



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: Martin Horvath

Heard: October 22, 2009 in Toronto, Ontario
Decision: November 11, 2009

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Peter Cory, Q.C.	Chair
Jeanne Beverly	Industry Representative
Guenther Kleberg	Industry Representative

Appearances:

David Halasz)	for Mutual Fund Dealers Association
)	of Canada
Martin Horvath)	Did Not Attend
)	

1. The decision in this Disciplinary Hearing has been facilitated by the Agreed Statement of Facts (the “ASF”) duly signed by Martin Horvath (the “Respondent”) and Shaun Devlin, Vice-President, Enforcement of the Mutual Fund Dealers Association of Canada (the “MFDA”). In that document the Respondent admits he committed that acts of misconduct alleged by the MFDA. Specifically, he admits that he:

- a. Had and continued in another gainful occupation that was not disclosed in writing and approved by ASL Direct, contrary to MFDA Rule 1.2.1(d);
- b. Engaged in securities related business that was not carried on for the account of ASL Direct and through the facilities of ASL Direct, contrary to MFDA Rule 1.1.1(a); and
- c. Has failed to cooperate with an MFDA investigation, contrary to s. 22.1 of MFDA By-law No.1.

2. Further the Respondent does not contest the penalties suggested by the MFDA. Specifically, prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member. Further, the Respondent will be fined the sum of \$20,000. The Respondent will also pay the costs of these proceedings fixed at \$2,500.

3. The Panel, in assessing and fixing the penalties of:

- a. a permanent prohibition from conducting securities related business;
- b. a fine of \$20,000; and
- c. costs fixed at \$2,500;

has taken into account the following factors.

The Seriousness of the Misconduct

4. The Respondent engaged in another gainful occupation in securities related business that was not carried for the account of the Member. This constitutes a serious offence. The misconduct occurred on a number of occasions: at least three individuals were involved in the

Real Estate Referral Activity, and at least three individuals in total invested in Mineralfields, PanFinancial and Walton (as those terms are defined in the Notice of Hearing).

5. Similarly, although the Respondent did partially cooperate with the MFDA by providing some documents and information during the investigation, he ultimately has not provided all the requested documents and information. The Respondent's conduct has undermined MFDA Staff's ability to determine the full nature and extent of the Respondent's involvement in the activities underlying the allegations made against him.

Investor Harm

6. Although there is no evidence of investor harm, the Respondent's failure to cooperate adequately with MFDA Staff has undermined the ability of MFDA Staff to determine the full nature and extent of the Respondent's involvement in the activities underlying the allegations made against him.

The Respondent's Recognition of the Seriousness of his Misconduct

7. The Respondent's admissions as to his misconduct described in the ASF, and his election to not contest the nature and amount of the penalties sought by MFDA Staff, show that he recognizes the seriousness of the misconduct.

8. By entering into the ASF, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring additional time and expense of a full hearing.

The Benefits Received by the Respondent

9. The Respondent reports that he received referral fees of approximately \$14,500 with respect to his activities. The \$20,000 proposed fine would result in the respondent disgorging the known benefits he received from his misconduct.

The Respondent's Past Conduct and Level of Activity in the Capital Markets

10. The Respondent has no past disciplinary history with the MFDA. The Respondent is not currently registered in the securities industry in any capacity.

Previous Decisions Made in Similar Circumstances

11. The penalties proposed are generally consistent with previous decisions made in similar circumstances.

- a. *In the Matter of Jawad Rathore*, [2005] Hearing Panel of the Ontario Regional Council (“*Rathore*”), MFDA File No. 200504, Hearing Panel Decision dated May 31, 2005, at p. 14, MFDA Book of Authorities, Tab 2.
- b. *In the Matter of Melvin Robert Penney*, [2009] Hearing Panel of the Atlantic Regional Council, MFDA File No. 200831, Hearing Panel Decision date May 13, 2009 (“*Penney*”), at p. 6, MFDA Book of Authorities, Tab 12.
- c. *In the Matter of Robert Michael Smylski*, [2007] Hearing Panel of the Prairie Regional Council, MFDA File No. 200707, Hearing Panel Decision dated July 13, 2007, at pp 4-6, MFDA Book of Authorities, Tab 14.
- d. *In the Matter of Ernest Ming Chung Lo*, [2006] Hearing Panel of the Ontario Regional Council, MFDA File No. 200512, Hearing Panel Decision dated April 3, 2006 at pp.20-22, MFDA Book of Authorities, Tab 15.

12. Generally, hearing Panels order a permanent prohibition and a \$50,000 fine for situations involving a failure to cooperate with the MFDA. MFDA Staff submits that in the present situation, the penalties sought by MFDA Staff are appropriate in light of the Respondent's acknowledgement of his misconduct and acceptance of the proposed penalties.

Penalties in This Case

13. The Respondent admits that the facts set out in the ASF constitute misconduct for which he may be penalized on the exercise of the discretion of a Hearing Panel. The Respondent does not contest MFDA Staff's submission that the penalties sought herein are appropriate.

14. The imposition against the Respondent of a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member will prevent the Respondent from participating in the industry and will deter others from engaging in similar activity.

15. The proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Members and Approved Persons.

COSTS

16. MFDA Staff acknowledges that the Respondent cooperated with MFDA Staff during the preparation of the hearing to the extent that the matter proceeded with an Agreed Statement of Facts and, by not opposing the imposition of the penalties sought by MFDA Staff, the potential length and expense of the hearing was reduced. Accordingly, MFDA Staff is suggesting and requests that an award of costs against the Respondent in the amount of \$2,500 would be appropriate in the circumstances. We agree with the MFDA figure.

17. We have, in addition, considered the MFDA Guidelines and the decision of other panels specifically;

- a. *In the Matter of Arnold Tonnies*, [2005], Hearing of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 25, 2007 (“*Tonnies*”), at pp. 19-20, MFDA Book of Authorities, Tab 6.
- b. *In the Matter of Raymond Brown-John*, [2005], Hearing Panel of the Pacific Regional Council, MFDA File No. 200502, Hearing Panel Decision dated June 27, 2005, at p. 4, MFDA Book of Authorities, Tab 7.
- c. *In the Matter of Anthony McPhail*, [2005], Hearing Panel of the Ontario Regional Council, MFDA File No. 200505, Hearing Panel Decision dated June 15, 2005, at pp. 1-2, MFDA Book of Authorities, Tab 8.
- d. *Artinian v. College of Physicians and Surgeons of Ontario* (1990), 73 O.R. (2d) 704 (Div. Ct.), MFDA Book of Authorities, Tab 9.

18. The Panel has therefore assessed and fixed the penalties and costs as set out above.

DATED this 11th day of November, 2009.

“Peter Cory”

The Hon. Peter Cory, Q.C.
Chair

“Jeanne Beverly”

Jeanne Beverly
Industry Representative

“Guenther Kleberg”

Guenther Kleberg
Industry Representative