



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 FUNDS DEALERS ASSOCIATION OF CANADA**

**Re: Hill & Crawford Investment Management Group Ltd.
and Albert Rodney Hill**

Heard: June 9-10, 2009 in Toronto, Ontario
Decision: June 23, 2009

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Peter Cory, Q.C.	Chair
Guenther Kleberg	Industry Representative
Gerard Chagnon	Industry Representative

Appearances:

Shelly Feld)	For the Mutual Fund Dealers Association of Canada
)	
Hill & Crawford)	The Respondents did not attend and no one appeared
Investment Management)	on their behalf
Group Ltd. and Albert Hill)	

1. In this case, Hill & Crawford Investment Management Group Ltd. (“HCIM”) and Albert Rodney Hill (“Mr. Hill”) filed a Reply which acknowledges that the allegations set out in the Affidavit material of the Mutual Fund Dealers Association of Canada (the “MFDA”) are correct. At the outset, it must be noted that there were no losses suffered by customers of HCIM or Mr. Hill. Further, both HCIM and Mr. Hill co-operated with the investigation. In the circumstances, it is not necessary to spend a great deal of time on the allegations, yet they must be considered in determining the penalties which should be imposed upon HCIM and Mr. Hill.

2. The following allegations have been established by the Affidavit evidence.

First Allegation

There has been a failure by HCIM and Mr. Hill to comply with the financial and operations requirements of the MFDA.

- a. A \$4,044.00 payment was made by HCIM to Mr. Hill in January 2005 and this payment contravened the terms of the uniform Subordinated Loan Agreement made between Hill, HCIM and MFDA which was signed on October 5, 2004 (referred to as the “SLA”).
- b. Payments were made by HCIM to Mr. Hill and to his wife between April and October 2005, a time while HCIM was designated to be in early warning. This contravened both the terms of the SLA and early warning requirement set out in the MFDA Rule 3.4.2(b)(iv).
- c. Contrary to the early warning restrictions imposed between May 31, 2006 and October 26, 2006, and later between May 22, 2007 and November 20, 2007, HCIM hired three new approved persons and opened two new client accounts in contravention of the early warning restrictions.
- d. Since February 2007, HCIM has failed to maintain the minimum capital of \$50,000 required by MFDA Rule 3.1.1 for HCIM as a Level II dealer and risk adjusted capital greater than zero.

- e. Since January 2, 2009, while early warning restrictions were imposed on HCIM, the Respondents contravened those restrictions by failing to (a) cease opening new client accounts, (b) notify all HCIM approved persons of the early warning restrictions that were imposed on HCIM, and (c) provide MFDA staff with a copy of correspondence to approved persons informing them that no new client accounts could be opened after January 2, 2009. The early warning requirements and restrictions are specifically designed to (a) control risk, (b) enhance the monitoring capability of MFDA when a Member is in worrisome financial circumstances, (c) prevent the capital position of Members from worsening as a result of the inappropriate use of assets to maintain the minimum capital of the Members, and lastly (d) prevent a Member from taking on significant additional liabilities.

Thus, the failure to meet the early warning requirement could lead to a conclusion that the Respondents were not meeting the basic standards and requirements of MFDA dealers, namely, efficiency, integrity and financial solvency.

- f. The evidence reveals that HCIM and Mr. Hill flagrantly disregarded regulatory requirements designed to control the financial risks. Specifically, the Respondents (a) failed to maintain minimum risk adjusted capital greater than zero, (b) made unauthorized payments to Mr. Hill and his wife in contravention of the terms of the uniform SLA and early warning requirements, (c) opened new client accounts, (d) hired new approved persons, (e) failed to inform approved persons that HCIM was designated to be in early warning, (f) failed to prepare Financial Questionnaires & Reports (“FQRs”) in accordance with generally accepted accounting principles, and (g) failed to file FQRs in good order on a timely basis.

Second Allegation

- g. HCIM and Mr. Hill (a) failed to comply with an Agreement & Undertaking entered into with the MFDA on October 25, 2005 and breached that agreement, (b) HCIM continued to make unauthorized advances to Mr. Hill in contravention

of early warning requirements and the terms of the Agreement & Undertaking, (c) there were books and records violations, (d) supervision violations, (e) financial reporting violations, (f) client account statements violations, (g) internal policy control deficiencies, and (h) deficiencies in the collection of “Know Your Client” information.

Third Allegation

- h. The third allegation, which is also admitted, was that HCIM and Mr. Hill obtained and retained pre-signed forms contrary to MFDA Rule 2.1.1. These pre-authorized forms were used by HCIM and Mr. Hill.

Summary

3. The breaches of rules and regulations by HCIM and Mr. Hill indicate a certain irresponsibility and lack of reasonable care in their attempts to meet the requirements and to obey the rules and regulations of the MFDA. Mutual fund dealers carry on a business which is based upon the trust of their clients. Their clients rely upon the dealer for care and maintenance of the funds that they invest with them and rely upon them to act in compliance with MFDA rules and regulations. The punishments that are imposed must reflect the gravity of the breaches and the importance of the maintenance of the trust of clients and members of the public generally in the work of MFDA dealers.

4. A business which is of necessity based upon trust must always do its utmost to preserve that trust and when that trust is breached, to ensure that penalties which are imposed will help to re-establish the trust of the public in the dealers.

5. In this case, the evidence has established that MFDA took every step to assist and educate the dealer. Nonetheless the dealer persisted in flouting the rules and in failing to meet the obligations imposed upon it particularly as a result of the fact that the company was in early warning.

Proposed Penalties

Counsel for the MFDA, in his written submissions, sought the following penalties:

- a. a permanent prohibition on the authority of Mr. Hill to conduct securities related business while in the employ of, or associated with, any MFDA Member;
- b. a global fine against Mr. Hill in the amount of at least \$25,000;
- c. costs payable by Mr. Hill attributable to conducting the investigation and prosecution of this matter in the amount of \$20,000;
- d. expulsion of HCIM from the MFDA;
- e. a global fine against HCIM in the amount of at least \$75,000; and
- f. costs payable by HCIM in the amount of \$20,000.

We consider the proposed penalties to be reasonable in the circumstances, except for the following:

Costs

6. Earlier awards by previous Hearing Panels reflect assessments of costs with the lower range from \$2,500 to \$3,500 with more at \$5,000 with the very occasional high figure of \$10,000. It may well be that higher costs should be awarded in appropriate cases. In cases where the MFDA seeks costs at a higher level (\$10,000 or more), it should provide a record of the names and functions of the members of staff that took part in the investigation and preparation for the case in issue and the hours that they spent on the matter. Further, there should be some division between what was done in order to educate and assist the dealer as opposed to the work that was done in the investigation and preparation for taking proceedings against the Respondents. It would not be appropriate to simply lump in all the expenses of education and assistance to dealers with the expenses of investigation and preparation undertaken with a view to laying charges. If there are large awards of costs to be sought in future, then there will have to be a maintenance of the records of exactly what was done in connection with the prosecution of the offences. We have not been presented with appropriate records in this case.

In this case, the MFDA seeks costs of \$20,000 levied against both HCIM and Mr. Hill personally. Without the production of evidence as to what precisely was done in connection with the investigation and case, the costs should not be put at the higher level. The costs against HCIM are fixed at \$7,500. The costs payable by Mr. Hill are also fixed at \$7,500.

Permanent Prohibition of Mr. Hill

7. We find it appropriate to make a distinction between the conduct of Mr. Hill as President and Chief Compliance Officer of HCIM and his conduct as a salesperson. In light of his frequent breaches of his obligations and undertakings and his disregard for rules and regulations in his capacity of President and chief Compliance Officer, and particularly his obligation to ensure that HCIM complied with the MFDA rules and regulations, Mr. Hill should permanently be prevented from acting as an officer or director or in any compliance or supervisory capacity with a Member. Furthermore, Mr. Hill should be prohibited from acting as a salesperson with a Member for a period of two years. At the end of this period of two years, should Mr. Hill wish to act as a salesperson with a Member, he must then be subject to strict supervision by the Member for a period of two years. It should also be conditional upon his undertaking and completing, before he is reinstated as a salesperson, a course in business ethics and procedure approved by the MDFA.

8. It is also conditional upon him paying the fine and costs assessed against him. It is necessary to impose these restrictions for the protection of the investing public and to maintain the integrity of the securities market. It may seem an onerous provision, yet it is essential if there is to be any specific and general deterrence and if there is to be reestablishment of the public's trust in MFDA dealers.

Penalties

11. We have taken into account that there are mitigating circumstances in this case. First, it would appear that no customers suffered losses as a result of failures of HCIM and Mr. Hill. Both HCIM and Mr. Hill have co-operated with the investigation. Further, there has been no previous disciplinary history and there have been no client complaints against the Respondents.

In light of the foregoing, this Panel orders the following sanctions against Mr. Hill:

A permanent prohibition from acting as an officer or director or in any compliance or supervisory capacity with a Member.

A prohibition from acting as a salesperson with a Member for a period of two years. At the end of this period of two years, should Mr. Hill wish to act as a salesperson with a Member, he must then be subject to strict supervision by the Member for a period of two years. It should also be conditional upon his undertaking and completing, before he is reinstated as a salesperson, a course in business ethics and procedure approved by the MFDA.

12. An appropriate fine would be \$25,000.

13. His costs have been assessed at \$7,500.

The Panel also orders the following sanctions against HCIM:

14. Expulsion from the MFDA.

15. An appropriate fine would be \$75,000.

16. HCIM costs have been assessed at \$7,500.

Dated: June 23, 2009

“Peter Cory”

The Hon. Peter Cory, Q.C., Chair

“Guenther Kleberg”

Guenther Kleberg, Industry Representative

“Gerard Chagnon”

Gerard Chagnon, Industry Representative