



**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: Dmitri Graham**

Heard: February 2, 2022 by electronic hearing in Toronto, Ontario  
Decision (Penalty) and Reasons: February 16, 2022

**DECISION (PENALTY) AND REASONS**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.  
Guenther W.K. Kleberg  
Colleen Waring

Chair  
Industry Representative  
Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Dmitri Graham	)	Respondent, not in attendance or represented by
	)	counsel

## I. INTRODUCTION

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The Hearing was held as an electronic hearing on February 2, 2022. Dmitri Graham (the “Respondent”) was not in attendance and not represented by counsel.

2. At the conclusion of the Hearing, the Panel found that the two allegations set out in the Notice of Hearing had been established and reserved its decision on the Penalty. These are our reasons for the findings of misconduct and for the Penalty.

3. From September 16, 2016 to October 20, 2017, the Respondent was registered as a dealing representative with Quadrus Investment Services Inc. (“Quadrus”), a Member of the MFDA. From November 23, 2017 to August 1, 2018, the Respondent was registered as a dealing representative with Sterling Mutuals Inc. (“Sterling”), a Member of the MFDA.

4. On August 1, 2018, the Respondent resigned from Sterling and he is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the London, Ontario area.

5. By a Notice of Hearing dated October 20, 2021, the MFDA commenced a disciplinary proceeding against the Respondent pursuant to sections 20 and 24 of MFDA By-law No. 1.

6. The Notice of Hearing set out the following allegations:

**Allegation #1:** From November 23, 2017 to July 29, 2018, the Respondent opened new accounts, processed Know-Your-Client forms, and processed trade forms without using the necessary due diligence to learn the essential facts relative to the clients, ensuring that transactions processed in their accounts were suitable, or ensuring that the transactions were authorized, contrary to MFDA Rules 2.2.1 and 2.1.1; and

**Allegation #2:** From November 23, 2017 to July 29, 2018, the Respondent signed or submitted documentation obtained by an unregistered individual to conduct securities related business, open new investment accounts, and obtain Know-Your-Client information for clients of the Member, thereby facilitating stealth advising by an unregistered individual, contrary to MFDA Rules 1.1.1(c) and 2.1.1.

7. The Respondent did not file a Reply to these allegations. Nor did he appear on December 14, 2021, to schedule a date for the commencement of the Hearing on the Merits. As stated above, he did not appear in person or by counsel on February 2, 2022, the date of this Hearing. Many attempts to serve documents personally on the Respondent were unsuccessful. On November 11,

2021, according to an affidavit by a process server, the Respondent's father told the process server that his son was "not interested in receiving the documents."

8. The MFDA presented its case against the Respondent at the February 2, 2022 Hearing through a detailed affidavit by Sheila Daneshvaziri, an Investigator in the Enforcement Department of the MFDA. The affidavit is over a thousand pages long, containing, in great detail, through documents, emails, bank statements, trading records, etc. evidence supporting the MFDA's case. It also includes transcripts of an interview with the Respondent by the MFDA before the present proceedings were commenced as well as the Respondent's testimony at an Ontario Securities Commission hearing in a case dealing with a different matter, but which is relevant to the present case.

9. The Panel had no doubt that the two allegations had been fully proved by the MFDA. The key question for the Panel is what the penalty should be, which we will turn to later in these reasons.

## **II. THE ALLEGED IMPROPER CONDUCT**

10. The alleged improper conduct involved what is known as "stealth advising." A description of stealth advising is set out in an MFDA Staff Notice on the subject in 2007. (Staff Notice, November 14, 2007, MSN-0067, "Stealth Advising."). Stealth advising, the Notice states, is:

"...where non-registered individuals have engaged in securities related business through various arrangements with Approved Persons of MFDA Member firms. Under such arrangements, client accounts are set up at the Member with the registered Approved Person as the representative of record, and trading activity is processed using the Approved Person's representative code. However, a non-registered individual services the account and this individual provides advice and makes recommendations to clients with respect to securities in the account, directing the registered Approved Person to place trades...."

11. That description exactly fits this case. In the present case, the Respondent served as the registered Approved Person. Between November 23, 2017 and July 29, 2018 the Respondent executed account forms as the Approved Person of record, when it was the unregistered individual who had provided the investment advice to the clients, collected Know-Your-Client ("KYC") information from the clients, and took the clients' instructions.

12. The unregistered individual was a former Approved Person, Trevor Rosborough ("Rosborough"). He had been a dealing representative with Quadrus from September 5, 2006 to October 31, 2017, when his employment was terminated by Quadrus because of his extensive use

of pre-signed forms. The Respondent had also been an employee of Quadrus during the last year of Rosborough's employment at Quadrus. The subsequent MFDA hearing against Rosborough in July 2018, following a Settlement Agreement, resulted in a fine of \$10,000 (*Re Rosborough* MFDA File No. 201865, July 23, 2018).

13. At about the time of Rosborough's termination from Quadrus, the Respondent and Rosborough entered into an arrangement that contemplated that the Respondent would become registered with Sterling so that the Respondent could open accounts and process securities transactions for Rosborough. The arrangement further contemplated that Rosborough would become registered with Sterling in the future, at which time it was anticipated that the Clients' accounts, notionally serviced by the Respondent, would be transferred to and serviced by Rosborough.

14. Rosborough introduced the Respondent to Sterling, negotiated the Respondent's contract with Sterling, and paid all the Respondent's dealer costs. Rosborough's two assistants were made available to the Respondent without charge. Moreover, the Respondent had the use of Rosborough's office and his car.

15. One reason why the Respondent was interested in joining Sterling, the Respondent claimed, was because he wanted to transfer at a later time to an Investment Industry Regulatory Organization of Canada ("IIROC") firm and he did not want his registration to lapse. In fact, he later did join an IIROC firm, but is now no longer in the securities industry.

16. Rosborough's new clients were transferred to the Respondent. Existing clients at Quadrus were given to another dealing representative at Quadrus. Substantially all of the commissions earned by the Respondent were transferred to Rosborough. The Respondent had none of his own clients.

17. Neither Sterling nor the MFDA knew about these arrangements until investigators at an Ontario Securities Commission hearing into alleged insider trading in a marijuana company by Rosborough, the Respondent, and another person disclosed the stealth advising relationship that is the subject of the present hearing. The OSC brought a disciplinary proceeding against Rosborough for stealth advising, which resulted in Rosborough's registration being suspended for five years. (See the Decision of the OSC Director, dated May 4, 2020, accepting a Settlement Agreement between Rosborough and the OSC, dated April 20, 2020.)

18. Although the Respondent claimed in an almost 200 page interview with the MFDA in January 2020 that he usually met with and advised his clients and did not facilitate stealth advising, the evidence is clear that he had little or nothing to do with them, apart from signing the documents and transferring the commissions to Rosborough. He did admit, however, not meeting with at least 3 clients. The extensive records set out in the Investigator's affidavit do not show a single email from the Respondent to the clients. The bank records show that almost all of the commissions received were paid over to Rosborough.

19. It was Rosborough or his assistants who met with the clients. Rosborough solicited new clients, made investment recommendations, collected KYC information, and took instructions from clients. Rosborough or the assistants supplied by him would then provide Sterling account forms for the clients to execute, bearing the Respondent's name as the responsible Approved Person. After the account forms were signed by the clients, the Respondent would execute the account forms and they would be submitted to Sterling for processing.

20. Between November 2017 and July 2018, during which time Rosborough was not an Approved Person registered as a dealing representative with Sterling, Rosborough engaged in stealth advising with respect to at least 16 to 18 clients using the Respondent as the Approved Person. The evidence is clear about these 16 to 18 clients. It appears more than likely that all 46 of the Respondent's clients were being advised by Rosborough.

21. As contemplated from the beginning of the arrangement, on July 29, 2018 Rosborough later became a registered Approved Person with the Member, Sterling. A day or two later, the Respondent resigned from Sterling, later joining an IIROC firm. As stated previously, he is not now registered in the securities industry in any capacity. Prior to resigning from Sterling, the Respondent asked Sterling to transfer to Rosborough all client accounts for which the Respondent was the responsible Approved Person. Sterling complied with the request.

22. The evidence about the Respondent's conduct is overwhelming. Rosborough cooperated with the Ontario Securities Commission in its charge against him of insider trading and stealth advising. He entered into a Settlement Agreement with the OSC on both the allegations of insider trading and of stealth advising. As stated above, because of his stealth advising Rosborough's registration was suspended for 5 years. Rosborough's evidence of his arrangement with the Respondent is set out in great detail in a lengthy interview (over 300 pages) of Rosborough in May 2019 with Staff of the OSC and Sheila Daneshvaziri, the MFDA Investigator. See also the Stealth

Advising Settlement Agreement, dated April 28, 2020, between the OSC and Rosborough appended to the Decision of the OSC Director, dated May 4, 2020.

23. Of equal, if not greater importance, is the sworn evidence that the Respondent gave at the OSC hearing dealing with the allegation of insider trading by Rosborough, the Respondent, and another person. The Respondent, acting without a lawyer, did not cross-examine Rosborough's testimony about engaging in stealth advising. In giving testimony under oath on his own behalf, the Respondent agreed with a paragraph of the Settlement Agreement between Rosborough and the OSC which stated that Rosborough engaged in stealth advising with respect to approximately 16 to 18 clients through the Respondent. He was asked by counsel for the MFDA:

“Q. Now, moving on to paragraph 25. Do you agree with everything stated in paragraph 25, ... Mr. Graham?”

A. Those are the allegations.

CHAIR: The question, Mr. Graham, is please read paragraph 25 and tell us whether you agree with what's there or not. I know you didn't write them, what's there, but the question is, do you agree with what's there?

MR. GRAHAM: I agree with what's there.”

### **III. THE APPLICABLE MFDA RULES**

24. The Respondent clearly facilitated stealth advising by Rosborough, and thereby contravened a number of MFDA Rules.

25. MFDA Rule 1.1.1(c) prohibits an Approved Person from engaging in securities related business unless the relationship between the Member and any person conducting securities related business on the account of the Member is that of (a) an employer and employee; (b) a principal and agent; or (c) an introducing dealer and carrying dealer. Rosborough had no such relationship with Sterling.

26. Rule 1.1.1 (c) is a “fundamental pillar” of the investor protection regime. As an MFDA Panel stated in *Re Roche* (2014 LNCMFDA 85 at para. 8):

“Rule 1.1.1(c) supports one of the fundamental pillars of the investor protection regime in that it ensures that only individuals who have met the necessary proficiency, good character and financial solvency requirements to be registered as a mutual fund dealing representative, and who remain in good standing in that regard are allowed to engage in securities related business with clients.”

27. A further MFDA Rule contravened by the Respondent is Rule 2.2.1, the “Know-Your-Client” rule, which includes requiring the Approved Person to know such things as “the essential

facts relative to each client and to each order or account accepted” and to ensure that each order “is suitable for the client based on the essential facts relative to the client and any investments within the account.”

28. Rule 2.2.1 has been described by a leading MFDA case as a “Cardinal Rule” and a cornerstone obligation of an Approved Person’s dealings with clients. (See *Re Lamoureux* [2001] ASCD No. 613.) The Respondent obviously breached this Cardinal Rule. It was Rosborough who provided investment recommendations, collected KYC information, and took clients’ instructions. As stated above there is no evidence that the Respondent ever met or communicated with these clients.

29. Finally, the Respondent also breached MFDA Rule 2.1.1, the Rule setting out the standard of conduct for the Member and for Approved Persons. The first three subsections regarding standard of conduct codified by MFDA Rule 2.1.1 require that Members and Approved Persons “deal fairly, honestly and in good faith with its clients”; “observe high standards of ethics and conduct in the transaction of business,” and “not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

30. By facilitating stealth advising by Rosborough, the Respondent breached each of those subsections. Clients’ accounts were serviced by an individual who was unregistered and was not being supervised by Sterling or subject to Sterling’s policies and procedures. Sterling, unaware that the Respondent was facilitating stealth advising by Rosborough, was misled into thinking that clients had at all times been dealing with a properly qualified Approved Person who is, among other things, complying with all applicable MFDA requirements and Sterling’s policies and procedures pertaining to, among other things, investment suitability.

#### **IV. PENALTY**

31. The conduct in the present case was very serious. The conduct went on for about a year. There were, we believe, 46 clients involved, with multiple transactions. The total asset value was over \$7,000,000.

32. The Respondent not only willingly engaged in the improper conduct, but he misled the Member as to what he was doing. He also attempted to mislead the MFDA, by denying in an interview with the MFDA that he had facilitated stealth advising.

33. Moreover, after the Notice of Hearing was issued, he did not participate in the Hearing in any manner. He did not accept service of documents and did not enter a Reply to the Notice of Hearing or attend this Hearing on the Merits. There is no evidence that he realizes the seriousness of his conduct.

34. The Respondent had not previously been the subject of MFDA disciplinary hearings, but he was an Approved Person with the MFDA for only about a year before he engaged in the conduct that is the subject of this Hearing.

35. It is also true that no client complained or was harmed by his conduct. The Respondent was fortunate.

36. Counsel for the MFDA submitted that the appropriate sanction to impose is:

- a) the Respondent be prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member for a period of at least 3 years from the date of the Hearing Panel's order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent pay a fine in the amount of at least \$25,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- c) the Respondent pay costs in the amount of \$10,000 which would constitute part of the costs to Staff of conducting the investigation and prosecution of the Respondent as set out in the Bill of Costs, pursuant to s. 24.2 of MFDA By-law No. 1.

37. We agree with the recommendation as to costs of \$10,000, but believe that the prohibition from conducting securities related business should be longer and that the fine should be higher.

38. Nine cases involving similar conduct were cited to us by Counsel for the MFDA. Each case, of course, depends on its own facts. The present case is more serious than any of those cases. Six of the cases were Settlement Agreements where credit is normally given for the Respondent's cooperation. Those cases therefore, understandably, had a lesser fine and penalty, although in one case the Respondent was permanently barred from re-entry into the industry, but that was because the Respondent said that she did not want to re-enter the industry, which permitted the Panel to bar her from the industry and give a low fine. (See *Re VandenBoomen* MFDA file No. 201306.)

39. We note that the penalty given to Rosborough by the OSC for his conduct with respect to stealth advising was a five-year prohibition. It is hard to say whose conduct was more serious,

Rosborough's or the Respondent's. Perhaps it was Rosborough, who designed the scheme, but to his credit he cooperated with the OSC and entered into a Settlement Agreement for the stealth advising hearing as well as for the insider trading hearing. It seems reasonable to set the prohibition for the Respondent at 5 years, the same as for Rosborough.

40. We have decided to set the monetary penalty at \$30,000, somewhat higher than the suggested amount.

41. We have also added a requirement that in addition to the normal requirements to be re-registered as an Approved Person with the MFDA in the future, the Respondent pass the Ethics and Professionalism Conduct Course offered by the IFSE Institute.

42. We believe that the penalties we have imposed will provide specific deterrence to the Respondent and a significant measure of general deterrence to others in the industry. It is, we believe, also consistent with the MFDA's Sanction Guidelines.

43. We therefore order that:

- a) the Respondent be prohibited from conducting securities related business in any capacity while in the employ of, or in association with, an MFDA Member for a period of 5 years from the date of the Hearing Panel's order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent pay a fine in the amount of \$30,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent pay costs in the amount of \$10,000 which would constitute part of the costs to Staff of conducting the investigation and prosecution of the Respondent as set out in the Bill of Costs, pursuant to s. 24.2 of MFDA By-law No. 1; and
- d) the Respondent will be required to write or rewrite and pass the Ethics and Professionalism Conduct Course offered by the IFSE Institute prior to being re-registered in the mutual fund industry, pursuant to section 24.1.1(f) of MFDA By-law No. 1.

**DATED** this 16<sup>th</sup> day of February, 2022.

“Martin L. Friedland”

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Martin L. Friedland, C.C., Q.C.  
Chair

“Guenther W. K. Kleberg”

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Guenther W. K. Kleberg  
Industry Representative

“Colleen Waring”

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Colleen Waring  
Industry Representative

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