



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: Sergio Peter Gizzo

Heard: January 7, 2011, Toronto, Ontario
Reasons for Decision: March 16, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Kathleen J. Kelly
Cheryl Hamilton
Robert C. White

Chair
Industry Representative
Industry Representative

Appearances:

Michelle Pong)	For the Mutual Fund Dealers Association of Canada
)	
Sergio Peter Gizzo)	Did not appear and was not represented by counsel
)	

Present:

Ian R. Smith)	Senior Investigator for the Mutual Fund Dealers
)	Association of Canada

THE MATTER

1. As set out in the Notice of Hearing, the Respondent, Sergio Peter Gizzo, was alleged to have violated the By-laws, Rules or Policies of the MFDA. After hearing submissions from Staff of the MFDA, the Hearing Panel found that the following allegation in the Notice of Hearing had been established:

Allegation #1: Commencing May 22, 2009, the Respondent has failed to provide information concerning his conduct while he was an Approved Person requested by the MFDA during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

2. The Hearing Panel made the following orders at the conclusion of the hearing and advised that it would issue written reasons for its decision in due course:

- a) The Respondent is permanently prohibited from conducting securities related business while in the employ of or associated with any Member of the MFDA;
- b) The Respondent shall pay a fine in the amount of \$85,000; and
- c) The Respondent shall pay costs to the MFDA in the amount of \$7,500.

3. These are the reasons.

REASONS

BACKGROUND

4. The Respondent, Sergio Peter Gizzo, was alleged to have violated the By-laws, Rules or Policies of the MFDA as follows:

Allegation #1:

- a) Commencing May 22, 2009, the Respondent has failed to provide information, concerning his conduct while he was an Approved Person, requested by the Mutual

Fund Dealers Association of Canada (MFDA) during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

5. On September 9, 2010, the Respondent, Mr. Gizzo, was served with a Notice of Hearing for a First Appearance by conference call scheduled for October 26, 2010. Mr. Gizzo did not participate in the First Appearance. However, he was aware of it because he brought an application for an injunction, before the Ontario Superior Court of Justice, to prevent the MFDA from publishing particulars of this matter on its website. The application was unsuccessful.

6. At the First Appearance, the Panel set January 7, 2011, as the date for the hearing of this matter to proceed.

7. The Mutual Fund Dealers Association of Canada *Rules of Procedure*, section 7.3, provides:

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

8. The Panel is satisfied that the Respondent received appropriate notice of the entire procedure and of the allegations against him by virtue of the affidavits of Tony Costa, sworn September 9, 2010, and Terri Spence, sworn December 22, 2010, which affidavits were filed as exhibits before the Panel.

9. Notwithstanding the MFDA *Rules of Procedure*, on the day of the hearing the Panel delayed the commencement of the hearing to allow time for the Respondent to proceed to the hearing room if he had intended to attend and participate. The Respondent did not attend the hearing.

10. At the hearing, the Panel was directed to the affidavit of Ian R. Smith, Senior Investigator in the Enforcement Department of the MFDA, sworn December 13, 2010. Information in the affidavit confirms that the Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group”) from April 6, 2001 until September 30, 2005, when he was dismissed in good standing. It also confirms that on November 14, 2008, client GG commenced a legal proceeding in the Ontario Superior Court of Justice against Investors Group, the Respondent, and other defendants.

11. Investors Group was served with the Statement of Claim on November 24, 2008. On November 26, 2008 Staff of the MFDA (“Staff”) received a report from Investors Group on the MFDA’S Member Event Tracking System (“METS”) that Investors Group had received a Statement of Claim from client GG. The METS report alleged that the Respondent had recommended an investment product (STC) to GG that was not approved for sale by Investors Group. All parties to the Statement of Claim filed Statements of Defence.

12. On January 13, 2009, based on receipt of the METS report on November 26, 2008, Staff commenced a review of the Respondent’s conduct. Investors Group was investigating the matter at the same time, and on March 10, 2009 it reported its conclusions to Staff of the MFDA. Investors Group reported that it was unable to confirm the Respondent’s involvement in the transaction alleged by GG, due to lack of documentation relating to the time period when GG indicated that she made a \$50,000 investment in STC.

13. By letter dated May 22, 2009, Staff informed the Respondent that the MFDA was conducting an investigation of his conduct and requested that he provide a written statement and documentation pursuant to section 22.1 of MFDA By-law No. 1. This letter was sent by both registered and regular mail. The registered letter was signed for by “Aurelio Gizzo” on June 4, 2009. The letter sent by regular mail was not returned to the MFDA.

14. Ian Smith wrote to the Respondent on February 26, 2010, and informed him that the MFDA would be continuing the investigation into his conduct. Again, the Respondent was requested to provide documentation. He was also requested to attend at an interview in relation to the matters under investigation.

15. Efforts by Staff to have the Respondent attend an interview continued until March 2010. The Respondent did not respond nor did he attend at the date set for the interview, April 1, 2010. The Respondent's failure to respond continued up until the date of the hearing.

LAW AND ANALYSIS

16. Disciplinary hearings are held pursuant to sections 20 and 24 of MFDA By-law No. 1 of the MFDA. As a mutual fund salesperson in Ontario and an Approved Person of a Member of the MFDA, the Respondent agreed to be bound by, observe, and comply with MFDA Rules. The Respondent remains subject to the jurisdiction of the MFDA by virtue of his acceptance and signing of Form 33-109F4 Registration of individuals and review of permitted individuals.

17. In addition, pursuant to 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 an individual ceases to be an Approved Person. There is no statutory impediment preventing self-regulatory organizations, like the MFDA, from continuing to exercise jurisdiction over former Members, as determined by the British Columbia Court of Appeal in the case of *Dass v. Investment Dealers Association of Canada*¹ and the Ontario Court of Appeal in *Taub v. Investment Dealers Association of Canada*².

18. Under section 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of a Member, an Approved Person or any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member's or person's compliance with, among other things, the by-laws, rules and policies of the MFDA.

19. To carry out this duty, pursuant to section 22.1 of MFDA By-law No. 1, the MFDA is authorized to request and to oblige a Member, Approved Person or any other person under its jurisdiction, to among other things:

- a) submit reports;

¹ [2008] B.C.J. No. 1987

² [2009] O.J. No. 3552

- b) produce for inspection and provide copies of its books, records and accounts relevant to the matter being investigated;
- c) attend and give information.

In essence, the Member, Approved Person or any other person under its jurisdiction is required to cooperate with the MFDA in conducting its investigation.

20. MFDA Hearing Panels have consistently found that a failure by an Approved Person to cooperate with a MFDA investigation, by failing to provide information, documents or a written report when requested to do so, is serious misconduct and constitutes a “failure to cooperate” contrary to section 22.1 of MFDA By-law No. 1³.

21. In the decision of *Artinian v. College of Physicians and Surgeons of Ontario*⁴, the Ontario Divisional Court stated that, fundamentally, members of self-regulated professions are obliged to cooperate with their self-governing bodies. MFDA Hearing Panels have cited with approval and relied upon this decision.

22. As stated by the Panel in, *In the Matter of Kevin Desbois*, the failure of an Approved Person to cooperate, by not providing a written statement to MFDA Staff is a very serious matter. A failure to cooperate is a failure to comply. It prevents the MFDA from performing its regulatory function. It prevents the regulatory body from fully investigating a matter and determining all of the relevant facts, as well as the full extent, and implications of the underlying events.

23. The evidence establishes that on at least four separate occasions, by letters dated April 21, 2009, May 22, 2009, February 26, 2010, and March 18, 2010, Staff sought to obtain from the Respondent a statement in writing in response to the complaints regarding his handling of the

³ (1) *In the Matter of Kevin Desbois*, [2010] Hearing Panel of the Central Regional Council, MFDA File No. 200822, Decision dated March 16, 2010;

(2) *In the Matter of Robert Brick*, [2007] Hearing Panel of the Ontario Regional Council, MFDA File No. 200705, Decision dated October 29, 2007;

(3) *In the Matter of Arnold Tonnie*s, [2005] Hearing of the Prairie Regional Council, MFDA File No. 200505, Decision dated June 27, 2005;

(4) *In the Matter of Anthony McPhail*, [2005] Hearing Panel of the Ontario Regional Council, MFDA File No. 200505, Decision dated June 15, 2005.

⁴ (1990), 73 O.R. (2d) 704 (Div.Ct.)

account of GG.

24. According to the Affidavit of Ian Smith, the Respondent contacted Staff by telephone on March 10, 2010 and claimed that he had previously responded to Staff's requests by fax. Staff has no record of receiving a fax from the Respondent and the Respondent has failed to provide Staff with any further written statements or confirmation of the alleged fax.

25. The letter dated March 18, 2010, not only again informed the Respondent that he was required to provide a written statement and documentation, but also that he was required to attend for an interview with Staff on April 1, 2010, at 10:00 a.m. The Respondent did not respond to the letter of March 18, 2020 nor did he attend the April 1, 2010 interview.

26. The Panel is satisfied that the MFDA Staff took all measures and steps necessary to properly inform the Respondent of the allegations against him and that they provided several opportunities for the Respondent to comply with his obligations under the Rules.

27. Enforcement counsel has demonstrated, to the satisfaction of the Panel that the allegation alleged did occur, as noted above from the affidavit filed. The Panel advised Enforcement counsel that the violation had been proven and requested her submissions on penalty, including costs.

28. Enforcement counsel requested a penalty against the Respondent as follows:

- a) Permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1(e) of MFDA By-law No. 1;
- b) A fine in the amount of \$85,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- c) Costs in the amount of \$7,500.00 attributable to conducting the investigation and hearing of the matter pursuant to section 24.2 of MFDA By-law No. 1.

29. In considering the penalty requested, we have considered the primary objectives of securities regulation, being: the protection of the investor, the integrity of the securities markets,

specific and general deterrence, the protection of the MFDA Membership, and protection of the integrity of the MFDA's enforcement process.

30. The Panel recognizes, as noted above, that this is a serious allegation. We are unaware as to whether the Respondent recognizes the seriousness of his improper activity. He subverted the ability of the regulator to perform its function. The Respondent intentionally prevented the regulator from fully investigating his conduct and determining, in an expeditious manner, all of the relevant facts.

31. We are also concerned about any damage that may be caused to the integrity of the capital markets. The penalty that is imposed must deter not only the Respondent but persons who would act in a similar manner. A review of the Guidelines leads us to conclude that the penalty proposed by Enforcement counsel is appropriate and the standards established in earlier cases.

32. The Panel finds that the allegation against the Respondent has been proven:

Allegation #1: Commencing May 22, 2009, the Respondent has failed to provide information concerning his conduct while he was an Approved Person requested by the MFDA during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

33. The Panel imposes the following penalty and costs upon the Respondent:

- a) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA;
- b) a fine in the amount of \$85,000.00; and
- c) costs, payable to the MFDA, in the amount of \$7,500.00.

DATED this 16th day of March, 2011.

“Kathleen Kelly”
Kathleen J. Kelly,
Chair

“Cheryl Hamilton”

Cheryl Hamilton,
Industry Representative

“Robert White”

Robert C. White,
Industry Representative

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