



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels
121 King Street West, Suite 1000, Toronto, Ontario, M5H 3T9
TEL: 416-361-6332 FAX: 416-943-1218 WEBSITE: www.mfda.ca

File No. 200609

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

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: Jean-Pierre Groulx

DISCIPLINARY HEARING

Heard: April 3, 2007
Toronto, Ontario

DECISION and REASONS

Hearing Panel of the Ontario Regional Council:

Thomas J. Lockwood, Q.C.)	Chair
Gary Legault)	Panel Member
Lino Cambone)	Panel Member

Appearances:

H.C. Clement Wai)	for Mutual Fund Dealers Association
)	of Canada
J.L. Denis Cadieux)	for Jean-Pierre Groulx

1. THE ALLEGATION

By Notice of Hearing, dated the 28th day of November, 2006, the following allegation was made against Jean-Pierre Groulx (“Respondent”):

Between 1997 and September 2005, the Respondent misappropriated from his insurance clients the sum of \$1,123,000.00, more or less, and thereby failed to be of such character and business repute as is consistent with the standards prescribed by Rule 2.1.1 of the Mutual Fund Dealers Association of Canada (“MFDA:”)

2. SERVICE

The Notice of Hearing provided for a First Appearance before the Hearing Panel at 121 King Street West, Suite 1000, Toronto, Ontario on Monday, January 15, 2007, at 10:00 a.m.

On November 28, 2006, J.L. Denis Cadieux, counsel for the Respondent, advised counsel for the MFDA that he would accept service of the Notice of Hearing on behalf of his client. Service of the Notice of Hearing and other related documents were thereupon effected on Mr. Cadieux, as set out in a December 4, 2006 Affidavit of Service of Josie Costantini, which Affidavit was marked as Exhibit 2 at the Hearing.

The First Appearance was held by telephone conference call before this Hearing Panel on January 15, 2007. At that time, Mr. Cadieux acknowledged receipt of service of the Notice of Hearing on behalf of the Respondent. After hearing submissions, and on the consent of all parties, we ordered that the Hearing on the merits of this matter would take place before the Hearing Panel at 121 King Street West, Suite 1000, Toronto, Ontario on Tuesday, April 3, 2007, commencing at 10:00 a.m. The Order further directed that the Respondent was to serve and file a Reply, by January 19, 2007, that MFDA Staff was to provide pre-Hearing Disclosure to the Respondent, by February 1, 2007, in accordance with Rule 10.4 of the MFDA Rules of Procedure, and that the MFDA Staff was to provide to the Respondent, by February 28, 2007, the evidence it

would be relying on in support of the allegations, in accordance with Rules 10.1 and 11.1 of the MFDA Rules of Procedure.

3. THE AGREED STATEMENT OF FACTS

At the commencement of the Hearing on the merits on April 3, 2007, the Hearing Panel was advised that the parties had executed an Agreed Statement of Facts. Mr. Cadieux, who was present at the Hearing on the merits by way of telephone, assured the Hearing Panel that, prior to executing the Agreed Statement of Facts, the Respondent had been fully informed of his rights and had executed the document freely and voluntarily. On consent, the Agreed Statement of Facts was entered as Exhibit 6.

The Agreed Statement of Facts reads as follows:

“I. INTRODUCTION

1. By Notice of Hearing dated November 28, 2006, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Jean-Pierre Groulx (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing sets out the following allegation:

Allegation:

Between 1997 and September 2005, the Respondent misappropriated from his insurance clients the sum of \$1,123,000, more or less, and thereby failed to be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

II. IN PUBLIC / IN CAMERA

3. The Respondent and Staff of the MFDA (“Staff”) agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out and the documents referred to in Part IV herein. The Respondent admits the facts contained herein constitute misconduct as alleged the Notice of Hearing for which the Respondent may be

penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1. Staff and the Respondent agree that the penalties as set out in Part V herein are appropriate in the circumstances.

IV. AGREED FACTS

5. Staff and the Respondent agree to make submissions based only on the agreed facts set out below, the Exhibits attached and no other facts.

Registration History

6. From June 21, 2004 to October 19, 2005, the Respondent was registered in Ontario as a mutual fund sales salesperson for Optifund Investments Inc. (“Optifund”).

7. Optifund has been a member of the MFDA since December 9, 2002.

8. On October 19, 2005, the Respondent was terminated by Optifund. The Respondent is not currently registered in the securities industry in any capacity.

Allegation

9. The Respondent held a Level II life insurance agent’s license with the Financial Services Commission of Ontario (“FSCO”).

10. On February 21, 2006, the Respondent signed Minutes of Settlement with FSCO admitting to two allegations of misconduct as set out below:

a) From 1997 to September 2005, the Respondent accepted approximately \$2,663,000 from 43 insurance clients to purchase insurance products on their behalf. Of this amount, the Respondent admitted to misappropriating approximately \$1,123,000.

b) The Respondent operated his insurance business using the names of “Services Financiers JPG Financial Services” and “Jean-Pierre Groulx Assurance”. The Respondent admitted that neither of these two insurance businesses were licensed in Ontario to conduct business in the insurance industry, as required by the *Insurance Act*, R.S.O. 1990, c.I.8.

Attached and marked as **Exhibit “A”** to this Agreed Statement of Facts is a copy of the Minutes of Settlement dated February 21, 2006.

11. As a term of the settlement, the Respondent gave his consent to have FSCO's Superintendent of Financial Services issue an order revoking his life insurance agent's license and agreed and undertook not to reapply for licensing by FSCO for a period of 5 years from the date of the order.

12. By Order dated February 28, 2006, FSCO's Superintendent of Financial Services approved the Minutes of Settlement and revoked the Respondent's life insurance license. Attached and marked as **Exhibit "B"** to this Agreed Statement of Facts is a copy of the Order dated February 28, 2006.

13. The Respondent is currently in bankruptcy proceedings. Attached and marked as **Exhibit "C"** to this Agreed Statement of Facts is a copy of the Notice of First Meeting of Creditors.

Misconduct Admitted

14. In light of the misconduct admitted to by the Respondent giving rise to the findings and order of FSCO, the Respondent admits that he is not of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

V. AGREED PENALTIES

15. The Respondent and Staff agree that the following penalty is appropriate in the circumstances:

(a) 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 MFDA Member, pursuant to s. 24.1.1 of By-law No. 1.

Dated at Toronto, this 29th day of March, 2007.

"Jean-Pierre Groulx"

"Shaun Devlin"

Jean-Pierre Groulx
Respondent

Shaun Devlin
Vice-President, Enforcement – MFDA"

4. THE LAW

Enforcement Counsel presented the Hearing Panel with Written Submissions as well as a Casebook, for which we are indebted. Counsel for the Respondent took no issue with these Submissions.

MFDA Rule 2.1.1 provides as follows:

“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; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1., or as may be prescribed by the Corporation.”

In paragraph 14 of the Agreed Statement of Facts, the Respondent admitted that, owing to the acknowledged conduct giving rise to the findings and Order of the Financial Services Commission of Ontario, he is not of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

In addition, MFDA Hearing Panels have consistently held that misappropriation of client funds by an Approved Person is dishonest conduct that is inconsistent with the standard of conduct set out in MFDA Rule 2.1.1.

In the Matter of Raymond Brown-John, [2005] Hearing Panel of the Pacific Regional Council, MFDA File No. 200502.

In the Matter of Earl Crackower, [2005] Hearing Panel of the Ontario Regional Council, MFDA File No. 200506.

In the Matter of Stephan Headley, [2006] Hearing Panel of the Ontario Regional Council, MFDA File No. 200509.

In the Matter of Donald Kent Coleman, [2006] Hearing Panel of the Ontario Regional Council, MFDA File No. 200511.

After considering the Agreed Statement of Facts and the submissions of counsel for both MFDA Staff and the Respondent, we are unanimously of the view that the allegation set out in the Notice of Hearing has been established.

5. PENALTY

MFDA Staff and the Respondent jointly submitted that the following penalty was appropriate in the circumstances:

- (a) A permanent prohibition of the authority of the Respondent to conduct 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 By-Law No. 1.

6. FACTORS TO BE CONSIDERED

A number of previous Hearing Panels have considered in detail the factors to be considered in assessing penalties in a case of this nature. Succinctly, these factors are:

- (a) The primary goal of securities regulation is the protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557.

- (b) In this protective role, an MFDA Hearing Panel should act to remove from the capital markets those whose past conduct is so abusive as to warrant apprehension of further conduct detrimental to the integrity of the capital markets.

Headley, supra, at page 24.

In the Matter of Robert Roy Parkinson [2005] Hearing Panel of the Ontario Regional Council, MFDA File No. 200501.

In the Matter of Mithras Management Ltd. et al (1990), 13 O.S.C.B. 1600.

- (c) In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

- (a) the protection of the investing public;
- (b) the integrity of the securities markets;
- (c) specific and general deterrence;
- (d) the protection of the MFDA's membership; and

- (e) the protection of the integrity of the MFDA's enforcement processes.

Parkinson, supra, at page 21.

In the Matter of Arnold Tonnies [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503.

Headley, supra at page 24.

- (d) Additional factors that Hearing Panels frequently consider when determining an appropriate penalty include the following:

- (a) The seriousness of the allegations proved against the respondent;
- (b) The respondent's past conduct, including prior sanctions;
- (c) The respondent's experience in the capital markets;
- (d) The level of the respondent's activity in the capital markets;
- (e) Whether the respondent recognizes the seriousness of the improper activity;
- (f) The harm suffered by investors as a result of the respondent's activities;
- (g) The benefits received by the respondent as a result of the improper activity;
- (h) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- (i) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- (j) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity; and

(k) Previous decisions made in similar circumstances.

Parkinson, *supra*, at page 22.

Tonnies, *supra*, at page 23.

Headley, *supra*, at page 25.

(e) MFDA Hearing Panels have consistently imposed permanent prohibitions on individuals who misappropriate client funds.

Crackower, *supra*.

Parkinson, *supra*.

Brown-John, *supra*.

Headley, *supra*.

(f) In this case, the Respondent has admitted misappropriating funds from his insurance clients in the amount of approximately \$1,123,000.00. There is no evidence before us that the Respondent has made any restitution to these clients. The evidence is that the Respondent is currently in bankruptcy proceedings.

7. PERMANENT PROHIBITION

In our view, it is incumbent upon this Hearing Panel to communicate to the Respondent, to the public and to the mutual fund industry as a whole that serious consequences will befall those who are engaged in activities similar to those of the Respondent. We are unanimously of the view that there should be a permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or associated with any MFDA Member.

8. FINES

Section 24.1.1(b) of MFDA By-Law No. 1, provides that a Hearing Panel has, *inter alia*, the power to impose a fine not exceeding the greater of:

- (i) \$5,000,000.00 per offence; and
- (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation.

The Agreed Statement of Facts did not request the imposition of a fine in the particular circumstances of this case. While, normally, a fine would be imposed in the case of misappropriation, taking into account the fact that this was a joint submission and also that the misappropriations occurred in connection with the Respondent's insurance related business and not in connection with his mutual fund clients, we have agreed with the joint recommendation and will not impose a fine.

9. COSTS

Section 24.2 of By-Law No. 1 provides that:

“A Hearing Panel may in any case in its discretion require that the . . . Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel and any investigations relating thereto.”

In his written submissions, counsel for the MFDA stated:

“In light of the Respondent's cooperation in entering into an Agreed Statement of Facts and that he is currently in bankruptcy proceedings, Staff is not seeking costs for the investigation and prosecution of this matter.”

Accordingly, there shall be no order as to costs.

10. PENALTY IMPOSED

A permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or associated with, any MFDA Member.

Dated at Toronto, this 9th day of May 2007.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.

Chair

“Gary Legault”

Gary Legault

Panel Member

“Lino Cambone”

Lino Cambone

Panel Member

Doc #108661