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: Stuart Henschel

Heard: October 24, 2013 and April 29, 2014 in Calgary, Alberta
Decision and Reasons: August 12, 2014

DECISION AND REASONS

Hearing Panel of the Prairie Regional Council:

John D. James	Chair
Barbara Shourounis	Industry Representative
Richard Sydenham	Industry Representative

Appearances:

Faye Emmanuel	)	Enforcement Counsel, Mutual Fund Dealers Association of Canada ("MFDA")
Stuart Henschel	)	Respondent, did not appear either in person or by counsel

INTRODUCTION

1. By way of a Notice of Hearing dated May 29, 2013, Stuart Henschel (the "Respondent") faces allegations as follows:

> **Allegation #1**: Between October 2007 and September 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending, facilitating the sale of or making referrals in respect of investment products totalling at least $6,346,000 to clients outside the Member, contrary to MFDA Rules 1.1.1(a), 2.4.2(b) and 2.1.1.
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> **Allegation #2**: Between October 2007 and September 2010, the Respondent had and continued in another gainful occupation which was not disclosed to and approved by the Member by selling, recommending, facilitating the sale of or making referrals in respect of investment products totalling at least $6,346,000 to clients outside the Member, contrary to MFDA Rules 1.2.1 (c) and 2.1.1.

2. The hearing into the allegations was heard on October 24, 2013. Neither the Respondent nor anyone on his behalf attended the hearing. We were satisfied by both the oral and affidavit evidence that the Respondent had been provided more than adequate notice of the proceeding. The Respondent's failure to attend the hearing was in keeping with his refusal to participate, as required by MFDA Rules, in the investigation into the conduct that gave rise to the allegations.

3. Staff of the MFDA ("Staff") called a single witness at the hearing, Allison Howse, an investigator with the MFDA. The majority of her evidence was contained in an affidavit, admitted into evidence, detailing the activities of the Respondent relating to "off book" activities conducted between 2007 and 2010. During this period the Respondent was, at all relevant times, an experienced and registered mutual fund sales person and dealing representative with FundEX Investments Inc. (the "Member").

4. The evidence given by Ms. Howse established to our satisfaction on the requisite

standard of proof on a balance of probabilities the following:

(a) The Respondent knew that he required approval from his employer, the Member, to sell, recommend or refer non-approved products to clients and to engage in outside business activities.

(b) Between 2007 and 2010 the Respondent sold, recommended, or facilitated the sale of or referred exempt market investment products offered by Certified Financial Savings and Mortgage Corp. ("Certified") and Crossroads-DMD Mortgage Investment Corporation ("Crossroads") to over 25 clients of the Member in an amount totalling at least $6,346,000. These products were all securities within the meaning of that term in the Alberta Securities Act.

(c) None of the Certified or Crossroads products were approved by the Member, and the Member was unaware of the Respondent's activities in relation to them. The Member became aware of the Respondent's "off book" activity as a result of two client complaints that prompted the Member to perform a compliance audit in May of 2011. That audit and the subsequent MFDA investigation revealed the extent of the Respondent's unapproved outside business activities.

(d) The Respondent received either commissions or referral fees totalling at least $224,375 from Certified and Crossroads in relation to his "off book" activities. The actual amounts could not be determined as the Respondent refused to cooperate with either the Member or MFDA investigations.

5. On the basis of the above findings, we had no hesitation at the close of the hearing on October 24, 2013 in finding that both allegations had been proven well beyond a balance of probabilities as required.

SANCTIONS

6. When Staff advised the panel of its position and expected submissions in relation to penalties they were seeking as a result of our finding that the allegations had been proven, we adjourned the hearing and directed Staff to make attempts to notify the Respondent and advise him of their position as to penalty. We did so because of the severity of the penalties being sought which included a lifetime ban and a fine of $225,000.

7. When the hearing reconvened on April 29,2014, we were satisfied that Staff had taken all reasonable steps to notify the Respondent of both the Hearing date to deal with penalty and the level of penalties that Staff were seeking against him. The Respondent did not appear and sent no representative, and we determined it appropriate to continue in his absence.

8. We agree with Staff that the penalties imposed should reflect the following factors:

a) Protection of the investing public;
b) The integrity of the securities markets;
c) Specific and general deterrence;
d) Protection of the MFDA's membership; and
e) Protection of the integrity of the MFDA' enforcement processes

9. Various factors will inform the level of sanctions necessary to achieve these goals. They can be both mitigating and aggravating. In this particular matter we considered the seriousness of the conduct, the Respondent's experience and level of activity in the capital markets, the fact that the Respondent failed to participate and cooperate in the investigative process as required, the benefits received by the Respondent as a result of the improper activity and previous decisions made in similar circumstances.

10. The seriousness of the conduct is at the very high end of the scale. The Respondent knew he was breaking an important rule intended to protect investors. He took steps to ensure his activity went undetected by the Member. The conduct took place over an extended period of

more than three years, involved over 25 clients and over 6 million dollars in "off book" transactions.

11. An experienced registrant, the Respondent had worked in the industry since 1989. He knew his activities were contrary to MFDA Rules. When his conduct was detected as a result of client complaints he refused, contrary to MFDA Rules, to participate in the investigation. He did not participate in any part of the enforcement process. He has clearly demonstrated that he is ungovernable.

12. He benefitted in an amount of at least $224,375 directly from his improper acts. In order to meet the needs of both specific and general deterrence it is necessary to ensure that the Respondent, or anyone who might be tempted to act similarly, is not allowed or seen by others to be allowed to profit from his improper acts.

13. Previous decisions of other panels considering the same type of conduct should be considered. It is apparent from the results in most of them that the financial penalties imposed should reflect the benefits received by the wrongdoer. Respect for the enforcement process can only be engendered by some level of consistency in the imposition of penalties. Absent any demonstrable error in principle underlying previous decisions, they should inform this panel's decisions. The cases cited by Staff and which we follow are:

a) *Hesselink*, 2013, MFDA File Number 201315;
b) *Cavalli,* 2013, LNCMFDA 82;
c) *Breckenridge,* 2007, LNCMFDA 38;
d) *Larson*, 2009 MFDA File Number 200826
e) *Piett,* 2012 MFDA File Number 201206; and
f) *Majdoub*, 2010 MFDA File Number 201010

14. Given all these factors we agree with the submissions of Staff and impose the following sanctions:

a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s 24.1.1(e) of MFDA By-law No. 1;

b) a global fine in the amount of $250,000 pursuant to s. 24.1.1(b) of MFDA B-law No. 1; and

c) costs of $7,500 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 12th day of August, 2014.

"John D. James"

John D. James
Chair

"Barbara Shourounis"

Barbara Shourounis
Industry Representative

"Richard Sydenham"

Richard Sydenham
Industry Representative

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