



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: Neil Kumar

Heard: March 18, 2019 in Toronto, Ontario
Decision and Reasons: March 27, 2019

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Edward V. Jackson
Guenter W.K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Neil Kumar)	Respondent, in person
)	
)	

Background

1. This is a hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on Monday, March 18, 2019. Neil Kumar (the “Respondent”) attended the hearing in person and was not represented by counsel.
2. The Panel found at the hearing on March 18, 2019 that the allegations against the Respondent had been proven, with reasons to follow, and at the conclusion of the hearing reserved its decision as to the penalty, with reasons to follow. This is our decision on the penalty and the reasons for our decision as to both the alleged conduct and the penalty.
3. A Notice of Hearing was issued on May 23, 2018 against the Respondent and a first appearance by teleconference was scheduled for August 14, 2018.
4. The Respondent did not appear in person or by teleconference or by counsel at the August 14, 2018, hearing and did not enter a Reply to the allegations. Indeed, the Respondent had not communicated with Staff in any way since the commencement of this proceeding in May 2018. The Panel at the August 14, 2018 hearing determined that the Respondent had been properly served with the Notice of Hearing and ordered that a hearing on the merits take place on February 7, 2019.
5. At the February 7, 2019, hearing the Respondent telephoned into the hearing and requested an adjournment of the hearing on the merits, which was opposed by the MFDA. The Respondent had notified the MFDA the previous day about his request. He told the Hearing Panel that he “didn’t really notice when this was actually going on...To be very honest, it completely slipped my mind”. The Respondent was at the time in England, but told the Panel that he would be returning to Canada in mid-March. He stated: “Pretty much my stance on the entire thing is all the claims are false...I’d like to present my case, my evidence.”
6. The Hearing Panel decided that because this was the Respondent’s first request for an adjournment, an adjournment should be granted until March 18, 2019. The hearing date was made peremptory and, under the circumstances, the Panel permitted Staff to present its evidence by affidavit rather than by oral testimony, unless the Hearing Panel requested that Staff provide additional evidence or Staff wished to present oral evidence.

7. The Respondent appeared in person at the March 18, 2019 hearing. After the MFDA presented its case through affidavit evidence, the Respondent gave evidence under oath, denying the allegations, but admitted that he did not cooperate fully with the MFDA's investigation of his conduct.

8. As to the Respondent's background, he was registered in Ontario as a mutual fund salesperson (now known as a dealing representative), commencing in 2006. From December 2012 to August 9, 2016, the Respondent was registered in Ontario as a mutual fund salesperson with Shah Financial Planning Inc. ("Shah Planning" or "Shah"), a Member of the MFDA. On August 9, 2016, the Respondent resigned from Shah and is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Mississauga, Ontario, area.

Respondent's Misconduct

9. The Notice of Hearing contained two allegations.

Allegation #1: Between July 2015 and March 2016, the Respondent:

- a) submitted a loan application for himself which contained false information about his assets and liabilities, and also contained a fabricated account statement;
- b) submitted a line of credit application for himself which contained false information about his assets and liabilities;
- c) arranged for two individuals to submit line of credit applications which he knew or ought to have known, contained false information about their assets, and also contained fabricated account statements; and
- d) processed a loan application for a client which he knew, or ought to have known, contained a fabricated account statement, 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 August 2016, the Respondent failed to cooperate with MFDA Staff during the course of investigations into his conduct and failed to facilitate access to documents and other records requested by Staff, contrary to sections 22.1 and 22.2 of MFDA By-law No. 1.

Particulars of the Misconduct

10. Particulars of the allegations are set out in the affidavit of John James Gallimore, a Senior Investigator in the Enforcement Department of the MFDA, sworn January 31, 2019.

11. The Respondent disputes the allegations, but the Panel accepted the validity of allegations on the balance of probabilities. It is not the function of a Hearing Panel to determine whether there is proof beyond a reasonable doubt, the standard that is required in criminal cases. A balance of probabilities is all that is needed here. (See *F.H. v. McDougall* [2008] 3 S.C.R. 41.) In our view, however, the truth of the allegations in this case goes far beyond a simple balance of probabilities. In short, we do not believe the Respondent. The evidence presented by the MFDA is overwhelming in proving its case.

12. Allegation 1(a) relates to the Respondent personally obtaining a loan through Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA. On July 3, 2015, the Respondent met with EL, a mutual fund salesperson registered with Investors Group. EL was authorized by Investors Group to offer Solutions Banking loans and lines of credit to clients and other individuals. During the meeting with EL, the Respondent applied for a Solutions Banking Registered Retirement Savings Plan (“RRSP”) loan in the amount of \$70,000. (The loan was, in fact, from National Bank.) Based on the information that the Respondent provided to her, EL completed the application form in respect of the RRSP loan.

13. The RRSP Loan was subsequently granted for \$70,000. Unbeknownst to EL, the information that the Respondent provided to her to complete the RRSP Loan Application Form was false and misleading. The RRSP Loan Application Form contained false information about the Respondent’s assets and liabilities.

14. The Respondent claims that he never met EL and never applied for the loan. “Everything was a lie,” he told us under oath at the Hearing. His position is consistent with what he told the MFDA in the interview conducted by MFDA Staff on November 8, 2016. The Panel, however, accepted the MFDA’s version of the facts. On July, 2016, EL had a 41-page interview with the MFDA and set out in detail the various meetings she had with the Respondent. She has no interest in not telling the truth.

15. We are not handwriting experts, but, for what it is worth, we have seen the Respondent’s application and the Respondent’s signature appears to be the same as other genuine signatures, such as the one on the copy of his passport, which he acknowledges is his signature. EL clearly met with the Respondent at the meetings to arrange the loans, and not with someone claiming for some reason to be the Respondent. EL had a copy of the page of the Respondent’s passport which included his name and picture and she would necessarily have been alerted that there was a serious problem if the person she was meeting with was not the person whose picture was on the passport, that is, the Respondent, Neil Kumar.

16. Moreover, there is an exchange of emails between EL and the Respondent, which clearly indicates that the Respondent signed the form. On July 9, 2015 EL sent a follow-up e-mail to the Respondent at his regular email address, saying: “Yes I do need the proof of assets. If you have them, could you kindly forward it to me, Please?” The next day Mr. Kumar sent her a reply from the same email address with “proof” of the assets, saying: “Please confirm if all is there that you require.’ The attached document purported to show that the Respondent had assets of \$462,700 at Hampton Securities Ltd. (“Hampton Securities”). This amount was consistent with the Respondent’s application form, where he claimed that he had assets of \$462,000 with Hampton Securities.

17. The evidence is clear, however, from documents that Hampton Securities provided to its regulator, the Investment Industry Regulatory Organization of Canada, (IIROC), which in turn forwarded them to the MFDA, that the Respondent had at the relevant time only \$202.48 in assets with Hampton Securities. The document that the Respondent sent to EL was therefore fabricated, no doubt using as a model, the document that the Respondent would have received at an earlier time from Hampton Securities.

18. Similarly, the Respondent claimed on the application form that he had only \$56,128 in liabilities. Evidence shows, however, that he had taken out a loan in 2014 with B2B Bank for \$200,000, which was still outstanding at the time of the application.

19. EL also arranged on July 30, 2015, a line of credit for the Respondent through Investors Group (again, from National Bank) for \$60,000. This is Allegation 1(b). Again, the Respondent set out the same false and misleading information that was used in the loan application with respect to the assets he claimed to own in Hampton Securities and the omission to mention the liability of \$200,000 he owed to B2B Bank.

20. The Respondent claimed in his evidence to us that the address on the applications was not his address, but other documents show that he sometimes used that address. So, it seems clear that he was the person seeking the RRSP Loan and the Line of Credit.

21. Although the Respondent had told us in the conference call from England that he would provide us with documentary evidence to prove his case, the only documentary evidence he presented at the hearing was an Equifax Credit Report and Score, dated March 17, 2019, which the Respondent had downloaded from the internet the day before the hearing, which does not show any RRSP loans or lines of credit. This proves, he argued, that he never took out the loan or established the line of credit. This is hardly proof that the Respondent had not borrowed the funds. The lending organizations may simply not have made this information available to Equifax.

22. The Respondent was also involved in applications for loans through Investors Group for at least three other persons, again using false statements of assets. These are Allegations 1(c) and (d). These transactions were handled by JF, a mutual fund salesperson with Investors Group, who had an interview with the MFDA on June 27, 2017, outlining the Respondent's involvement in the transactions. The Respondent admits to meeting with JF.

23. It is unnecessary to go through the full details here. They are set out in the Notice of Hearing.

24. Paragraphs 20 to 27 of the Notice of Hearing deal with an application by RV, who was then registered as a mutual fund salesperson with Shah Planning and was also a client of Shah. His accounts were serviced by the Respondent. The Respondent was present at the meeting of RV and

JF in March 2016 and participated in filling out the application form requesting a line of credit through Investors Group. Assets of over \$300,000 in Hampton Securities were listed on the application form. A line of credit was approved and about \$50,000 was obtained by RV. The evidence shows that RV did not, in fact, have an account with Hampton Securities.

25. Paragraphs 28 to 34 of the Notice of Hearing deal with the Respondent's participation in obtaining a line of credit set up in March 2016 for KM, also one of the Respondent's clients. The Respondent was present at the meeting and helped prepare the application, which falsely stated that KM held assets at Qtrade Asset Management Inc. ("Qtrade") of \$747,435.75. The line of credit was approved by Investors Group. KM did not, it was later discovered, have an account at Qtrade.

26. Finally, paragraphs 35 to 41 deal with the Respondent's participation in an RRSP loan of \$100,000 for another of the Respondent's clients, RD. This loan was from Manulife Bank. Assets of over \$500,000 in Hampton Securities were shown on the application form, but, once again, RD did not hold any assets or have an account at Hampton Securities.

Failure to Cooperate

27. In May 2016, Investors Group filed reports on the MFDA's Member Event Tracking System ("METS"), stating that the Respondent and others submitted fraudulent documents to EL and JF in order to obtain loans and lines of credit. MFDA Staff commenced an investigation.

28. Commencing August 2016, the Respondent failed to cooperate with Staff's investigation into the matters described in Allegation #1. The Respondent admitted to the Panel that he failed to cooperate. Staff made a number of requests to the Respondent to provide information and to attend an interview with Staff. The Respondent provided Staff with misleading information and failed to attend an interview. These requests are documented in paragraph 42 of the Notice of Hearing.

29. In a letter sent by the MFDA to the Respondent, dated November 14, 2016, the Respondent had been asked in writing a series of questions, following an interview that the Respondent held with MFDA staff on November 8, 2016. Amongst other questions, the Respondent was asked if he "applied for a \$60,000 loan/LOC at National Bank/Solutions Banking;" "whether you have, or have ever had, an account with Hampton Securities Inc.;" and "whether you referred [RD] to EL,

Investors Group Consultant, and [RV] and [KM] to JF, Investors Group Consultant, to apply for a Solutions Banking/National Bank mortgage, loan or LOC.” In all three cases, the Respondent’s answer was ‘no’.

30. 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 the extent of the Respondent’s role in producing fabricated account statements and whether he provided fabricated account statements for individuals other than RD, RV, and KM, described above.

CP’s Complaint

31. The MFDA alleges that the Respondent failed to cooperate in the investigation of a complaint to Shah Planning brought by CP on July 15, 2016, against the Respondent, alleging that the Respondent had misappropriated money that her fiancé, RC, had transferred from his locked-in pension to a self-directed registered pension plan based upon the advice of the Respondent, and had facilitated the sale of off-book investments. Neither CP nor RC were clients of Shah. Upon receipt of the complaint, Shah reported CP’s complaint to the MFDA and MFDA Staff commenced an investigation into the allegations made by CP.

32. It is not necessary for the purpose of this hearing to outline in any detail the nature of the alleged wrongdoing about which CP complained. The conduct alleged is very serious, involving forgery, fraud, and misappropriation of funds. This hearing is not concerned with proving that the Respondent was involved in wrongdoing concerning RC, but rather that he did not cooperate with the MFDA’s investigation of the matter.

33. Upon receipt of the complaint by CP, the MFDA opened a new investigation into the complaint which was separate and distinct from the ongoing investigation into the Respondent’s conduct relating to the falsification of loan applications. The issues involved in the new investigation were disputed, complex and difficult to unravel and as we will see the Respondent did not cooperate with the investigation. As a result, the MFDA decided that they might have difficulty in proving wrongful conduct and should, instead, merge this investigation involving CP’s complaint into the earlier investigation as another example of the Respondent’s failure to cooperate.

34. MFDA Staff were concerned that the Respondent might be engaged in potentially ongoing misconduct involving, among other things, unapproved outside business activities, securities related business that was not conducted through the Member, fraudulent investment schemes, and/or activities that gave rise to conflicts of interest that had not been disclosed to the Member and had not been addressed by the exercise of responsible business judgment influenced only by the best interests of clients.

35. On August 11, 2016, without prior notice to the Respondent, Staff attended at the Respondent's residential addresses. The Respondent was present at one of the addresses. Staff requested that the Respondent permit Staff to conduct inspections of documents, files, correspondence and other records at this and another address. Staff also requested access to his laptop computer to facilitate the investigation of electronic records relevant to Staff's investigation. The Respondent refused to cooperate with Staff's requests for access to documents and other records in spite of being shown the Rules requiring him to comply with MFDA requests.

36. Between August 22, 2016 and October 21, 2016, Staff made several requests to the Respondent to attend an interview and provide Staff with a list of all bank accounts in which the Respondent had a beneficial interest for the period between June 1, 2013 and August 31, 2016; and copies of all account statements in respect of any bank account in which the Respondent had a beneficial interest for the period between June 1, 2013 and August 31, 2016.

37. On November 8, 2016, the Respondent attended an interview with Staff. At the time of the interview, he had not provided Staff with the requested Account List or Account Statements, as Staff had requested. During the interview, the Respondent did not produce the documents, but gave undertakings to provide Staff with, among other things, the Account List and Account Statements.

38. In spite of numerous further requests to provide the Account List and Account Statements and various extensions of the deadline for providing the documents, the Respondent failed to follow through on the promised undertakings.

39. On December 21, 2016, the Respondent sent an email to Staff purporting to provide his response to the undertakings. The Respondent's response, in Staff's view, was inadequate as it did not include the requested Account List and included account statements for an account that the

Respondent appeared to hold at Tangerine Bank, which were redacted to such an extent that none of the information that Staff required for purposes of its investigation could be inspected. All the names and much of the other material had been redacted by the Respondent.

40. Over the next five months, various requests for the banking information and for a further interview were sent by the MFDA, but were ignored by the Respondent. The Respondent knew that the MFDA wanted information from him. On May 24, 2017, the Respondent sent an email to Staff, stating: “I was told there was mail dropped off a week or two ago. Can you please send me a copy as I’m not able to review anything from where I am?” There was no indication in the email as to where he was.

41. Further requests for the documents were made by the MFDA as well as a request for a further interview on May 31, 2017. The Respondent replied by email on May 30, 2017, stating that he would not attend the interview on May 31, 2017. He never did provide the Account List or un-redacted copies of the Tangerine Bank account statements, stating: “As per tangerine request, councils advise was that it is not necessary to provide un-redacted copies as I left the amounts un-redacted.” [Respondent’s spelling, etc. throughout.] Further attempts to communicate with the Respondent were made, without success.

42. Until the day before the scheduled hearing on the merits on February 7, 2019, the Respondent had not communicated with Staff for over 20 months – since he advised Staff on May 30, 2017 that he would not attend the interview scheduled for May 31, 2017.

43. 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 whether he misappropriated RC’s monies as CP alleged in her complaint.

Legality of the Respondent’s Conduct

44. The conduct in the present case is very serious. An Approved Person who completes loan applications with information that he or she knows, or ought to know, is false, engages in conduct that is contrary to Rule 2.1.1. Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person “deal

fairly, honestly and in good faith with its clients;” “observe high standards of ethics and conduct in the transaction of business;” and “not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

45. Not only is the conduct involving the loan applications fundamentally dishonest, 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.

46. The failure to cooperate allegation is in many respects even more serious than the false applications. Pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of a Member, Approved Person, and any other person under its jurisdiction “as it considers necessary or desirable in connection with any matter relating to compliance by such person” with, among other things, “the By-laws, Rules or Policies” of the MFDA.

47. In carrying out its s. 21 duty, the MFDA is authorized under s. 22.1 of By-law No. 1, to require a Member, Approved Person or any other person under its jurisdiction:

- a) to submit a report in writing with regard to any matter involved in any such investigation;
- b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and
- c) to attend and give information respecting any such matters.

48. S. 22.2 provides that the MFDA “shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member or person concerned, and no such Member or person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.’ The provision makes it clear that the Respondent was not entitled to decline to produce the bank records. The words “bank accounts” are specifically mentioned in the section and if they are for some unknown reason not

wide enough to cover the Respondent's bank accounts, the words "records of every description" are.

49. There is ample authority for the proposition that an Approved Person must provide Staff with documents and truthful written responses, and attend an interview with Staff when requested to do so. (See, for example, *Re Douglas* MFDA File No. 201824; *Re International Capital Management Inc. Sanchez and Sanchez* MFDA File No. 201761; *Re Vatanchi and Ho* MFDA File No. 201430; and *Re Bangyay* MFDA File No. 201238.)

50. The evidence in the present case establishes that the Respondent

- a) submitted a misleading written response to Staff during the investigation of the matters described in Allegation #1 of the Notice of Hearing;
- b) failed to attend an interview with Staff during the investigation of the matters described in Allegation #1 of the Notice of Hearing;
- c) refused to cooperate with Staff's requests for access to documents and other records that Staff requested during its attendance at the Respondent's premises on August 11, 2016;
- d) failed to provide documents requested by Staff during the investigation of the allegations made by CP and RC against the Respondent; and
- e) failed to attend a second interview with Staff during the investigation of the allegations made by CP and RC against the Respondent.

Penalty

51. The conduct of the Respondent in the present case was egregious. As counsel for the MFDA argued with respect to Allegation 1: "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. Such conduct is deceitful and is completely outside the bounds of conduct required by an Approved Person. It warrants significant penalties. The Panel agrees.

52. Moreover, the Respondent, as set out in Allegation 2, failed to cooperate with two MFDA investigations into serious misconduct which demonstrates, in MFDA counsel's words, "a fundamental breach of a registrant's obligations and illustrates that the registrant is ungovernable. The Panel agrees.

53. Due to the Respondent's failure to cooperate with Staff's investigations, Staff has been unable to determine the full nature and extent of his conduct including: the extent of the Respondent's role in producing fabricated statements and whether he provided fabricated account statements for individuals other than RD, RV, and KM; and whether he misappropriated RC's monies as CP alleged in her complaint, or indeed, misappropriated funds of other persons as yet unknown. The Respondent poses a significant risk to other investors and the market at large.

54. There is no question that there should be 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.

55. What should the monetary penalty be? A number of comparable cases were cited to us. Two of them were very similar: *Re Adeola* MFDA File No. 201401; and *Re Villarín* MFDA File No. 201352. In both cases, false data with respect to assets was used by the Respondents in applications for loans and the Respondents did not cooperate with the MFDA. In each case there was a permanent prohibition and a fine of \$250,000.

56. In some respects the present case is more serious. Not only did he fail to cooperate, but, unlike the Respondents in those two cases, Mr. Kumar did not tell the truth under oath. However, in both the other cases the losses to the clients and others was likely larger than in the present case, where the actual loss to lenders and borrowers is not clear. In the *Villarín* case it was over \$400,000. It may have been higher in the present case, but the Respondent's conduct prevented us from knowing what it was.

57. We concluded that we would follow those cases and impose a fine of \$250,000, which is a significant penalty and will serve as a deterrent to others.

58. We also order costs of \$10,000.

59. We therefore order:

- 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 \$250,000; and
- c) costs of \$10,000.

DATED this 27th day of March, 2019.

"Martin L. Friedland"

Martin L. Friedland, CC, QC
Chair

"Edward V. Jackson"

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Industry Representative

"Guenther W.K. Kleberg"

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