



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: Youssef Hamzi

Heard: June 18, 2012 in Toronto, Ontario
Reasons for Decision: June 26, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
David W. Kerr	Industry Representative
Brian Nowak	Industry Representative

Appearances:

H. C. Clement Wai)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
David Doney)	Counsel for the Respondent, Youssef Hamzi
)	

1. By Notice of Hearing dated October 7, 2011, a hearing panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to conduct a telephone conference call to consider a disciplinary proceeding commenced by the MFDA against Youssef Hamzi (“Respondent”). Subsequent telephone calls were held which resulted in setting a fixed date for hearing on June 18, 2012. On June 18, 2012, at the commencement of the hearing, we were advised that the matter had been resolved save and except for the issue of penalty.

ALLEGATIONS

2. The Respondent admits that:

Allegation #1: Between January 2008 and October 2008, the Respondent engaged in personal financial dealings with client AG by accepting a total of \$54,000 more or less from client AG which the Respondent has failed to repay or otherwise account for, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #2: Commencing October 2010, the Respondent has failed or refused to provide documents and information, and to attend an interview requested by the MFDA during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

3. We heard submissions from Staff and counsel for the Respondent concerning the facts of this matter. They confirmed that the misconduct alleged in the allegations above were agreed to by the Respondent. In view of these admissions, it is not necessary to set out the facts in great detail save and except as follows.

THE FACTS

4. The Respondent was registered as a mutual fund salesperson in March 2005. He resigned on September 14, 2009 and is not registered in the securities industry in any capacity at this time.

5. The Respondent deposited into his personal account a total of \$54,000 by way of personal cheques received from a client for investment purposes. None of the investments were

made. MFDA Staff commenced an investigation of the Respondent's activities. The Respondent failed to cooperate with the investigation by failing to provide documents and information at certain interviews and by failing to attend subsequent interviews.

6. The Respondent received a number of cheques from January 2008 up to and including October 2008 from the client. The client believed that he had paid \$39,000 to the Respondent. Subsequent examination of the bank records indicated that the total should have been \$54,000 rather than \$39,000. Staff had been unable to determine why there is a \$15,000 difference between the sum of \$39,000 which the Respondent admits receiving and the sum of \$54,000 which the bank records confirmed. The Respondent was subsequently charged by the police with fraud over \$5,000. That matter was resolved by way of a plea of guilty and at that time the Respondent was ordered to repay \$42,000. The \$12,000 difference between the \$42,000 and the \$54,000, in the Crown's view, is represented by a loan rather than an advance because of the word loan endorsed upon the cheque dated October 11, 2008.

7. With reference to Allegation #2, the Respondent attended on May 18, 2010 to answer questions. He undertook at that time to provide further information and documents which he failed to do. A new interview was scheduled for October 4, 2010. At that time the Respondent requested that the interview be adjourned to allow him to retain counsel. The Respondent undertook to fulfill the undertakings provided in the original interview by October 11, 2010. The Respondent did not identify his counsel nor did he respond to the request for undertakings. In essence, as of October 2010, the Respondent failed to provide documents and information or to attend a meaningful interview, contrary to Section 22.1 of MFDA By-law No. 1.

SUBMISSIONS AS TO PENALTY

8. As a panel, we are obviously concerned with the type of conduct as described above and as detailed in the submissions made by counsel for the MFDA. This type of conduct raises a number of concerns that include the following:

- (a) The public interest and whether the penalty to be imposed will protect investors;
- (b) Whether the penalty is reasonable and proportionate having regard to the conduct of the Respondent and the issues of both specific and general deterrence;

- (c) Whether the penalty imposed will prevent the type of conduct which has been detailed by counsel for the MFDA;
 - (d) Whether the penalty will foster confidence in the integrity of the Canadian capital markets;
 - (e) Whether the penalty will foster confidence in the integrity of the Mutual Fund Dealers Association of Canada;
 - (f) Whether the penalty will foster confidence in the regulatory process itself.
9. Counsel for the MFDA suggested the following penalty:
- (a) A permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member; and
 - (b) A fine in the range of \$75,000 to \$100,000;
 - (c) Costs in the range of \$7,500 to \$10,000.
10. We have considered all of the above factors together with the submissions as to penalty made by counsel for the MFDA. Those concerns which follow are in addition to the concerns that we have expressed earlier:
- (a) The seriousness of the allegations accepted by the Respondent;
 - (b) The Respondent's past conduct;
 - (c) The Respondent's experience and level of activity in the capital markets;
 - (d) Whether the Respondent recognizes the seriousness of the improper activity;
 - (e) The harm suffered by investors as a result of the Respondent's activities;
 - (f) The benefits received by the Respondent as a result of the improper activity;
 - (g) The risk to investors and the capital markets in the jurisdiction, if the Respondent were to continue to operate in capital markets in the jurisdiction;
 - (h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
 - (i) 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;

- (j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) Previous decisions made in similar circumstances.

11. Counsel for the MFDA had made reference to the Penalty Guidelines. The Penalty Guidelines suggest that in the event of misconduct as alleged herein that the fine should be a minimum of \$25,000. The Guidelines suggest that for personal financial dealings a minimum fine of \$10,000 should be imposed and a minimum fine in the amount of \$50,000 for failure to cooperate. Counsel for the MFDA suggested that a fine in the range of \$75,000 to \$100,000 together with costs in the range of \$7,500 to \$10,000 should be imposed.

12. Counsel for the MFDA points out in his submissions the following reasons for these penalties:

- (a) The seriousness of the misconduct including misuse of client funds and failure to cooperate with the MFDA which undermines the MFDA's ability to determine the full nature and extent of the complaints.
- (b) There is a great concern that there has been substantial investor harm. Notwithstanding that a payment of \$42,000 has been made this amount does not match the total of cheques drawn nor does it provide the lost interest which would have been earned on money otherwise thought to be invested.
- (c) The Respondent's failure to cooperate was intentional as was his failure to provide documents and information and to attend an interview with MFDA Staff. This failure to conduct an interview has left the MFDA in the position where it does not know what benefits were received by the Respondent or have other clients been affected.

13. Mr. Doney, on behalf of the Respondent, advised the Panel that the Respondent is a 32-year-old married person with four children. He has lost his employment which he originally had. He is presently employed receiving \$2,000 per month. He has never had any disciplinary problems prior to this particular matter. The fraud charges had been disposed of by a plea of guilty which resulted in the payment of \$42,000 as noted above and a conditional sentence.

14. Mr. Doney submits that the failure to cooperate resulted from the fact that the Respondent did not retain counsel until quite late in the proceedings. The Respondent was concerned that any discussions that he had with the MFDA would affect any civil actions which might arise and any criminal charges that might be laid and accordingly he did not wish to make disclosure. Counsel points out that the \$12,000 discrepancy between the amount paid and the amount alleged to be taken was considered by the Crown Attorney to be a loan. The client did not appear to give evidence so we are unable to make any resolution of this particular problem but for our purposes it is not necessary for us to do so. Notwithstanding that discrepancy the Respondent clearly admits that the client has suffered harm. The Respondent admits that he is responsible for his conduct and accepts responsibility for the loss suffered by the client. He is a person of modest means and, therefore, cannot pay a large fine. He has limited income and a number of family responsibilities.

15. We are of the view that in view of the seriousness of the Respondent's conduct the penalty as suggested by counsel for the MFDA can be considered to be very reasonable and if anything on the low side. Our consideration of the entire matter includes the fact that the Respondent has finally come to grips with this particular issue and resolved it on the day of trial. This resolution prevented a lengthy hearing. We observe that the extensive preparation necessary for the hearing has been done by counsel for the MFDA so that he would be ready to proceed to trial. We believe the requested costs of \$10,000 are appropriate. We believe on all of the circumstances discussed above that the appropriate penalty is \$75,000.

PENALTY

16. Accordingly, on the basis of these reasons, the following penalties and costs are imposed upon the Respondent:

- (a) A permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member;
- (b) A fine of \$75,000; and
- (c) Costs of \$10,000.

17. At the conclusion of the hearing, we advised counsel that we would provide written

reasons with respect to penalty which we have now done as herein set forth.

DATED this 26th day of June, 2012.

“John Webber”

The Hon. John B. Webber, Q.C,
Chair

“David Kerr”

David W. Kerr,
Industry Representative

“Brian Nowak”

Brian Nowak,
Industry Representative

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