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: Donato Gragasin

Heard: April 22, 2014 in Winnipeg, Manitoba
Reasons for Decision: July 9, 2014

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Robert Hucal	Chair
Patricia Kloepfer	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

Francis Roy	)	Enforcement Counsel, Mutual Fund Dealers Association of Canada
Sam Gabor	)	Counsel for the Respondent

Introduction

1. By Notice of Hearing dated July 19, 2013, the Mutual Fund Dealers Association of Canada ("MFDA") commenced disciplinary proceedings and we were constituted as a Hearing Panel, in the matter of Donato Gragasin ("Respondent") pursuant to Sections 20 and 24 of MFDA By-Law No. 1.

2. The Notice alleged that the Respondent had engaged in conduct contrary to the By-Law, Rules and Policies of MFDA:

> **Allegation #1**: Between October 2006 and July 2008, the Respondent prepared and submitted new account application forms and investment loan applications for 10 clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, thereby failing to observe the high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.
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> **Allegation #2**: Between October 2006 and July 2008, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, features and costs of a leveraged investment strategy that he recommended to 10 clients, thereby failing to ensure that the leveraged investment recommendations were suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.
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> **Allegation #3**: Between October 2006 and July 2008, the Respondent failed to ensure that the leveraged investment recommendations he made to 10 clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to:
>
> a) the client's relevant "Know Your Client" information and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses; and

b) the Member's requirements regarding the use of leveraging, as set out in the Member's policies of procedures.

contrary to MFDA Rules 2.2.1 and 2.1.1.

3. At the opening of the Hearing, Staff tendered an Agreed Statement of Facts signed by the parties April 15, 2014, which was admitted into the record as evidence.

Registration History

4. The Respondent, who was registered as a mutual fund salesperson with WFG Securities of Canada Inc. ("WFG") in Manitoba commencing September 2006; in Alberta commencing October 2006 and in British Columbia commencing July 2007, conducted business at the WFG, Winnipeg Branch, until he was terminated on May 15, 2009. The Respondent is not currently registered in the securities industry in any capacity.

Misconduct

Allegation #1: New account application forms and loan applications

5. At all material times, WFG's policies and procedures required its Approved Persons, including the Respondent, to assess and determine whether a leveraged investment recommendation was suitable for a client having regard to certain criteria. In particular, WFG's policies and procedures required that the suitability be based on the specific investment objectives, needs, investing experience, financial position and their capacity to service debt load.

6. WFG's policies and procedures additionally required that, with respect to the use of leverage, among other things, the following methods to fund a loan are "prohibited": systemic withdrawal plans (SWPs) and cash distribution from underlying funds.

7. The Respondent completed the documents required to implement the Leveraged Investment Strategy in the accounts of the clients, without discussing the contents of the

documents with the clients. The Respondent then had the clients sign the fully completed documents without reviewing the contents of the documents with the clients adequately or at all. As a consequence, the clients' documented Know-Your-Client information did not accurately reflect the clients' actual personal and financial circumstances in material respects.

8. The information recorded on the documents complied or substantially complied with WFG's minimum requirements permitting the use of leveraging. WFG's policies and procedures stated that leveraging was only suitable for those clients that met the following criteria, among other factors:

a) an investment knowledge of "good" or "excellent";
b) a "long term" time horizon; and
c) a "medium" or "high" risk tolerance.

9. The Respondent recorded the investment knowledge of all 10 clients as "good" when he knew or ought to have known that the clients' actual investment knowledge was limited to nil; that all of the clients were new to WFG; and none had any prior experience investing in any types of securities.

10. The Respondent recorded the investment risk tolerance of all 10 clients as "medium" when he knew or ought to have known that the clients' actual investment risk tolerance was "low".

Allegation #2: Failure to explain

11. The Respondent failed to explain:

i) Risks inherent in using borrowed monies to invest;
ii) Risk posed when mutual funds were used as part of the leveraging strategy;
iii) The Risk in the event the value of the mutual funds declined and interest rates increased thereby reducing monthly proceeds and that such events might prevent

repayment of costs of servicing the loans;

iv) That monthly mutual fund payments were partial returns of capital rather than income.

Allegation #3: Unsuitable Leveraging Recommendation

12. The Respondent ignored WFG policies for leveraging. In particular, borrowed monies represented 78%, 74% and 147% of net worth of three sets of clients; the clients had insufficient personal resources to withstand investment losses; the clients were not able to service the loans from their own personal revenue; the risk tolerance was low; and the investment knowledge was limited to nil.

13. In considering our position regarding the proposed penalties, we considered the following facts:

i) all of the investors, it appears, were told that the mutual funds would not decrease in value;
ii) that mutual fund proceeds were guaranteed;
iii) that proceeds received would be sufficient to pay the clients' loan costs;
iv) that proceeds in excess of loan costs would provide a source of income to pay any expenses or to enjoy an improved lifestyle or purchase additional investments;
v) value of mutual funds would grow;
vi) strategy was "low risk".

Misconduct Admitted

14. By engaging in the conduct described above, the Respondent, between October 2006 and July 2008:

a) failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to

MFDA Rule 2.1.1;

b) misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy to the 10 clients, thereby failing to ensure that the Leveraged Investment Strategy was suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and

c) failed to ensure that the leveraged investment recommendations he made to 10 clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to:

   i. the clients' relevant "Know Your Client" information and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses;

   ii. the Member's requirements regarding the use of leveraging, as set out in the Member's policies and procedures.

contrary to MFDA Rules 2.2.1 and 2.1.1.

Penalty

15. Primarily, the goal of the regulatory process is protection of the investor . In addition, we considered the seriousness of the allegations, the Respondent's past conduct, the Respondent's experience and level of market activity, harm suffered to investors and benefits received by the Respondent, the confirmed potential risks and the fact that damage caused to the integrity of the markets called for deterrence to others.

16. In the case at hand, the false information recorded on the KYC and loan application was serious misconduct; the failure to deal with the suitability issue and comply with those obligations was a serious failure on the Respondent's part; the Respondent acknowledged that he did not understand the investment strategy implemented, thereby exposing his clients to

unsuitable investments.

17. The Respondent's conduct caused harm to at least 10 clients. We are advised that, fortunately, WFG provided compensation to each of the affected clients.

18. While conduct was serious, we note that the Respondent's willingness to accept responsibility and general cooperation with Staff likely preclude his posing a risk to investors in the future, were he to return to the capital markets. We also note that no previous disciplinary sanctions were imposed and the Respondent's acknowledgement of the seriousness of his misconduct.

19. There are mitigating factors in considering the penalty. By borrowing funds himself to purchase mutual funds, he has created financial hardship for his family and could be said to have suffered severely for his actions.

20. We should also note that the Respondent had no previous experience using borrowed monies to invest. The training he received was clearly lacking.

21. Interestingly, the facts are not dissimilar from those in Re Sarker, MFDA File No. 201327. That very recent decision has been helpful in our determination.

22. The Respondent did not oppose the penalties proposed, as follows:

a) a 3-year prohibition to conduct securities related business while in the employ of or associated with any MFDA member;
b) a fine of $30,000.00; and
c) costs of $5,000.00

23. The Hearing Panel briefly convened to consider its decision and then confirmed the penalties proposed as being consistent with previous decisions. We agree with Staff's comment in its Submission on page 20 that the proposed penalties are reasonable and proportionate having

regard to the conduct of the Respondent and the circumstances of the case.

DATED this 9th day of July, 2014.

"Robert Hucal"

Robert Hucal
Chair

"Patricia Kloepfer"

Patricia Kloepfer
Industry Representative

"Greg Wiebe"

Greg Wiebe
Industry Representative

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