



**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: Gilles Robert Latour**

Heard: November 28, 2016 in Toronto, Ontario  
Reasons for Decision (Penalty): December 19, 2016

**REASONS FOR DECISION  
(Penalty)**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Guenther W. K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

David Halasz	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Gilles Robert Latour	)	In attendance by teleconference; not represented
	)	by counsel
	)	
	)	

### **Decision as to penalty**

1. We decided that the appropriate penalty for the misconduct of the Respondent was a permanent prohibition and a fine of \$900,000. In addition, we made a costs award against the Respondent of \$10,000.

### **Misconduct**

2. We determined at the hearing into the misconduct of the Respondent on May 30, 2016 that the Respondent had solicited and accepted at least \$651,946 from at least three clients which the Respondent had failed to return or otherwise account for, and had failed to or refused to cooperate with staff's investigation of his conduct.

3. Our decision and reasons as to misconduct were issued on June 7, 2016.

### **Staff's submission**

4. Staff submitted that the appropriate penalty was a permanent prohibition, a fine of approximately \$800,000 to \$900,000 and a costs award of \$10,000.

5. Staff outlined the factors considered in arriving at their suggested penalties.

### **Respondent's submission**

6. The Respondent stated that he has been advised by his counsel in a co-temporal criminal matter against him, based on alleged conduct in the matter before us, that he should not do anything or say anything to anyone outside of the criminal proceeding until the criminal matter had concluded.

7. The Respondent had requested that this MFDA matter be put over until the criminal matter had been decided, but that had not happened.

8. The Respondent stated that he was distressed by 22 stories that had appeared in the local press about his alleged misconduct, allegedly based on comments from senior MFDA enforcement officials, while this matter and the criminal matter were proceeding, that they were out to get him and put him out of business.

9. The Respondent stated that he was flabbergasted at the whole process and that he had meant no disrespect to staff or the panel by his so-called failure to cooperate.

10. The Respondent concluded that he was bankrupt, had lost his home, had no job or prospect for work, no cell phone, and was literally living out of a suitcase.

### **Considerations concerning Respondent's submissions**

11. The purpose of the penalty hearing was to determine the appropriate penalty for the Respondent's misconduct in all the circumstances.

12. It was not the purpose to determine whether the MFDA matter should have been adjourned until the co-temporal criminal matter had been concluded. That issue had been addressed and determined by the panel at the appearance on May 27, 2016, and at the hearing on the merits on May 30, 2016.

13. Nor was it the purpose of this panel to investigate or comment on allegedly improper statements to the press by senior enforcement officials of the MFDA during its investigation or while the matter was before the courts or this panel. That is for others to consider.

14. In determining an appropriate penalty, disciplinary tribunals should take into consideration relevant circumstances surrounding a Respondent and the impact of the penalties

on the Respondent, as one of many factors that may be relevant (see *Donnelly (Re)*, 2010 LNIROC 32 and others).

15. We took the Respondent's circumstances into consideration in setting the penalties.

16. We gave light weight to the fact that the Respondent is impoverished, although that fact restrained us from imposing an even higher fine than \$900,000 to provide an even more impressive deterrent against what we considered to be dishonest and inexcusable conduct toward senior and vulnerable clients who suffered greatly, to his profit, from his misconduct.

17. Regarding the Respondent's failure to cooperate, we considered that his conduct fell far short of justification through reliance on legal advice, from his lawyers in the criminal matter, not to do or say anything outside the criminal process. The Respondent had a clear duty to cooperate with the MFDA investigation. He had a duty to file a reply. He had a duty to provide information about his activities and conduct with clients, to his Member and to the MFDA.

18. Because of the Respondent's failure to cooperate, it was not possible for the MFDA to determine whether, as some evidence discovered in their investigation suggested to them, more clients had suffered more losses than the \$651,946 identified.

### **Other factors considered**

19. The Respondent disobeyed the rules of his Member against obtaining a loan from clients. He did not inform his Member of such loans. He did not advise the clients he obtained funds from of the conflicts of interest he had created by such loans. This was contrary to his Member's rules.

20. There was great harm to his clients.

21. The reputation of his Member and of the industry in general was harmed by his conduct. Public confidence in the integrity of the capital market suffers whenever dishonest and inexcusable conduct, such as that of the Respondent's, occurs.

22. The Respondent has demonstrated by his conduct that he is ungovernable and should not be involved in the securities business.

23. While the Respondent has suffered personally from the consequences of his actions, and stated that he is flabbergasted at the whole process, he did not appear at all remorseful for his conduct, and did not appear to recognize that he had done anything wrong.

24. Counsel for staff referred to several MFDA and other cases as precedents for determining an adequate penalty. We considered them, and in particular *Frank*<sup>1</sup> and *Brauns*<sup>2</sup>. The facts in the other cases were not completely analogous with the facts in the matter before us. However, we were satisfied that the actual penalties in this matter were appropriate in all the circumstances, and not inconsistent with the penalties provided in similar cases.

25. The MFDA penalty guidelines suggest a minimum fine of \$50,000 and a permanent prohibition where a Respondent has been non-cooperative. They further suggest that a Respondent not be permitted to profit from his misconduct. In addition, they emphasize that penalties should be preventative and protective of investors and the capital markets in general.

26. In our case, the Respondent has been seriously and almost perfectly non-cooperative, and the consequences have likely been that additional misconduct and client losses have not been established because of this non-cooperation.

## **Conclusion**

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<sup>1</sup> *Frank (Re)*, [2015] MFDA Central Regional Council, Hearing Panel Decisions dated May 5, 2015 (Misconduct Decision) and August 28, 2015 (Penalty Decision)

<sup>2</sup> *Brauns (Re)*, 2014 LNCMFDA 9

27. We concluded that a permanent prohibition on the Respondent from participating in the capital markets through any member of the MFDA was appropriate.

28. We concluded that a fine of \$900,000 was appropriate. This figure mathematically includes the amount of approximately \$650,000 of funds obtained from the three clients and for which there is no evidence of repayment, and the suggested minimum of a \$50,000 fine for misconduct amounting to non-cooperation, and \$200,000 to cover lost interest to clients on funds obtained, and further deterrence.

29. The fine of \$900,000 should ensure that the Respondent does not profit from his wrongdoing and should provide an adequate deterrent to him and to others against carrying out such conduct in the future.

30. Staff did not provide us with a bill of costs. This matter was not really defended. However, staff had a difficult investigation because of the non-cooperation of the Respondent. In addition, staff expended time and energy in contacting the Respondent and in serving him with materials for the various hearings.

31. We determined that the costs award of \$10,000 was reasonable and adequate in the circumstances and not inconsistent with the amount of costs awards in similar cases.

### **Procedural matters**

32. The penalty hearing was attended by the Respondent and by two members of the panel by teleconference. He lives in Cornwall and has previously agreed that his appearances would be by teleconference. The hearing was adjourned for 10 minutes during which the panel deliberated in private by separate telephone conference to reach a decision.

33. The Respondent disclosed at the penalty hearing that he no longer has a fixed address, does not have a cell phone, and no longer uses the email address he had used in his earlier communications with MFDA staff.

34. On September 23 and October 25, 2016, staff sent copies of its written submission for the penalty hearing to the Respondent at his last known email address. On October 28, 2016 the MFDA issued a news release advising of the details of the penalty hearing. On November 4, 2005 staff left telephone messages about the scheduling of the penalty hearing at the telephone number previously used in communication with the Respondent. On November 24, 2016 a process server located, identified and presented to the Respondent the material staff intended to rely on at the penalty hearing. This consisted of staff's written submission (11 double spaced pages) and a book of authorities.

35. The panel decided that notice of the penalty hearing had been duly given.

36. At the penalty hearing the Respondent confirmed that he had perused the material. Nevertheless, he requested an adjournment so that he could consider them further. The panel observed that each panel member had received a copy of the material and had reviewed it and its previous Decision and Reasons (misconduct) in approximately two hours. The panel denied an adjournment.

**DATED** this 19<sup>th</sup> day of December, 2016.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Guenther W. K. Kleberg”

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“Kenneth P. Mann”

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