



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: Roman Vendrov

Heard: July 15, 2019 (Misconduct), July 29, 2019 (Penalty) in Toronto, Ontario
Reasons for Decision: September 19, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, QC
Matthew Prew
Joe Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Roman Vendrov)	Respondent, in person
)	
)	
Sam Osovetsky)	Respondent's Advisor
)	
)	

I. INTRODUCTION (MISCONDUCT)

1. By Notice of Hearing dated October 12, 2018, the Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding against Roman Vendrov (the “Respondent”).

2. The Notice of Hearing contained the following allegations of violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: In March 2016, the Respondent submitted a line of credit application on his own behalf which contained false information and fabricated supporting documents, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in December 2016, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

3. The Respondent filed a brief Reply to the Allegations, which in relevant part, was as follows:

In reply to the available submission dated Oct 12, 2018, it is hard to point out any facts in relation to the case described;

- a) It should be noted that Roman Vendrov (myself), acted on the loan application as an applicant to a loan, subject to approval by all the involved parties, that accepted the application for the loan, processed it, approved it, underwrote it, syndicated it, proved and processed full and final release of the funds to account.
- b) There were no statements of any kind issued by Roman Vendrov (myself), and all the due process occurred by all those involved, stated in clause (a).
- c) In such case it could be helpful to explore it all via Mediation Process, that could be done same way as our conference call;

Sincerely Yours;

4. The Reply's meaning is somewhat obscure and, as will be seen in what follows, the Respondent's position changed as the case progressed. Ultimately the Respondent's defence was that another person, Neil Kumar ("Kumar"), was responsible for preparing the falsified and fabricated documents and he was unaware of that fact because he never read them, despite having signed the line of credit application.¹

II. FACTS

5. The relevant facts on behalf of Staff of the MFDA were presented by the senior investigator John J. Gallimore ("Gallimore") by way of an affidavit dated July 11, 2019 ("Gallimore Affidavit"). Gallimore also gave extensive evidence during the hearing held on July 15, 2019. Staff also called John Fitzgerald ("JF") who was the Approved Person at Investors Group Financial Services ("Investors Group") who processed the application for a line of credit from Solutions Banking in the amount of \$60,000 for the Respondent. Solutions Banking is a banking product offered by National Bank of Canada through Investors Group.

6. The Respondent was, from March 2015 to November 2016, registered in Ontario as a dealing representative with Shah Financial Planning Inc. ("Shah"), a Member of the MFDA. On November 12, 2016, the Respondent was terminated by Shah and he is not currently registered in the securities industry in any capacity.

7. In addition to being a dealing representative at Shah, the Respondent was also a client of Shah where his account was serviced by Kumar. It was Kumar who referred the Respondent to JF for the purpose of applying for a line of credit. JF testified that Kumar was involved in the preparation of the line of credit application and the supporting documentation and was present at the meetings he had with the Respondent in respect of the application for the line of credit.

¹ Kumar was the Respondent in MFDA Case No. 201859. Following a disciplinary hearing, an MFDA Hearing Panel determined that Kumar, among other things, submitted falsified line of credit applications for himself, arranged for two individuals (including the Respondent) to submit falsified line of credit applications, and processed a falsified line of credit application for a client.

8. JF testified that he completed the line of credit application using information which he obtained from the Respondent and Kumar. Among that information, which was incorporated into the line of credit application under the heading of “Assets” of the Respondent, were the following:

Investment: Mutual Funds	Marquest	\$188,115.29
Investment: Stocks	Hampton Securities	\$319,289.65

9. The Respondent and JF both testified that the Respondent signed the line of credit application which was then sent on to the lender, National Bank, for consideration and, ultimately, approval.

10. Staff inquired of Hampton Securities and were advised by it that the Respondent did not have an account with it and that the claimed asset of \$319,289.65 did not exist. Further, in response to a question posed to the Respondent by Staff by letter dated November 21, 2016, the Respondent denied in writing having an account with Hampton Securities. He also denied having applied for the \$60,000 line of credit.²

11. The mutual fund investment “Marquest” did exist but its value was inflated from \$121,915.29 as at December 31, 2015 to the value which appeared on the line of credit application, \$188,115.29 as at March 14, 2016.

12. JF testified that he asked the Respondent to provide substantiation for the Hampton Securities and Marquest asset values listed on the line of credit application. JF then received, from either the Respondent or Kumar, he was not sure which, the following:

- i. A fabricated account statement purportedly issued by Hampton Securities Ltd. (“Hampton”), which falsely stated that on December 31, 2015, the Respondent held assets at Hampton valued at \$319,289.65;
- ii. A fabricated account statement purportedly issued by Shah, which falsely stated that on December 31, 2015, the Respondent held units of the “Marquest Monthly Pay Fund Class A” mutual fund valued at \$188,115.29.

These fabricated supporting documents were sent to National Bank in support of the application.

² As it turned out, the first denial was false. The Respondent had a small account of no significant value.

13. As stated earlier, National Bank subsequently approved the line of credit application and the Respondent obtained \$49,386.00 from the line of credit, none of which has been repaid. At the hearing, the Respondent asserted he had repaid an unquantified amount but offered no corroborating evidence of any kind in support of the bare assertion.

III. ANALYSIS AND REASONS

Allegation #1 – Falsified Loan Application

14. As was the case in a related matter, *Re Prabhydal Singh Rai*, the Respondent submitted the line of credit application not for a client, but for himself. That line of credit application also contained false information and included fabricated documents. Again, like the present case, Kumar was directly involved in the preparation of that line of credit application and related supporting documents.

Rai (Re), MFDA File No. 2018106, Panel Decision dated July 24, 2019

15. During the hearing, the Respondent did not challenge the fact that the line of credit application was based on false information and fabricated documentation. He simply took the position that he didn't know it, leaving it all to Kumar and never checked anything himself. This despite having admittedly signed the line of credit application and having provided substantiation regarding his assets to JF subsequently.

16. The standard of proof in this case, as in all MFDA and other regulatory proceedings in the securities industry, is the civil standard of a balance of probabilities. It is not the criminal standard of beyond a reasonable doubt, despite the fact that in this case the acts in question might well be characterized as criminal in another forum.

17. The Supreme Court of Canada stated in *H. v. McDougall* that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.” Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test but there is no objective standard to measure sufficiency.

Desgroseilliers (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201790, Panel Decision dated August 21, 2018, at para. 15.

18. The question of whether Kumar prepared the fraudulent material is irrelevant to the main issue before us. In our view, given Kumar's *modus operandi* displayed in other cases, it seems likely he was the originator of this material as well as the originator of the scheme to defraud the National Bank³. However, the issue before us is whether, on a balance of probabilities, the Respondent was a knowing participant in the fraud. In our view it is highly likely he was, for several reasons.

Rai (Re), *supra*.

Kumar (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201859, Panel Decision dated March 27, 2019.

19. The most significant reason is the improbability of the Respondent's story overall. His first response to Staff was that he didn't have an account at Hampton Securities. By the time the Notice of Hearing was issued on October 12, 2018, he knew the issue was centered on his supposed account at Hampton Securities and on the Marquest account. His position then changed, and in response to a question from a member of the Hearing Panel, that he had made a mistake as he did in fact have an account at Hampton but with only \$2,000 in it, not the \$319,289.65 claimed in the line of credit application, which he persisted he never looked at. His purported explanation was, on its face, nonsensical.

20. The Respondent sought to explain his failure to be aware of the fabrication and frauds of Kumar in two ways. First was that he was freshly qualified as a dealing representative by the MFDA and didn't really understand what he was doing in applying for a line of credit. Secondly, he said he relied on Kumar and proffered the excuse that he should have checked but that he was having unspecified family problems at the time.

21. Finally, and dispositively in the Hearing Panel's view, he applied for a line of credit which he must have known he wasn't qualified for, he signed the line of credit application which he knew

³ The extent of the frauds centred on Kumar, including the identity of the participants, has apparently not been identified because of the failure of those known to be involved to cooperate with the MFDA. See paragraph 38 below.

or should have known to be false in respect of the one thing he had to establish to be able to qualify for a line of credit, his assets. Nothing the Hearing Panel heard in the evidence suggested that he could have got the line of credit without the fabrications and false information.

22. The Hearing Panel, following hearing evidence of both parties, as well as the arguments, was left in no doubt as to the result. In our view it is highly probable, at the least, that the Respondent was complicit in the submission of false information and fabricated supporting documents as alleged.

Allegation #2 – Failure to Cooperate

23. Staff of the MFDA made numerous attempts to elicit the Respondent’s cooperation with the investigation. Despite being under the professional obligation imposed by the rules, policies and by-laws of the MFDA, the Respondent, with the exception of responding inaccurately to the December 2016 email, failed entirely to cooperate with Staff in its investigation. In *Artinian v. College of Physicians and Surgeons of Ontario*, the Ontario Divisional Court stated that “fundamentally, every professional has an obligation to cooperate with his self-governing body”.

Artinian v. College of Physicians and Surgeons of Ontario (1990),
73 O.R. (2d) 704 (Div. Ct.), at para. 9.

24. There is ample authority for the proposition that an Approved Person must provide Staff with information and documents when requested to do so. To hold otherwise would hinder the MFDA’s ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

Kumar (Re), supra.

Bangyay (Re), [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201238, Panel Decision dated July 22, 2013.

Popen (Re), [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201136, Panel Decision dated September 24, 2012.

Armani (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201701, Panel Decision dated August 3, 2017.

25. The Respondent repeatedly failed to provide information and documents requested by Staff during its investigation, including documents that he had undertaken to Staff to produce. Staff prepared the following chart which sets out the information and documents withheld. The chart was derived from the information contained in the Gallimore Affidavit.

Date	Communication	Method of Delivery	Result
11/21/2016	Staff sent a letter requesting a written response from the Respondent concerning the matters under review by December 13, 2016.	Registered and regular mail	<p>Registered mail was signed for by "R VENDROV" on November 22, 2016.</p> <p>On December 13, 2016, the Respondent sent an email to Staff providing his written response.</p> <p>The Respondent's written response was misleading. In particular, the Respondent falsely advised Staff that he had not applied for the line of credit that is the subject of Allegation #1.</p>
6/28/2017	Staff sent a letter requesting that the Respondent contact Staff within 10 business days in order to schedule an interview.	Registered mail	<p>Registered mail was signed for by "ROMAN VENDROV: on July 6, 2017.</p> <p>The Respondent failed to respond.</p>
7/27/2017	Staff sent a letter advising the Respondent that he was required to attend an interview on September 6, 2017, and was required to confirm by August 8, 2017 that he would attend the interview.	Personal service	<p>Process servers made four attempts to personally serve the Respondent with the letter. On each attempt, the process servers were unable to locate the Respondent.</p> <p>The process servers left delivery cards for the Respondent following three of the attempted deliveries.</p> <p>Staff has not received any notifications which would indicate that the</p>

Date	Communication	Method of Delivery	Result
			Respondent responded to the delivery cards.
8/3/2017	Staff sent another letter advising the Respondent that he was required to attend an interview on September 6, 2017, and was required to confirm by August 8, 2017 that he would attend the interview.	Email	The Respondent failed to respond and he has failed to attend an interview with Staff.
12/20/17	Staff sent a letter advising the Respondent that Staff had escalated this matter to MFDA Enforcement Counsel.	Email	The Respondent did not respond and at no time has the Respondent made himself available to attend an interview with Staff.

26. It was for the foregoing reasons that the Hearing Panel, on July 15, 2019, held that Allegation No. 1 and Allegation No. 2 had been established.

IV. INTRODUCTION (PENALTY)

Proposed Penalty

27. Pursuant to s. 24.1.1(i) of MFDA By-law No. 1, if in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA, a Hearing Panel can impose any of the penalties set out in s. 24.1.1(a)-(f).

28. Also pursuant to s. 24.2 of MFDA By-law No. 1, a Hearing Panel may also require the Approved Person to pay the costs of the proceeding.

29. In the present case, Staff proposed the following penalties against the Respondent:

- a) A permanent prohibition on the Respondent’s authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;

- b) A fine in the amount of at least \$115,000; and
- c) Costs in the amount of \$7,500.

Factors Concerning the Appropriateness of Penalty

30. The primary goal of securities regulation is the protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, 68.

31. The Hearing Panel in *Tonnies (Re)*, stated that the role of a Hearing Panel, when imposing sanctions in furtherance of this goal, is as follows:

The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in *Re Mithras Management Ltd. et al.* (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:

...[T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

Tonnies (Re), [2005] Hearing Panel of the Prairie Regional Council, MFDA File No.200503, Panel Decision dated June 27, 2005, at para. 45.

Desgroseilliers (Re), *supra*, at para 45.

32. Sanctions imposed by a Hearing Panel should therefore be protective, preventative, and intended to be exercised to prevent likely future harm to the markets. To determine whether a penalty is appropriate, the Hearing Panel should consider:

- a) The protection of the investing public;
- b) The integrity of the securities markets;

- c) Specific and general deterrence;
- d) The protection of the MFDA's membership; and
- e) The protection of the integrity of the MFDA's enforcement processes.

Tonnies, supra, at para. 46.

33. Previous Hearing Panels have identified the following as matters to consider when determining whether a penalty is appropriate, most of which are now included in the November 2018 MFDA Sanction Guidelines.

- 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.

Tonnies (Re), *supra*, at para 23.

MFDA Sanction Guidelines, November 15, 2018.

34. The Hearing Panel, in reaching its conclusion that a permanent ban should be granted and that the minimum amount for the total fine suggested by Staff, \$115,000, was appropriate, considered the following factors:

Nature of the Misconduct

35. Completing loan applications with false information and fabricated supporting documents is fundamentally dishonest conduct. It prevents the Member and/or lender from assessing the suitability of the loan application, exposes the lender to significant financial harm should the borrower default on the loan, and undermines the reputation and integrity of the securities industry.

Kumar (Re), supra, at para. 51.

36. Such conduct is deceitful and is completely outside the bounds of conduct required by an Approved Person. It warrants significant penalties.

Kumar (Re), supra, at para. 51.

37. In addition, failing to cooperate with an MFDA investigation is very serious misconduct which demonstrates a fundamental breach of a registrant's obligations and illustrates that the registrant is ungovernable.

38. As a result of the Respondent's failure to cooperate with Staff's investigation, Staff has been unable to determine the full nature and extent of his conduct including determining the degree of his involvement in the fraudulent loan scheme identified by Investors Group. Further, the Respondent's lack of cooperation, as Gallimore testified, has impeded Staff's ability to determine the extent of, and participants in, the fraudulent scheme centered on Shah and Investors Group.

Benefits Received by the Respondent

39. The Respondent used and ultimately obtained \$49,386 from the line of credit that is the subject of Allegation #1.⁴ Therefore, he received a substantial monetary benefit from his misconduct.

The Respondent's Recognition of the Seriousness of the Misconduct

40. The Respondent does not recognize the seriousness of his misconduct. He continued to deny any wrongdoing throughout. The Respondent's failure to provide information and documents

⁴ Gallimore Affidavit, para. 27.

to Staff (and an almost complete failure to cooperate with Staff) demonstrates his unwillingness to comply with the regulation of the securities industry and a lack of remorse. His belated explanations for these failures were weak and completely unpersuasive in the extreme.

The Respondent’s Past Conduct

41. Although the Respondent has no past disciplinary history with the MFDA, this factor was given very little weight in light of the seriousness of the misconduct at issue in this proceeding. It also is relevant to determining the penalty that the Respondent denied and continued to deny throughout the process that he was involved in what the Hearing Panel has now found to be untrue; that is he was complicit in the fraud which led to his being granted the letter of credit.

Risk to Investors and the Capital Markets

42. As stated above, the Respondent’s failure to cooperate with Staff’s investigation demonstrates that he is ungovernable. Therefore, we agree with Staff’s submission that he would pose a significant risk to other investors and the market at large if he were allowed to return to the industry and that a permanent prohibition is necessary to protect investors.

Previous Decisions Made in Similar Cases

43. The proposed penalties, a permanent ban and \$115,000, are appropriate based on previous decisions made in similar circumstances, as set out in the chart below:

Case	Misconduct	Penalties
<i>Rai (Re), supra</i>	The Respondent: <ul style="list-style-type: none"> • <u>submitted a loan application and a line of credit application for himself which contained false information and a fabricated account statement;</u> • arranged for two individuals to submit line of credit applications which contained false information and fabricated account statements; • failed to cooperate with Staff’s investigations into his conduct by, among other things, <u>providing a misleading written statement to Staff and failing to attend interviews.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$125,000 • Costs of \$7,500

<p><i>Kumar (Re), supra</i></p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • <u>submitted a loan application and a line of credit application for himself which contained false information and a fabricated account statement</u> • arranged for two individuals to submit line of credit applications which contained false information and fabricated account statements; • processed a loan application for a client which contained a fabricated account statement; and • failed to cooperate with Staff’s investigations into his conduct by, among other things, <u>providing a misleading written statement to Staff and failing to attend interviews.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$250,000 • Costs of \$10,000
<p><i>Crackower (Re), [2005]</i> Hearing Panel of the Central Regional Council, MFDA File No. 500506, Panel Decision dated August 22, 2005</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • Had another gainful occupation that was not approved by the Member; • solicited and accepted \$3.4 million from clients, which he failed to return or otherwise account for; • <u>providing a misleading written statement to Staff in response to an inquiry from Staff; and</u> • <u>failed to attend an interview with Staff.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$3.4 million for unapproved occupation and soliciting/accepting monies from clients. • Fine of \$50,000 for misleading Staff. • Fine of \$50,000 for failure to attend interview. • Costs of \$7,500
<p><i>Lipovetsky (Re), [2013]</i> Hearing Panel of the Central Regional Council, MFDA File No. 201252, Panel Decision dated July 25, 2013</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • borrowed a total of \$40,000 from two clients; and • <u>failed to cooperate with Staff’s investigation by failing to attend an interview with Staff.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$30,000 for borrowing from clients • Fine of \$50,000 for failure to cooperate • Costs of \$7,500
<p><i>Nguyen (Re), [2019]</i> Hearing Panel of the Central Regional Council, MFDA File No. 201895, Panel Decision</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • <u>failed to cooperate with Staff’s investigation by failing to attend an interview with Staff.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$75,000 • Costs of \$6,500

dated March 28, 2019.		
<i>Gizzo (Re)</i> , [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201024, Panel Decision dated March 16, 2011.	The Respondent: <ul style="list-style-type: none"> • <u>failed to cooperate with Staff's investigation by failing to provide a written statement and documentation to Staff and failing to attend an interview.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$85,000 • Costs of \$7,500

Summary on Penalty

44. The Hearing Panel agrees with Staff's submission that the proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and will strengthen public confidence in the Canadian mutual fund industry by helping to ensure a high standard of conduct by Members and Approved Persons.

45. Staff asked that the MFDA be awarded costs in the amount of \$7,500 and filed a Bill of Costs in that amount in support of that request. A review of that document made it clear that it is far from being a claim for a full indemnification of the true cost of this proceeding. The Hearing Panel is therefore content to accept Staff's costs submission and awards the requested amount.

46. In summary, having found that the two allegations made in the Notice of Hearing have been established, the Hearing Panel orders:

- a) A permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) A fine in the amount of \$115,000; and
- c) Costs in the amount of \$7,500.

DATED this 19th day of September, 2019.

“John Lorn McDougall”

John Lorn McDougall, QC
Chair

“Matthew Prew”

Matthew Prew
Industry Representative

“Joe Yassi”

Joe Yassi
Industry Representative

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