



File No. 200702

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: LORNE HENRY

DISCIPLINARY HEARING

Hearing: May 11, 2007
Decision: May 11, 2007
Written Reasons: May 29, 2007

DECISION AND REASONS

Hearing Panel of the Ontario Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.
Robert Hovianseian
Robert White

Chair
Industry Representative
Industry Representative

Appearances: Jason Bennett for the Mutual Fund Dealers Association of
Canada

The Respondent neither appeared nor was represented by counsel.

On March 6, 2007, the Mutual Fund Dealers Association of Canada (“MFDA” or the “Association”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1, advising Lorne Henry (the “Respondent”) that disciplinary proceedings have been commenced against him, alleging the following violations of the By-laws, Rules or Policies of the Association:

Allegation # 1: That, between February 2002 and June 2003, he misappropriated approximately \$317,650 from 12 individuals, including nine mutual funds clients, \$298,200 of which he failed to return or otherwise account for, and thereby failed to deal fairly, honestly and in good faith with those individuals and engaged in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation # 2: That, in June 2003, he borrowed approximately \$3,500 from two mutual fund clients, thereby placing his personal interests above those of the clients and giving rise to a conflict of interest that he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

Allegation # 3: That, commencing July 2006, he failed to provide a report in writing as requested by the MFDA in the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

The particulars, as set out in the Notice of Hearing, are as follows:

Registration History

1. The Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group”) from July 1991 to July 11, 2003.

2. Investors Group became a member of the MFDA on March 7, 2002.
3. On July 11, 2003, Investors Group terminated the Respondent as a result of one of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1: Misappropriation

4. Between February 2002 and June 2003, the Respondent solicited and accepted a total of \$317,650 from 12 individuals, including nine mutual fund clients (“the investors”), purportedly to be invested in non-mutual fund investments outside the accounts and facilities of Investors Group.
5. The Respondent led the investors to believe that their ‘private’ investments would be secure and would yield a higher rate of return than mutual funds or other investments. In the case of NM, the Respondent led the mutual fund client to believe that her money would be placed in an “investment opportunity with a car broker providing a return of 25% per month for 2 months” and assured her that the car broker was “a good client.”
6. The investors provided the Respondent with cash, personal cheques payable to the Respondent, or electronic funds transfers to an account controlled by the Respondent for the purpose of investing in the purported investments.
7. In exchange, the Respondent provided the investors with handwritten notes promising to repay their principal plus as much as 30% interest in as little as 30 days. In addition to setting out the terms of the ‘investment’, the notes contained a statement that investors would have a claim against the Respondent’s estate “if

anything should happen” to him. In some cases, the Respondent offered his “personal guarantee” for the return of all monies provided to him.

8. In response to a complaint received in June 2003, Investors Group met with mutual fund client SA on July 4, 2003 to discuss certain dealings with the Respondent. SA provided Investors Group with a note, handwritten by the Respondent and dated March 25, 2002, in which the Respondent promised to “invest privately [sic] for [SA] \$50,000 for one year at the rate of 20%”. SA also produced two personal cheques he made payable to the Respondent in the amount of \$44,000 and \$6,000, respectively; his Investors Group portfolio statement listing 17 RRSP redemptions between February 25, 2002 and March 26, 2002 totaling approximately \$56,000; and a personal cheque in the amount of \$20,000 from the Respondent made payable to SA which was returned for non-sufficient funds.
9. On July 11, 2003, Investors Group terminated the Respondent.
10. On August 14, 2003, the Respondent admitted to Investors Group that he had a gambling problem and had been soliciting money from mutual fund clients and other individuals, either as personal loans or for the purpose of private investment, in order to fund his gambling habit. The Respondent provided Investors Group with the names of eight individuals and one couple (SA, DB, MB, GG, DM, NM, PP, MP and MM/VM), including eight mutual fund clients, from whom he admitted receiving a total of \$171,000.
11. Investors Group subsequently identified four other individuals or couples (KJ/DC, TK, MO and DP), including two mutual fund clients, who provided monies to the Respondent which he failed to return or otherwise account for.

12. In summary, as set out in the table below, the Respondent received a total of \$317,650 from 12 individuals or couples, including nine mutual fund clients, of which amount he misappropriated \$298,200:

	Investor Name(s)	Mutual Fund Client?	Amount(s) Received	Date(s) Received	Amount(s) Repaid by Respondent
1.	SA	Yes	\$50,000	March 25, 2002	\$0
2.	DB	Yes	\$32,000	Unknown	\$0
3.	MB	Yes	\$50,000 \$10,000	February 15, 2002 May 29, 2003	\$0
4.	GG	Yes	\$3,000	January 16, 2003	\$0
5.	KJ/DC	No	\$45,000	June 11, 2003	\$0
6.	TK	Yes	\$4,900	Unknown	\$0
7.	DM	Yes	\$5,000 \$2,000 \$6,750 \$6,000 \$9,000 \$15,000	July 16, 2002 August 21, 2002 November 11, 2002 March 14, 2003 March 21, 2003 June 9, 2003	\$5,000 \$2,000 \$6,750 \$0 \$0 \$4,500
8.	NM	Yes	\$20,000	February 11, 2003	\$0
9.	MO	Yes	\$6,000 \$2,000	July 25, 2002 November 18, 2002	\$1,200
10.	PP	No	\$15,000	Unknown	\$0
11.	DP	No	\$6,000	July 16, 2002	\$0
12.	MP	Yes	\$10,000 \$10,000 \$8,000 \$2,000	February 4, 2003 February 8, 2003 April 29, 2003 May 24, 2003	\$0
			\$317,650		\$19,450

13. The Respondent did not disclose to Investors Group that he was placing mutual fund clients in purported private investments. None of the monies advanced to the Respondent were ever paid to, received by, or otherwise reflected in the books and records of Investors Group.
14. Investors Group has taken steps to compensate some of the individuals affected by the Respondent's misconduct.
15. By soliciting and accepting monies from the investors, and failing to return or otherwise account for the monies, the Respondent failed to deal fairly, honestly and in good faith with the investors and engaged in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1(a) and (c).

Allegation #2: Conflict of Interest – Personal Financial Dealings

16. During the period in which the Respondent was soliciting and accepting monies for private investment purposes as outlined above, the Respondent personally borrowed a total of \$3,500 from mutual fund clients MM and VM on June 24, 2003 and June 25, 2003. The Respondent promised to repay these personal loans within five days, which he failed to do. The Respondent has not repaid or otherwise accounted for any of the monies he received from MM and VM.
17. The Respondent did not disclose to Investors Group that he had entered into personal financial dealings with these mutual fund clients.
18. By soliciting and receiving personal loans from mutual fund clients MM and VM, the Respondent entered into personal financial dealings with clients which placed his personal interests above those of the clients, thus giving rise to a conflict of

interest that he failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rule 2.1.4.

Allegation #3: Failure to Cooperate

19. In May 2006, the MFDA was provided with a copy of a Statement of Claim in respect of an action commenced by one of the investors against the Respondent and Investors Group.
20. By letter dated July 4, 2006, the MFDA asked the Respondent to submit a report in writing concerning the circumstances giving rise to his termination by Investors Group. The Respondent was asked to provide a written response by no later than July 25, 2006, however the Respondent failed to do so.
21. By letter dated July 26, 2006, the MFDA made a second request that the Respondent submit a written report concerning his July 2003 termination by no later than August 12, 2006. The Respondent was reminded of his obligation to provide such a report as set out in section 22.1 of MFDA By-law No. 1. Once again, the Respondent failed to respond to this request.
22. By letter dated August 21, 2006, the MFDA confirmed that the Respondent had failed to reply to previous requests and reminded the Respondent of his obligation to provide a written report pursuant to section 22.1 of MFDA By-law No. 1. The Respondent was permitted a further extension until September 5, 2006 to submit his report and was advised that failure to do so may result in the commencement of disciplinary proceedings against him for failure to cooperate with the MFDA in the course of an investigation.

23. By letter dated November 3, 2006 and an email message of the same date, the MFDA notified the Respondent that he had failed to provide a written report regarding his termination, contrary to section 22.1 of MFDA By-law No. 1. The Respondent was granted until November 15, 2006 to comply with section 22.1 and was cautioned that should he fail to respond by that date, the MFDA would consider initiating disciplinary proceedings against him for failure to cooperate.
24. On November 4, 2006, the Respondent contacted the MFDA by telephone and agreed to provide the MFDA with a written response together with certain documents by November 15, 2006. However, the Respondent failed to provide his written response or any documentation as agreed.
25. To date, the Respondent has failed to submit a report in writing concerning the circumstances giving rise to his termination by Investors Group in July 2003 and, as such, has failed to cooperate in an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

As noted the above, the Respondent, although duly and appropriately notified, failed to appear at the hearing, nor did anyone appear on his behalf, and the hearing therefore proceeded in his absence.

Although By-law 1.20.4 of the Association permits a hearing panel, where the Respondent fails to appear, to “accept the facts alleged ... in the Notice of Hearing as having been proven,” we nevertheless invited enforcement counsel to present his evidence. This he did by the production of two affidavits, the first from John Buchanan, a Senior Financial Consultant with Investors Group Financial Services Inc. (“Investors Group”), the Respondent’s employer, and, at the relevant time, Associate Regional Director of the firm. The affidavit, produced as Exhibit 4, details the investigation carried

out by Investors Group, leading to the conclusion that the Respondent “received a total of approximately \$321,150 from 13 individuals or couples, including 10 clients of Investors, of which he failed to repay or otherwise account for \$301,700.” The affidavit adds that, “at no time did Mr. Henry disclose to Investors Group that he was placing mutual fund clients and other individuals in purported private investments nor did he disclose that he was borrowing money from Investors Group clients.”

The second affidavit (Exhibit 5) was prepared by Ian Smith a senior investigator with the MFDA. It deals primarily with the fact that the Respondent, contrary to the By-laws, Rules and Regulations, failed to provide a written report about the matter when requested to do so. The various communications sent to the Respondent by the investigators form part of the exhibit.

In light of the facts so proven, the hearing panel concluded that the Respondent had, in fact, committed the acts alleged against him, and that the allegations had been proven. (The slight discrepancy in the amounts was explained by counsel to the satisfaction of the panel.)

Enforcement counsel was then invited to make representations concerning the penalties to be imposed.

In the panel’s view, the Respondent’s behavior was not only highly irresponsible, but also totally unacceptable. The public is entitled to deal with registered representatives with confidence. They place their trust (and their monies) in their hands, and they have a right to presume that this trust will not be abused. Here, the number of persons defrauded (and that is not too strong a word), as well as the amounts involved, place the Respondent’s conduct into the category of most serious violations, and this must be reflected by the punishment imposed. The only mitigation is that he had no previous condemnations and that, to some extent, he collaborated with his employer in

reconstructing the events. However, he failed to show the same degree of collaboration when requested to do so by the MFDA, breaching thereby not only the relevant By-law, but also the “general principle that every professional has an obligation to cooperate with his or her self-governing body” (see *Re: Dale Michael Graveline*, MFDA File No. 200606, December 20, 2006).

Previous cases dealing with similar offences underline the need for serious penalties. (See, for instance, *Re: Robert Roy Parkinson*, MFDA File No. 200501, April 29, 2005, permanent prohibition and fines totaling \$375,000; *Re: Raymond Brown-John*, MFDA File No. 200502, June 27, 2005, permanent prohibition and fines totaling \$185,000; *Re: Arnold Tonnies*, MFDA File No. 200503, June 27, 2005, permanent prohibition and fines totaling \$350,000; *Re: Earl Crackower*, MFDA File No. 200506, August 22, 2005, permanent prohibition and fines totaling \$3,500,000; *Re: Stephan Headley*, MFDA File No. 200509, February 21, 2006, permanent prohibition and fines totaling \$150,000; *Re: Dale Michael Graveline*, cited above, permanent prohibition and fines totaling \$100,000; *Re: Glenn Murray Greyeyes*, MFDA File No. 200510, June 5, 2006, permanent prohibition and a fine of \$225,000.)

After due deliberation, the hearing panel ordered that the following penalties be imposed on the Respondent:

- (a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity;
- (b) a fine in the amount of \$300,000 with respect to allegations #1 and #2;
- (c) a fine in the amount of \$50,000 with respect to allegation #3;
- (d) costs in the amount of \$10,000.

The penalties set out above were imposed at the conclusion of the hearing, with written reasons to be given at a later date. These are the reasons.

Given at Toronto, Ontario, this 29th day of May, 2007.

“Hon. Fred Kaufman”

Hon. Fred Kaufman, C.M., Q.C., Chair

“Robert Hovianseian”

Robert Hovianseian

“Robert White”

Robert White

Doc #111500