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: Rajvir Kaur Hothi

Heard: September 9, 2020 by electronic hearing in Edmonton, Alberta
Decision: September 9, 2020
Reasons for Decision: September 29, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC	Chair
James Samanta	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

Justin Dunphy	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Rajvir Kaur Hothi	)	Respondent, not in attendance or represented by counsel

I. INTRODUCTION

A. The Allegations

1. On February 7, 2020, the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing ("NoH") pursuant to Sections 20 and 24.4 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Rajvir Kaur Hothi (the "Respondent"), alleging the following:

> **Allegation #1:** Between October 25, 2017 and January 8, 2018 the Respondent misappropriated monies from two clients and two other individuals, contrary to MFDA Rule 2.1.1.
>
> **Allegation # 2***:* Commencing in March 2018, the Respondent failed to cooperate with MFDA's investigation into her conduct, contrary to Section 22.1 of MFDA By-law No. 1.

B. Service

2. The evidence presented through the affidavit of Patricia West, MFDA investigator ("West" and "West Affidavit") established that unsuccessful attempts were made to serve the Respondent on August 14, 2019 with an earlier dated Notice of Hearing at her residential address that was registered on the National Registration Database. However, West communicated with the Respondent through her email address.

3. On February 18, 2020 the Respondent was served with the NoH at her email address which was downloaded.

4. The Respondent did not file a Reply to the NoH. She was advised by emails on May 19, 2020 and June 16, 2020 of the date and time of the electronic hearing on the merits to proceed on September 9, 2020 as well as her right of disclosure. The particulars of the proposed hearing were also posted publicly on the MFDA website.

5. Despite the foregoing, the Respondent did not communicate to MFDA Staff any desire or intention to attend the electronic hearing.

C. Proceeding on the Merits in the Respondent's Absence

6. MFDA Rule of Procedure 13.5 provides that the Hearing Panel may proceed in accordance with MFDA Rule of Procedure 7.3 where the Respondent, having been served with a NoH, fails to attend the hearing of the proceedings on the merits.

7. MFDA Rule of Procedure 7.3 permits a Hearing Panel to proceed in such circumstances without further notice to, and in the absence of, the Respondent. The Hearing Panel may also accept facts alleged and conclusions drawn in the NoH as proven and impose any penalties and costs described in ss. 24.1 and 24.2 of MFDA By-law No. 1.

8. MFDA Rule of Procedure 1.6 specifically permits hearsay statements to be admitted as evidence and MFDA Rule of Procedure 13.4 permits evidence to be adduced by way of sworn statements.

9. We proceeded with the hearing after waiting an interval after the appointed hour on September 9, 2020. The Respondent did not attend in that interval or attempt to join the hearing at any time thereafter.

10. We concluded that service upon the Respondent of the NoH and the intention of the MFDA to proceed to hearing of the Allegations, including in her absence, was good and sufficient.

11. We then received the West Affidavit as evidence to establish the Allegations in the NoH.

D. Proposed Sanctions

12. Enforcement Counsel proposed the following penalties:

a) a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of, or associated with any member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
b) a fine of $100,000.00 pursuant to s. 24.1.1 (b) MFDA By-law No. 1; broken down as follows:
    i. a fine of $50,000.00 in respect of the misappropriation in violation of Rule 2.1.1; and

ii. a fine of $50,000.00 for the Respondent's failure to cooperate; and

c) costs of $7,500.00 pursuant to s. 24.2 of MFDA By-law No. 1.

13. After reviewing the evidence in the West Affidavit, we concluded the MFDA had proved the Allegations to the required standard.

14. After adjourning to deliberate, we reviewed the West Affidavit, the submissions of Enforcement Counsel, the case law and authorities cited. We then concluded that it was appropriate to impose the following sanctions:

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

b) a fine of $90,000.00 pursuant to s. 24.1.1 (b) of MFDA By-law No. 1 broken down as follows:

i. a fine of $40,000.00 in respect of the misappropriation in violation of Rule 2.1.1;

ii. a fine of $50,000.00 for the Respondent's failure to cooperate; and

c) costs of $6,500.00 pursuant to s. 24.2 of MFDA By-law No. 1.

15. We issued an Order imposing the foregoing sanctions, with written reasons to follow.

16. These are our written reasons.

Evidence of Misappropriation and Failure to Cooperate

17. The facts deposed to in the West Affidavit establish as follows:

Registration History

a) From September 2008 to September 2015, and from December 2016 to February 2018, the Respondent was registered in Alberta as a mutual fund salesperson with TD Investment Services Inc. (the "Member");

b) The Respondent was also employed with the bank branch of TD Canada Trust ("TD Bank");

c) The Respondent was designated as a Branch Manager during the relevant period of the misconduct; and

d) The Respondent is not currently registered.

(West Affidavit, at Paras. 4-7 and Exhibit 1)

MFDA jurisdiction over the Respondent

a) As a mutual fund sales person in Alberta and Approved Person of a Member of the MFDA, the Respondent was bound by and agreed to observe and comply with MFDA Rules. [West Affidavit Exhibit 1]

b) Pursuant to s. 24.1.4 of MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA notwithstanding that such individual ceases to be an Approved Person.

Allegation #1 – Misappropriation

a) The Member reported to MFDA Staff that the Respondent admitted to having transferred customer funds for her own personal use;

b) The Member advised that the Respondent processed withdrawals totaling $27,556.59 from 5 bank accounts that she serviced with TD Bank with respect to 4 individuals, 2 of whom were also mutual fund clients;

c) TD Global Security and Investigations conducted an interview of the Respondent, where she admitted to misappropriating monies to use for gambling;

d) The Member confirmed that the Respondent created a fake bank account for client JL, and used an ATM card connected to the fake account to transfer monies from the 5 bank accounts into the fake account, from which she subsequently conducted withdrawals; and

e) TD Bank compensated the individuals whose monies were misappropriated.

(West Affidavit, at paras. 13-20 and Exhibits 7-11)

Allegation #2 – Failure to Cooperate

a) MFDA Staff sent letters requesting information to the Respondent on March 5, 2018, and March 28, 2018 via registered mail, which were accepted by the Respondent. The Respondent did not reply to the letters;

b) MFDA Staff sent another letter on September 13, 2018 via process server, which was personally served on the Respondent;

c) The Respondent contacted MFDA Staff via telephone on September 26, 2018, and requested an extension to respond to MFDA Staff, which was granted. The Respondent did not contact Staff by the extended deadline of November 30, 2018;

d) MFDA Staff sent an e-mail to the Respondent on December 4, 2018 as well as a telephone call on December 6, 2018 to follow up. The Respondent did not respond. An interview date was scheduled for January 10, 2019, which the Respondent failed to attend; and

e) MFDA Staff sent a follow up letter to the Respondent on March 21, 2019 via process server, which was left at her address, and sent a follow up e-mail on April 9, 2019, to which the Respondent failed to reply.

(West Affidavit, at paras 21-28 and Exhibits12 -18)

18. Enforcement Counsel informed us that to the knowledge of the MFDA, the Respondent has faced no other proceedings nor incurred sanctions from any other regulatory authority in respect of this misconduct. It further appears that the clients' losses have been reimbursed by entities other than the Respondent.

Finding on Allegation #1

19. At all times material to the misconduct, the Respondent was registered as a dealing representative, however the misappropriation occurred in her capacity as a bank employee with respect to bank accounts rather than mutual fund accounts.

20. Further, two of the individuals who held three of the affected bank accounts were not mutual fund clients serviced by the Respondent. The Respondent misappropriated the total amount

of $24,556.59 from these three individuals. The remaining sum of $3,000.00 was misappropriated from the bank accounts of two mutual fund clients serviced by the Respondent.

21. Although the Respondent is not currently registered, there is no statutory impediment preventing self-regulatory organizations like the MFDA from continuing to exercise jurisdiction over former Approved Persons. See *Taub v. Investment Dealers Association of Canada* 2009 ONCA 628.

22. The evidence was sufficient to establish that the misappropriation of client funds by the Respondent while an Approved person constitutes a breach of MFDA Rule 2.1.1 which requires that each Member and Approved Person deal fairly, honestly and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. See *Douglas (Re)* MFDA File No. 201824 Hearing Panel of the Central Regional Council, Decision and Reasons dated October 9, 2018 at para. 24.

23. Although the majority of the misappropriation occurred in the Respondent's capacity as a bank employee rather than an Approved Person of the MFDA, her conduct does constitute a breach of Rule 2.1.1 for non-mutual fund related misappropriation. See *Aksomitis (Re)* MFDA File 201531 Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated May 24, 2016 at paras. 21 and 33.

Finding on Allegation #2

24. MFDA By-law No. 1 s. 21 provides that the MFDA has a duty to conduct examinations and investigations of a Member, an Approved Person, and any other person under its jurisdiction as it considers necessary or desirable in connection with any matter relating to that Member's or person's compliance with among other things, the By-laws, Rules, and Policies of the MFDA.

25. Pursuant to its s. 21 duty, MFDA is authorized to request and oblige an Approved Person to:

a) submit a report in writing regarding any matter involved in any investigation,

b) produce for investigation and provide copies of the books, records and accounts of the person relevant to the matter that is being investigated,

c) attend and give information respecting such matters, and

d) make any of the above information available through persons under the direction or control of the Approved Person or any other person under the jurisdiction of the MFDA.

26. Correspondingly, the Approved Person or persons under investigation are obliged to cooperate with the s. 21 requirements.

27. As well, an Approved Person must provide MFDA Staff with information and documentation and attend an interview with MFDA Staff when requested to do so. To hold otherwise would hinder the ability of the MFDA to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public. See *Douglas Re*, (*supra)* and *Aksomitis (Re) (supra).*

28. Based on the foregoing, we concluded the MFDA had proved the Allegations to the required standard.

Penalties

29. We considered the foregoing facts, submissions, case authorities, and the following factors in determining whether the penalties sought were appropriate in this case.

30. A primary goal of securities regulation is deterrence and the protection of the public, and that sanctions imposed by the Hearing Panel must to be preventative in nature only, and cannot be punitive. *See Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557.

31. Hearing panels frequently consider the following factors when determining whether a penalty is appropriate:

a) The seriousness of the allegations proved against the respondent,

b) The respondent's past conduct, including prior sanctions,

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, were the respondent 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.

See *Breckenridge*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and dated November 14, 2007 at p.21

Seriousness of the Misconduct

32. The misconduct in the present case is egregious. Misappropriation of client funds undermines investor confidence in the regulatory regime, exposes clients to loss, and brings the mutual fund industry into disrepute.

Harm to Client/ Benefit to Respondent

33. The Respondent's misconduct was intended only to benefit the Respondent and she knew or should have known it would result in harm to the clients.

Industry Experience of Respondent

34. As a mitigating factor, we noted that the Respondent had no prior disciplinary history. As an aggravating factor, the Respondent occupied the position of branch manager and, as such, was well aware that other Approved Persons looked to her as an example of appropriate professional conduct. Despite this, she engaged in misconduct that was not only wrongful but egregious.

Recognition of the Seriousness of the Conduct

35. By failing to cooperate in the investigation as requested and declining to participate in the hearing process, we found no evidence that the Respondent recognizes the seriousness of her misconduct or feels remorse for her actions.

Deterrence

36. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty imposed should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated in *Cartaway Resources Corp. (Re)* [2004] 1 SCR 672 (SCC) at para 61:

> A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged…

37. We concluded that the sanctions to be imposed here must serve to send a message to not only the Respondent but also to others in the mutual fund industry that the misconduct engaged in by the Respondent is serious and warrants the imposition of significant disciplinary penalties.

Permanent Prohibition

38. While the misappropriation of funds affecting MFDA clients of the Respondent amounted to only $3,000.00 of the $27,556.59 proven, we considered the misconduct outside the MFDA jurisdiction to be relevant because the same misconduct affected four individuals. As well, it demonstrated that the misconduct was not an isolated incident.

39. As noted earlier, we also concluded that engaging in misappropriation of client funds while occupying the position of a branch manager makes the misconduct even more egregious.

40. Moreover, the Respondent's failure to cooperate during the course of the investigation of the MFDA hindered its ability to provide effective oversight of the mutual fund industry.

41. Given the Respondent's demonstrated disregard for the mutual fund industry and protections put in place to ensure investor protection, we concluded that she would remain a significant risk to other investors and to the market at large were she allowed to return to the industry.

42. The foregoing factors demonstrated that the Respondent is wholly unfit to be registered ever again in the mutual fund industry and justified the permanent prohibition of the Respondent from conducting securities related business while in the employee of, or associated with, any member of the MFDA.

Appropriateness of a monetary fine for violation of Rule 2.1.1.

43. The motivation for the Respondent's conduct involved neither good intentions, nor mere error of judgment in order to deliver a benefit to the clients in question. Instead, the misconduct was committed solely for her own personal benefit, and while she was in a position of trust and authority to freely access their accounts.

44. We noted that previous hearing panels have considered the issue of whether there is jurisdiction to impose a significant fine on activity not involving an MFDA member.

45. In *Aksomitis Re* (supra), the hearing panel imposed a fine equal to three times the amount misappropriated from the mutual fund clients as well as an additional fine in respect of the respondent's theft from Royal Bank clients on the basis that the misconduct in the latter case constituted activity that would cause an Approved Person to be in breach of the conduct rules of the MFDA, even though no MDFDA member was involved.

46. In *Lam (Re),* MFDA File No. 201856, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated January 25, 2019, the respondent misappropriated $5,000.00 from a client while registered, and an additional $42,426.63 from the client's mutual fund and segregated fund accounts after he ceased to be registered. He engaged in unauthorized trading further to the misappropriation money and also failed to cooperate with MFDA staff. The client was reimbursed for the losses but not by the respondent.

47. The Hearing Panel there considered *Aksomitis Re* (*supra)*, but did not follow its methodology in arriving at an appropriate fine. Instead, it imposed a fine of $50,000.00 on the reasoning that a substantial fine was necessary to communicate to the Respondent and to other Approved Persons that engaging in misappropriation was serious misconduct and (citing *Cartaway Resources Corp.* (supra) at paras. 52 to 62) that the effect of general deterrence should advance the goal of protecting investors so the penalty should be sufficient so as to affirm public confidence in the regulatory system and ensure that others in the industry do not repeat the misconduct.

48. We concluded that the misconduct in misappropriating funds for personal gain warrants a significant fine to communicate to the Respondent and to other Approved Persons that even if the amounts taken from accounts of MFDA clients only were modest, this misconduct is egregious. We concluded further that the commission of this misconduct while in the position of a branch manager is a serious aggravating factor.

49. We concluded that these particular circumstances warranted a monetary fine of $40,000.00. This penalty will make clear to Respondents and like-minded Approved Persons that they should not benefit from the wrongdoing and, to the extent possible, reflect the extent to which the Respondent obtained or attempted to achieve a financial or other benefit from the misconduct.

Appropriateness of a monetary fine for failure to cooperate

50. We note that previous cases also have imposed a fine of $50,000.00 and a permanent prohibition for failure to cooperate.

51. We concluded that for the failure to cooperate with an MFDA investigation which limits the ability of staff to properly investigate complaints and carry out its mandate of protecting the investing public, a fine of $50,000.00 should be imposed. A fine in this amount will signal to all those involved in the mutual fund industry regulated by the MFDA that they have a clear obligation to cooperate with an MFDA investigation and that failure to do so will attract substantial fines and a permanent prohibition from participating in the industry.

52. Finally, while the draft bill of costs submitted by Enforcement Counsel stood at $6,625.00, we concluded that costs should be awarded of $6,500.00.

53. The sanctions considered globally are within a reasonable range of appropriateness having regard to decisions made by other hearing panels in similar situations. Further, they will foster public confidence in the integrity of the Canadian capital markets and the industry.

DATED this 29th day of September, 2020.

"Shelley L. Miller"
Shelley L. Miller, QC
Chair

"James Samanta"
James Samanta
Industry Representative

"Greg Wiebe"
Greg Wiebe
Industry Representative

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