having personal financial dealings with an individual who was a client of his while he was working at Desjardins Financial prior to when he transferred to Quadrus". (Ex. 4 Tab 2 Page 101).

He was employed at Desjardins from June 30, 2004 to January 28, 2008 and at Optifund Investments from February 9, 2004 to June 30, 2006."

26. Tab 2 contains a number of documents relating to the Respondent's work record which we need not dwell upon.

27. Suffice it to say that the evidence establishes that the Respondent was working as a mutual fund sales person for businesses which were Members of the Mutual Fund Dealers Association of Canada and, as such, he was bound by its Rules as an Approved Person. Rule 1.1.2 provides that an Approved Person shall comply with the By-laws and Rules.

28. Tab 3 establishes that CD was a client of Desjardins from November 18, 2004 to March 31, 2008. She transferred all her mutual funds to another Dealer some time after the borrowing episode.

29. Tabs 9, 10 and 11 relate to various redemptions of CD's mutual fund investments which constituted proof of the loans made by CD to the Respondent.

30. Tab 12 is a transcript of an interview of CD by Mike Ford, Manager of Investigations at the MFDA. She testified that she and the Respondent went to High School together, dated for a brief period, lost contact, but always knew what was going on in each other's lives. When the Respondent was a car salesman for Volkswagen, she purchased a car from him and when he moved to selling insurance, he provided some insurance policies for her children. When she learned he was a Mutual Fund salesman, she contacted him for certain information and he persuaded her to transfer her portfolio to his brokerage at that time.

31. Her evidence continued to set forth the history of the Respondent's borrowing money from her; the amounts, \$26,000; the intimidation reflecting his control over her portfolio; his knowledge that what he was doing was wrong; the need for secrecy; his promises to repay her. In repayment she only received \$500.

32. Two very significant facts were made clear throughout her interview. First, the Respondent knew that his borrowing from her was wrong, and that he could lose his job if it were revealed and, to prevent this, there was to be no paper trail. Secondly, that the Respondent intimidated CD throughout this investment period and for some time before she filed a complaint.

33. Tab 13 is a transcript of an investigative interview of the Respondent by Mike Ford of MFDA. In that interview, the Respondent admitted that he was an Approved Person working at Desjardins Financial and that CD was a client and that he borrowed from CD approximately \$25,000.00, and possibly slightly more. When he was asked if Desjardins permitted him to borrow money from clients, his reply was: "Of course they didn't." His testimony continued that he could not put dates on his borrowings, but will not argue any dates CD alleges. When it was suggested to the Respondent during the interview that the amount borrowed was \$26,000.00, his reply was "it could have been that." These borrowings occurred in March, April and May of 2007 while the Respondent was employed at Desjardins Financial.

34. On February 2, 2008 the Respondent, having left Desjardins Financial, began employment with Quadrus Investment Services, also a member of MFDA. This lasted to December 1, 2010 when his employment was terminated for the following reasons (Ex. 4 Tab 2 Page 101):

"Reason is failure to disclose two criminal charges (sexual assault and sexual exploitation) against him laid in August 2010, as well as his failure to provide information to Quadrus regarding him having personal financial dealings with an individual who was a client of his while he was working at Desjardins Financial prior to when he transferred to Quadrus."

35. During his interview with Mr. Ford the Respondent admitted that two charges were laid against him, one of which he entered a plea of guilty and the other was later withdrawn. Further, he also admitted not reporting them to Quadrus. He did suggest that he was not aware that he was supposed to report criminal charges laid against him which is not credible for a person of his lengthy experience in the financial industry. He also suggested that he didn't report these charges as they were of a very embarrassing nature. This, most likely, was the real reason for his failure to report.

36. The evidence indicated that the Respondent was going through a family breakup with custody battles requiring significant legal work and costs. For him it was a very emotional time.

37. In CD's letter of complaint (Ex. 4 Tab 4 at page 250) after describing the first two loan amounts of \$5,000.00 each she states:

"Geoff (the Respondent) came back in May and said his lawyer was demanding money upfront or he would not represent Geoff in his custody battle. Initially I said No, but he persisted and became belligerent, aggressive and bullying. As I grew more uncomfortable he became more aggressive and demanding. I gave in to him out of fear as I knew he still had control over my portfolio." (underlining added)

38. CD forwarded a copy of this letter to the Respondent.

39. Ex. 4 Tab 16 entitled Order of Conditional Discharge of Bankrupt shows that the Respondent filed an Assignment in Bankruptcy on March 3, 2011 and received a Conditional Discharge on January 20, 2012. His filed list of creditors did not include his borrowings from CD.

40. The Respondent was aware of all the facts alleged in the Notice of Hearing, the letter of complaint and the evidence he provided in the investigation transcript when he formulated his Reply dated June 28, 2013, in which he stated:

"It would make sense to me to let stand the evidence I have voluntarily put forward at the initial hearing in Halifax."

41. His Reply contained no denials. This coupled with his failure to attend the scheduled hearing on July 30, 2013, enables the Panel not only to proceed with the Hearing on the date and time specified, but also to accept the facts alleged and the conclusions drawn by the Corporation (MFDA) in the Notice of Hearing and impose any of the penalties and costs described in Sections 24.1 and 24.2 respectively of MFDA By-Law No. 1. (Rules of Procedure 7.3(a) and (b)).

42. The Panel did proceed with the Hearing on the appointed day, hearing the testimony of David Forestieri, together with a large number of documents to which he was directed in his testimony.

43. The Panel accepts all the documents provided and forming the Exhibits filed as proof of the matters therein relating to the Respondent's activities set out in the Allegations, and finds that all facts in the Allegations have been proven, not only by operation of Rule 7.3 of MFDA Rules of Procedure, but also by the evidence provided at the Hearing.

44. It is necessary to consider each allegation as to whether the facts taken as proved constitute a breach of MFDA Rules and Policies as alleged. Had no evidence been called and the Respondent failed to appear, the breaches of the Rules and Policies of MFDA would be conclusions under Rule 7.3(b) and the Panel would be free to accept them as stated. However, having heard evidence, it is incumbent on the Panel to determine if these conclusions do apply and whether the Rules alleged have been breached.

Allegation # 1: Between March 2007 and January 28, 2008, the Respondent engaged in personal financial dealings with client CD when he requested and received from client CD a series of loans totaling approximately \$26,000 to pay personal expenses, thereby creating a conflict or

potential of interest between the interests of the Respondent and the interests of client CD which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client, contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1.

45. The relevant portions of Rule 2.1.1 states:

2.1.1. Standard of Conduct. Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest;

46. Rule 2.1.4, Conflict of Interest provides:

2.1.4 Conflicts of Interest

- (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interests arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
- (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
- (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.
- (d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules. 2.1.4(a), (b) and (c).

47. A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.

48. Rule 2.1.1 imposes an obligation on the Respondent as Approved Person, to deal fairly, honestly and in good faith with his client. He failed in each category of this Rule in his dealing with CD. He took unfair advantage of their earlier friendship in his pursuit of obtaining loans. He used the threat of his having control of her portfolio and he would take the loan he was seeking out of her investments. As his need grew, he persisted in seeking money from CD and, in her complaint letter she stated:

"Initially I said No, but he persisted and became belligerent, aggressive and bullying. As I grew more uncomfortable he became more aggressive and demanding. I gave in to him out of fear as I knew he still had control over my portfolio."

49. Obviously, the Respondent's behaviour was neither dealing fairly, nor honestly, nor in good faith.

50. As well, his conduct fell far short of observing high standards of ethics and conduct in his dealings with CD.

51. The Panel is satisfied that the Respondent has breached MFDA Rule 2.1.1(a), (b) and (c) and these breaches also amount to a conflict of interest which should have been reported by the Respondent to his employer pursuant to Rule 2.1.4. His insistence on secrecy and no paper record proved he had no intention of reporting anything of his borrowings from his client CD to his employer, thereby acting in breach of Rule 2.1.4.

52. Counsel for MFDA provided the Panel with a book of cases dealing with the Rules alleged here, defining some of the terms used in them and discussing the very nature of the relationship between a financial counsellor and his client.

53. The Panel acknowledges that these cases are very helpful, but does not consider it necessary to extend this decision with quotations from those cases relating to the matters under consideration here as will become obvious.

54. Essentially, the very nature of the relationship between a financial counsellor and his client demands that the clients best interests are the basis of any and all transactions performed on behalf of the client. Obviously, this precludes activities and transactions directed in any way for the benefit of the financial advisor's self-interest.

55. The terms in Rule 2.1.1 hardly need definitions from other cases for they are well understood by ordinary persons and the Respondent's conduct with CD was so egregious that he clearly was not dealing fairly, nor honestly, nor in good faith giving the ordinary meaning of those terms. As well, he was not observing high standards of ethics and conduct and his business conduct was certainly unbecoming and detrimental to the public interest.

56. The evidence is clear that he played upon his earlier friendship with CD to initiate the first loan from her portfolio and she gave in to his requests, though she was not happy with the idea. However, from then on in the months of March, April and May, 2007, his conduct to her included demanding money, intimidation, threats that he had control of her investments and could take what he wanted, his belligerent aggressiveness and bullying, all of which, made her fearful.

57. From his comments in the Ford interview where he stated how surprised and shocked he was that CD filed her complaint, it became apparent that his plan was to make money for her thereby returning to her portfolio the amount he was borrowing, i.e. repay the loans with monies made through CD's investments.

58. Allegation #1 has been proven.

Allegation # 2: Between March 2007 and January 28, 2008, the Respondent failed to comply with the policies and procedures of the Member regarding conflicts of interest with clients when he accepted a series of loans totaling approximately \$26,000 from client CD to pay personal expenses, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

59. Rule 1.1.2 requires an Approved Person to comply with the MFDA By-laws and Rules when conducting or participating in any securities related business. This Rule obviously bound the Respondent to these Rules and By-laws.

60. Under Rule 2.5.1 referred to in Allegation 2, a Member must establish, implement and maintain procedures to ensure the handling of its business in accordance with the MFDA By-laws, Rules and Policies. Each Member with whom the Respondent was employed during the times involved in these events was obliged to follow these Rules.

61. As MFDA Counsel stated:

“The obligation of Approved Persons to comply with the policies and procedures of the Member with whom they are registered is a cornerstone of the self-regulatory system.”

62. It is well established that Approved Persons are obliged to follow their Member's business practices when dealing with clients. See **Re Cartaway Resource Group** [2000] B.C.S.C.D. No. 92 and **In the Matter of Arnold Tonnies** [2005] MFDA File No. 200503.

63. The standard of conduct required to be followed by all Members and Approved Persons is set forth in Rule 2.1.1. This Rule sets forth the most fundamental obligations of all registrants in the securities industry. The Respondent, therefore, was obliged to observe "high standards of ethics and conduct in the transaction of business."

64. While "borrowing" by an Approved Person from a client is not forbidden, and perhaps it should be in any revision of the Rules, it would be the very rare occasion where it would not offend the present Rules. It cannot be done secretly, as was done here, nor by any intimidation of a client.

65. It is the Panel's view that any borrowing by an Approved Person from a client immediately creates a conflict of interest or potential conflict of interest which must be immediately disclosed to the Member under MFDA Rule 2.1.4.

66. In the present matter, the Panel unanimously finds that the Respondent's conduct, already set forth, does not come close to meeting the "high standards of ethics and conduct" of Rule

2.1.1(b) with the initial borrowing itself and further, with his totally unprofessional and outrageous behaviour in his continuing borrowing activities with CD.

67. Allegation #2 is, therefore, proven.

Allegation # 3: Between October 8, 2009 and November 1, 2010, the Respondent failed to report to the Member two consecutive criminal charges against him, one of which he pled guilty to and the other of which was subsequently withdrawn, contrary to section 4.1(d) of MFDA Policy No. 6.

68. This Allegation arises out of the fact that in October 2009 and again in May of 2010 criminal charges were laid against the Respondent. He did not report these charges to Quadrus Investment Services Ltd. where he was employed. To complete the factual situation the Respondent subsequently entered a plea of guilty to the October charge and the May charge was withdrawn.

69. MFDA Policy No. 6 establishes the minimum requirements concerning events that the Approved Person is required to report and the events that Members are also required to report.

70. Rule 4.1 of that Policy requires an Approved Person to report within 2 business days any of a list of activities and events including:

(d) the Approved Person is charged with, convicted or, pleads guilty or no contest to, any criminal offence, in any jurisdiction;

71. The same Policy requires a Member to report to MFDA within 5 business days that an Approved Person has been charged with, convicted of, or pleads guilty to a criminal offence (MFDA Policy No. 6.1(c)(i)).

72. Rule 1.2.5(b) of the MFDA Rules provides the following under the heading Reporting Requirements:

Approved Person Reporting. Every Approved Person must report to the Member such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to complaints, criminal, civil and other legal

proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events.

73. Clearly, under the MFDA Rules and Policy No. 6, the Respondent was required to report to Quadrus Investment within the time periods set out in those Rules and Policy No. 6. He was expected to know these requirements though in his interview with Mike Ford (Ex. 4 Tab 13) he indicated, while admitting he did not report any of these events, charges, plea of guilty or conviction, he was unaware that he was required to do so.

74. It must be indicated here that these charges did not involve anything relating to the financial industry. However, the requirement is not directed solely to matters relating to the financial industry, rather it covers any and all charges, convictions or guilty pleas an Approved Person may be facing. The fact of criminal charges of whatsoever offence against an Approved Person is extremely significant to his ability to work with clients and prospects, to his own reputation and to the reputation and interests of his employer as well as to the industry at large and the public.

75. The Panel does not accept that the Respondent was unaware of the reporting requirement. He is required to know the Rules and with his long experience in the financial, he must have realized the importance, in his particular industry, of these particular rules. He could not help but know that criminal charges could have a devastating effect on the public in his area of work and a similar effect on his co-workers and his employer.

76. As Counsel for MFDA stated in her brief:

"Members are expected to establish, implement and maintain policies and procedures to ensure the supervision and operation of its business is in accordance with MFDA By-laws, Rules and Policies and applicable securities legislation. By failing to report material events to the Member in a timely fashion the Approved Person prevents the Member from protecting their own interests, the interests of other Approved Persons who are acting in accordance with the rules and regulations, the interests of clients and the public interest. These risks are particularly heightened in cases where Approved Persons fail to report events such as criminal charges, convictions because they expose the Member (and possibly other Approved Persons) to very real commercial risks and liabilities as well as potential safety risks to its employees or agents, clients and the public."

77. The Panel agrees and adopts the statement as its own. The requirement to report criminal charges is extremely serious and failure to do so leads to very serious circumstances. In this case, the failure was one of the two reasons given by his employer for the termination of his employment after being 17 years in the financial industry. It also is a serious matter in the Panel's considerations as to penalty.

78. As in Allegations #1 and #2, Allegation #3 facts are all admitted by the Respondent. It is unnecessary to belabour the facts already admitted other than to say that each of the Allegations are very serious matters deserving of significant penalties.

79. Having accepted that the breaches alleged in Allegations #1, #2, and #3 are proven, and all the facts entered in support of these allegations are admitted by the Respondent, as set forth in the Notice of Hearing, and in the documentary evidence entered at the Hearing, it is now necessary to deal with the matter of Penalty.

80. Section 24.1.1 of the MFDA By-laws give the Panel power to provide very serious penalties to an Approved Person if in the opinion of the Hearing Panel the person:

24.1.1 (i) has failed to comply with the provisions of a By-law, Rule or Policy of the Corporation (MFDA),

and

(ii) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest.

81. The Respondent's behaviour in his financial dealings with his client CD was so far outside what was expected and required of him as a financial advisor that a substantial penalty must be imposed. This would apply even if the borrowing episode stood alone as the requirement of "the best interests of the client" just did not exist in his relationship with CD at this time.

82. However, the failure to report criminal charges as required constitutes another very serious situation with consequences possible to many persons and businesses far removed from the Respondent warranting a substantial penalty.

83. It has been said many times that the goal of securities regulations is the protection of the investor, but another goal is to establish a business environment for the financial industry which has the complete confidence of the public with whom it engages.

84. MFDA counsel offered some general considerations for the Panel in this matter, two of which were from the Tonnie case, supra, at pages 21 and 22:

- “(1) Sanctions imposed in the securities regulatory context should be protective and preventative, intended to be exercised to prevent future harm to the capital markets; and
- (2) General deterrence is an appropriate consideration in making orders that are both protective and preventative. A penalty must re-affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry.”

85. This Panel agrees with these concepts as applicable in this matter. We are dealing with an Approved Person with 17 years' experience in the financial industry before his termination, who was or should have been aware of his regulatory obligations and his Member's policies and procedures. He entered into a borrowing relationship in which he orchestrated complete secrecy, no paper trail, and no repayment terms which he continued by demanding and intimidation and creating fear in CD, his client, whose best interests were supposed to be his guide. As indicated earlier, he did not show any intention to repay the loans rather he would get CD's portfolio up to the pre-loan amount by making further investments with her portfolio. His behaviour was so egregiously bad, for which he showed no remorse in any documentation, that the penalty must be significantly large to deter others in the capital markets from engaging in similar activities.

86. Rather than assess penalties on each Allegation, the Panel accepts MFDA counsel's suggestions for a penalty that would include all breaches alleged in Allegations #1, #2 and #3.

Order

87. It is hereby ordered that the Respondent be penalized as follows:

- (a) a permanent prohibition from conducting any 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;
- (b) a fine in the amount of \$40,000.00 pursuant to S. 24.1.1(b) of MFDA By-law No. 1; and
- (c) costs in the amount of \$5,000.00.

DATED this 20th day of September, 2013.

“D. Merlin Nunn”

The Hon. D. Merlin Nunn, Q.C.,
Chair

“Susan Nixon”

Susan Nixon,
Industry Representative

“Scott M. Kay”

Scott M. Kay,
Industry Representative

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