



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: Michael Guglielmi

Heard: January 5, 2016 in Toronto, Ontario
Reasons for Decision: January 14, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler
Guenther Kleberg
Kenneth P. Mann

Chair
Industry Representative
Industry Representative

Appearances:

Francis Roy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Bruce O'Toole)	Counsel for the Respondent
)	

Introduction

1. By Notice of Hearing dated May 25, 2015, the Mutual Fund Dealers Association of Canada (“the MFDA”) commenced disciplinary proceedings against Michael Guglielmi (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.
2. The Respondent and the MFDA agreed upon the relevant facts. The Respondent admitted that the facts disclosed that he had engaged in professional misconduct. The parties agreed that the appropriate penalty was a one year prohibition, a fine in the amount of \$15,000 and costs in the amount of \$10,000.
3. After hearing the submissions of the parties, we found that the Respondent had indeed engaged in professional misconduct as alleged. With one refinement to the proposed penalty, which the parties also agreed upon, we accepted the joint submission with written reasons to follow. These are our written reasons.

Agreed Facts

Registration History

4. From December 16, 2008 to May 1, 2102, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.
5. From October 5, 2012 to April 17, 2013, the Respondent was registered in Ontario as a mutual fund salesperson with Hub Capital Inc. (“HUB”), a Member of the MFDA.
6. At the material time, the Respondent conducted business in Vaughan, Ontario. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1 – Facilitation of Stealth Advising

7. While the Respondent was registered with Quadrus, he, together with WB, PA and WM who were registered as mutual fund salespersons, conducted business under the trade name, Real Wealth Investments (“RWI”) at the same branch location (the “RWI Branch”). At that time, WB and PA were registered with Quadrus and WM was registered with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.

8. In or about April 2012, the Respondent, WB and PA resigned from Quadrus, and WM resigned from Investia.

9. WB, PA and WM did not become registered in the securities industry at any time after April 2012.

10. On October 5, 2012, the Respondent became registered as a mutual fund salesperson with HUB. He continued to conduct business at the RWI Branch though he no longer conducted business under the trade name RWI.

11. Although WB, PA and WM were no longer registered in the securities industry, they continued to conduct insurance and mortgage broker business with RWI and regularly attended the RWI Branch.

12. Commencing in or about October 2012, WB, PA and WM informed the Respondent that certain individuals wanted to purchase mutual funds. WB, PA and WM requested that the Respondent provide them with account forms (including Know-Your-Client Information Forms, Orders Tickets and Dealer Representative Change Forms) to open accounts for the individuals at HUB and process trades in those accounts. WB, PA and WM also requested that the Respondent facilitate this activity by processing all of the account forms under his HUB representative code. The Respondent agreed to participate in this arrangement with WB, PA and WM (the “Stealth Advising Arrangement”).

13. In accordance with the Stealth Advising Arrangement, between October 2012 and April 17, 2013, WB, PA and WM met with at least 12 individuals in the absence of the Respondent to complete the account forms. WB, PA and WM provided the completed account forms to the Respondent, who signed the documents and submitted them to HUB for processing using his representative code.

14. WB, PA and WM were not registered in the securities industry and did not possess the necessary proficiencies to advise or trade in securities on behalf of the 12 individuals. Furthermore, WB, PA and WM were not in an employer-employee relationship, a principal-agent relationship or an introducing dealer-carrying dealer relationship with HUB, as required by MFDA Rule 1.1.1(c).

15. HUB was not aware of the Stealth Advising Arrangement and, as a consequence, the activities of WB, PA and WM were not subject to supervision by HUB.

Allegation #2 – Failing to Know the Client and Assess Suitability

16. By participating in the Stealth Advising Arrangement or, alternatively, by relying solely upon the Respondent's mail communications with the 12 clients, the Respondent opened accounts and processed trades for the 12 clients, without fulfilling his obligations to:

- (a) learn the essential facts relative to each client and each order or account accepted;
- (b) ensure that the acceptance of each order was within the bounds of good business practice;
- (c) ensure that each order accepted or recommendation made for each account was suitable for the client and in keeping with the client's investment objectives; and
- (d) explain to the individuals the features and risks of the mutual fund trades he was processing on their behalf.

Misconduct Admitted

17. By engaging in the conduct described above, the Respondent admits that, between October 2012 and April 17, 2013, he:

(a) allowed WB, PA and WM, all unregistered individuals, to:

- i. open new accounts at the Member for at least 12 individuals that the Respondent never met; and
- ii. recommend and process trades in the accounts of the 12 individuals using the Respondent's representative code;

thereby facilitating stealth advising by WB, PA and WM, contrary to MFDA Rules 1.1.1(c) and 2.1.1 ("Allegation #1"); and

(b) opened new accounts and processed trades for at least 12 individuals without performing the necessary due diligence to learn the essential facts relative to the clients and failing to ensure that the investments were suitable and appropriate for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1. ("Allegation #2)

Additional Facts

18. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

19. The Respondent has cooperated with Staff throughout the course of Staff's investigation and these proceedings.

20. There is no evidence that the Respondent's conduct resulted in harm to investors.

21. By admitting professional misconduct, as well as the underlying facts, the Respondent has demonstrated remorse, and saved the MFDA significant time and resources that would have accompanied a fully contested hearing.

Analysis

22. The Respondent admits that, between October 2012 and April 17, 2013, he facilitated stealth advising by WB, PA and WM, in relation to at least 12 clients and opened new accounts and processed trades for those clients without performing the necessary due diligence to learn the essential facts relative to the clients and failing to ensure that the investments were suitable and appropriate for the clients.

23. The parties agree that the appropriate penalty in the circumstances is a one year prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any Member of the MFDA, a fine in the amount of \$15,000, and costs in the amount of \$5,000.

24. In our view, the proposed penalty is consistent with existing jurisprudence and the Penalty Guidelines. It recognizes the seriousness of the misconduct. It adequately addresses specific and general deterrence, as well as protection of the investing public, the MFDA's membership, the integrity of the securities markets and the MFDA's enforcement processes. It also takes into consideration the mitigating factors in this case, including the Respondent's cooperation, acknowledgement of responsibility, and absence of any prior disciplinary record. We also note the absence of any evidence of harm to investors, despite the obvious risk to clients associated with his misconduct. Finally, we recognize that there is a public interest in accepting negotiated joint submissions as to penalty unless the joint submissions fall outside of the range of reasonable outcomes.

25. Counsel for both parties alerted us to a range of penalties imposed by other hearing panels for related misconduct. Each case is distinguishable, to a significant extent, by its own facts. Some of the cases involve more serious misconduct and a correspondingly more serious penalty. Suffice it to say, the proposed penalty here falls squarely within the range of reasonable outcomes available in the circumstances. Accordingly, we accepted it with one refinement.

26. The joint submission did not provide for terms of payment of the fine or the costs award. In our view, any order in which a fine and/or costs are imposed should be accompanied by terms of payment. Otherwise, it is unknown whether and when a respondent is in breach of the order. If pursuant to a settlement agreement or a joint submission, the proposed fine or costs are already held in escrow by the MFDA pending the hearing, the hearing panel's order can simply reflect that the fine or costs be paid forthwith. Otherwise, a hearing panel can impose a fixed length of time for payment of the full amounts owing or payment by specified installments. Another option available, which we have chosen here, is not to impose a fixed length of time for payment, but instead couple the fine and costs order with a condition that the Respondent not be entitled to be re-registered until the fine and costs have been fully paid. We understand that the Respondent desires to be re-registered once his one-year prohibition has ended. Although we were advised that, practically speaking, the Respondent would not be permitted to re-register while the costs and fine remain unpaid, we were also advised that no legislative provision or by-law mandates that result. Accordingly, it is important to incorporate that condition in our order.

Order

27. We made an order in accordance with these reasons.

28. We are grateful to Mr. Roy and Mr. O'Toole for their assistance.

DATED this 14th day of January, 2016.

“Mark J. Sandler”

Mark J. Sandler
Chair

“Guenther Kleberg”

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Industry Representative

“Kenneth P. Mann”

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Industry Representative

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