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: Luc Marc Andre Laverdiere

Heard: May 3, 2010 in Vancouver, British Columbia
Reasons for Decision: May 12, 2010

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Susan Monk	Industry Representative
Sharon Moskalyk	Industry Representative

Appearances:

David Halasz	)	For the Mutual Fund Dealers Association
	)	of Canada
Basil R. Hobbs	)	For the Respondent
	)	

1. On December 9, 2009 the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing (Exhibit 1) in respect of a disciplinary proceeding commenced by the MFDA against Luc Mark Andre Laverdiere (the "Respondent"). At a hearing held on Monday, January 18, 2010, the Panel was advised by the parties that they were working on an Agreed Statement of Facts, and a hearing on the merits was set for Monday, May 3, 2010.

2. At the commencement of this hearing, counsel for the parties advised that they had reached an Agreed Statement of Facts (the "ASF") (Exhibit 3), which was duly signed by the Respondent, and by Shaun Devlin, Vice-President Enforcement, of the MFDA. At the commencement of the hearing, counsel for the Respondent advised the Panel that the Respondent not only accepted the Agreed Statement of Facts, but that the Respondent did not oppose the penalty proposed by MFDA Staff.

The Evidence

3. It is appropriate at this point to set out the Agreed Statement of Facts:

AGREED STATEMENT OF FACTS

I. INTRODUCTION

(a) By Notice of Hearing dated December 9, 2009, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Luc Marc Andre Laverdiere (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

(b) The Notice of Hearing set out the following allegations:

> **Allegation #1:** Commencing in the fall of 2006 and continuing during 2007, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the

Member by recommending, referring and facilitating purchases by clients and other individuals of an investment product outside the Member, contrary to MFDA Rule 1.1.1(a).

Allegation #3: Commencing in the fall of 2006 and continuing during 2007, the Respondent failed to comply with the policies and procedures of the Member in respect of the sale of non-mutual fund securities and off-book transactions by recommending, referring and facilitating purchases by clients and other individuals of an investment product that had not been approved for sale by the Member, contrary to MFDA Rules 1.1.2 and 2.5.1, and 2.1.1.

II. ADMISSIONS AND ISSUES TO BE DETERMINED

(c) The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part III herein. The Respondent admits that the facts in Part III constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s.24 of MFDA By-law No. 1.

(d) Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is: (i) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, and (ii) a fine in the amount of $20,000.00, pursuant to s.24.1.1(e) of MFDA By-law No. 1.

(e) Staff also seeks a $2,500 costs award against the Respondent, which the Respondent does not oppose.

(f) The Respondent claims to be impecunious and unable to pay any amount towards either a fine or costs.

III. AGREED FACTS

(g) Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part III and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

Registration History

(h) The Respondent was registered in British Columbia as a mutual fund salesperson with Coast Capital Investment ("CCI") from May 30, 2005 until his termination on February 8, 2008. CCI, who was a Member of the MFDA since May 10, 2002, resigned from the MFDA on or about March 25, 2009, and transferred all of its mutual fund business to Worldsource Financial Management Inc.

(i) The Respondent is not currently registered in the securities industry in any capacity.

(j) The Respondent has not previously been the subject of disciplinary proceedings.

Facts

Allegation #1 – Securities Related Business Outside the Member

(k) Commencing in the fall of 2006 and continuing during 2007, the Respondent recommended, referred and facilitated purchases of an investment product offered by Horizon FX Limited Partnership ("Horizon FX") by at least six clients and other individuals (the "Investors").

(l) The Horizon FX investment product was offered for sale by way of an offering memorandum, dated September 11, 2006, in reliance upon the exemptions from the prospectus and registration requirements under the British Columbia *Securities Act*. The offering memorandum represented that Horizon FX invested in contracts on the spot foreign exchange and foreign exchange markets.

(m) Horizon FX purportedly directed the proceeds from its limited partnership offering to Razor FX, an unregistered foreign exchange dealer in the U.S., ostensibly for the purpose of conducting trading activities in foreign currencies. It was subsequently discovered that the principals of Razor FX were operating a scheme to defraud investors, were eventually arrested in the U.S., and pleaded guilty to engaging in a scheme to defraud investors in the spot foreign currency exchange market.

(n) The Respondent did not disclose his involvement in the sale of the Horizon FX investment product to CCI.

(o) The investment product offered by Horizon FX was not known to CCI or approved by CCI for sale by its Approved Persons, including the Respondent.

(p) In late 2006, the Respondent personally purchased units of Horizon FX, which he learned about through discussions with the President of Horizon FX, who was then in a common-law relationship with the Respondent's sister.

(q) Commencing in 2006 and continuing during 2007, the Respondent recommended, referred and facilitated purchases of the Horizon FX investment product by the Investors by engaging in one or more of the following types of conduct with respect to each Investor:

    (a) the Respondent recommended Horizon FX as an investment opportunity to Investors by, among other things, telling Investors that he had invested in Horizon FX, that he was happy with the investment, and that the investment was performing very well;

    (b) the Respondent referred or introduced Investors to the President of Horizon FX for the purpose of allowing the President to promote the

investment and facilitate purchases of the Horizon FX investment product;

(c) the Respondent, along with the President of Horizon FX, met with Investors individually to facilitate purchases of the Horizon FX investment product;

(d) the Respondent provided Horizon FX subscription forms to the Investors to facilitate purchases of the Horizon FX investment product;

(e) the Respondent reviewed the Horizon FX offering memorandum or subscription form, or both, with the Investors and explained the investment to them;

(f) the Respondent took subscription forms completed by Investors and sent them to Horizon FX; and

(g) the Respondent arranged for at least one Investor to transfer funds to Horizon FX.

(r) The Respondent recommended, referred and facilitated purchases of the Horizon FX investment product by the Investors in the approximate amounts set out below:

Investor	Approx. Amount
GB	US $75,453.00
TE	US $4,500
CW	US $21,000
CM	US $14,000
AD	US $19,000
RG	Unknown[1]
Total	At least US $133,953

[1] The amount of RG's investment could not be verified. The Respondent claims that RG was repaid his invested amount plus profit, however the fact and nature of this repayment has not been verified.

(s) On or about October 18, 2007, the British Columbia Securities Commission ("BCSC") issued a case trade order against Horizon FX on the basis that the offering memorandum did not comply with the disclosure requirements prescribed under the British Columbia *Securities Act* (the "Act").

(t) On or about December 14, 2009, the principal of Horizon FX entered into a settlement with the BCSC, wherein he admitted, *inter alia*, that he illegally traded and distributed approximately $34 Million worth of Horizon LP securities contrary to the Act. As part of the BCSC proceeding, approximately $2.6 million in assets and property of the principal of Horizon FX (a bankrupt) were frozen and ordered released to the bankruptcy trustee for distribution to investors.

(u) It is not currently known if there is any reasonable prospect of recovery of the Investors' funds.

Allegation #3 – Breach of Member Policies Procedures

(v) CCI maintained a written policies and procedures manual ("PPM"), which listed, *inter alia*, certain prohibited sales activities.

(w) The PPM contained the following direction under the title "Prohibited Sales Practices":

> "Advice and/or Sales of Non-Mutual Fund Securities: CCI is registered as a 'Limited Dealer – Mutual funds'. Based on this registration category, both CCI and its sales reps are limited to trading and advising in mutual funds and certain exempt securities. The exempt securities that CCI sales reps are permitted to advise and/or trade in are as follows: Canada and BC Savings Bonds; and Term deposits and GICs. <u>Sales reps must not advise upon, offer opinions as to the merits of, or trade in, securities other than mutual funds, except as noted above.</u>" [emphasis added]

(x) The PPM also contained the following direction under the title "Off-Book Transactions":

> "An 'off-book' transaction is defined as a transaction that is processed without going through CCI's Investment Admin department and without being recorded on CCI's books. Off-Book trading activities are prohibited. All transactions must be transmitted to, and processed by, Investment Admin and must be recorded on CCI's books …" [emphasis added]

(y) On October 5, 2006, October 12, 2007, and December 6, 2007, the Respondent confirmed by email that he had read, acknowledged, understood and would adhere to CCI's policies and procedures.

(z) The Respondent's activities set out under Allegation #1 above constitute a breach of CCI's policies and procedures in respect of the sale of non-mutual fund securities and off-book transactions.

Misconduct Admitted

(aa) By engaging in the conduct described above, the Respondent admits that he:

(a) engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to MFDA Rule 1.1.1(a) – (Allegation #1); and

(b) breached the Member's policies and procedures in respect of the sale of non-mutual fund securities and off-book transactions, contrary to MFDA Rules 1.1.2, 2.1.1, and 2.5.1 – (Allegation #3).

Allegation #1 – Securities Related Business Outside the Member

4. The Respondent has admitted Allegation #1, which invokes MFDA Rule 1.1.1(a)

which is as follows:

> No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:
>
> (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provide in the Rules) and in accordance with the By-laws and Rules …
> [the two exceptions in the Rule are not applicable to this case].

5. MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision.

6. In *Re Thomson*, a similar case, the Panel said:

> This provision is for the protection of the investors as well as member firms. When a transaction is done off the books, the Association Member loses the ability to supervise the transaction and take responsibility for the suitability of the transaction for the investor.
>
> *Re Thomson* (2004) I.D.A.C.D. No. 49, paras. 58 to 60

7. In paragraph 30 of the ASF, the Respondent admits that he engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member as alleged in Allegation # 1.

Allegation #3 – Breach of Member Policies and Procedures

8. By engaging in the conduct admitted in Allegation #1, the Respondent failed to comply with the Members Policies and Procedures in respect to the sale of non mutual fund securities and off book transactions (ASF paragraphs 22 to 26).

9. MFDA Rule 2.5.1 provides:

> Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

10. An Approved Person is required to comply with the supervisory policies and procedures established, implemented and maintained by a Member under Rule 2.5.1. The Respondent's failure to do so in this case was a breach of his obligation under MFDA Rule 1.1.2, which provides:

> Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

11. Further, where an Approved Person fails to comply with the Member's Policies and Procedures, he engages in conduct which falls below the acceptable standard of conduct required of the Approved Person as prescribed by MFDA Rule 2.1.1(b), which is:

> Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
> (b) observe high standards of ethics and conduct in the transaction of business…

12. The Member Firm (CCI) maintained a written Policies and Procedures Manual which listed certain prohibited sales activities. "Sales reps must not advise upon, offer

opinions as to the merits of, or trade in securities other than mutual funds, except as noted above "and" Off-book trading activities are prohibited." (ASF para. 23 and 24).

13. In 2006 and 2007 the Respondent confirmed that he had read, acknowledged, understood and would adhere to the Members Policies and Procedures (ASF paragraphs 22 to 25). In the MFDA Decision *In the Matter of Arnold Tonnies* the hearing panel held that the directions in the Members Policies and Procedures Manual can be used as a standard of ethics and conduct against which they can measure the activities of the Approved Person, and based on that test, found that Tonnies had breached the standards of the Member when he failed to abide by the Policies and Procedures set out by the Member.

Re Arnold Tonnies [2005], MFDA Prairie Regional Council
MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005

14. On the evidence and authorities before us, we find that the Respondent knowingly breached his Member's internal standards and fell short of the standards expected of an Approved Person in the Canadian Mutual Fund Industry.

Finding of Misconduct

15. At the hearing, based upon the evidence, admissions, and authorities the Panel were referred to, and based on the submissions of counsel for the parties, the Panel found that it had been proven that the Respondent had:

(a) Engaged in securities related business that was not carried on for the account of the Member through the facilities of the Member, contrary to MFDA Rule 1.1.1(a) (Allegation #1); and

(b) Breached the Members Policies and Procedures in respect of the sale of non-mutual fund securities, and off-book transactions, contrary to MFDA Rules 1.1.2, 2.1.1, and 2.5.1 (Allegation #3).

16. Based upon the foregoing, the hearing then proceeded with submissions on penalty.

Penalty

17. The MFDA sought, and the Respondent did not oppose, the imposition of the following penalties on the Respondent:

(a) A permanent prohibition;

(b) A fine in the amount of $20,000; and

(c) Costs in the amount of $2,500.

18. The MFDA submitted that a permanent prohibition and a fine of this magnitude would reflect the seriousness of the Respondent's misconduct, and is 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 its Members and Approved Persons. We agree.

19. Further, the MFDA submitted that the proposed sanctions would prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants, and foster public confidence in the securities industry. We agree.

20. It must be remembered that the MFDA is part of the securities industry throughout Canada, and the various laws that regulate the securities industry have **their primary goal as the protection of the investor**; other goals include capital market efficiency and ensuring public confidence in the system.

Pezim v. British Columbia (Superintendent of Brokers) [1994] S.C.J. 58 at paras. 59 and 68, per Iacobucci J.

21. In determining the appropriate sanctions to impose a hearing panel should consider the following:

(a) the protection of the investing public;

(b) the integrity of the securities market;

(c) specific and general deterrents;

(d) the protection of the governing body's membership; and

(e) the protection of the integrity of the governing body's enforcement processes.

In the Matter of Arnold Tonnies, supra, p. 22.

22. Factors that hearing panels frequently consider when determining whether a penalty is appropriate include the following:

(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.

Lamoureux (Re), [2002] A.S.C.D. No. 125 at para. 11

In the Matter of Melvin Robert Penney, [2009] Hearing Panel of the Atlantic Regional Council, MFDA File No. 200831, Hearing Panel Decision dated May 13, 2009, ("*Penney*"), at para. 13.

Tonnies, supra at p. 23

23. Another source to be taken into account when determining the appropriate penalties is the MFDA Penalty Guidelines. The Penalty Guidelines are intended to assist hearing panels, MFDA staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. The Penalty Guidelines make it clear that the guidelines are not mandatory, but suggest the types and ranges of penalties that would be appropriate for

particular case types. “The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.”

MFDA Penalty Guidelines at p. 1

24. The MFDA Penalty Guidelines recommend for securities related business (MFDA Rule 1.1.1) a minimum fine of $10,000; write or re-write an appropriate industry course; a period of increased supervision; suspension; and permanent prohibition in egregious cases (e.g. undisclosed activity). The MFDA Penalty Guidelines recommended for breach of Policies and Procedures a minimum fine of $5,000; write or re-write an appropriate industry course; suspension; and permanent prohibition in egregious cases.

MFDA Penalty Guidelines, p. 14, 16

25. The Panel, having considered the ASF, submissions of both counsel, and the authorities, at the Hearing assessed and fixed the following penalties against the Respondent Luc Marc Andre Laverdiere:

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

(b) A fine in the amount of $20,000; and

(c) The Respondent pay costs in the amount of $2,500.

26. In assessing the penalties, the Hearing Panel took into account the factors referred to in paragraphs 20 and 21 of these Reasons.

27. As the Respondent has admitted, he engaged in securities related non mutual fund business, outside the Member and off book, and clearly and knowingly breached the Member’s Policies and Procedures. Misconduct occurred on a number of occasions, involved at least 6 individuals, and commenced in 2006 and continued into 2007. In our view these are very serious violations. They go to the very heart of the Member and Approved Person relationship.

28. As a result of the Respondent's misconduct, investors purchased over $133,000 of unauthorized investments, and there is no reasonable prospect of recovery of the investors' monies.

29. The Panel has borne in mind that the Respondent has recognized the seriousness of the misconduct in that he has made admissions as to his misconduct as per the ASF, and he has not opposed the nature and amount of the penalty sought by MFDA Staff. By agreeing to the ASF, the Respondent avoided the MFDA incurring the additional time and expense of a full hearing.

30. The investors have lost their funds as a result of the Respondent's conduct in recommending the Horizon FX investment as per the ASF, but there is no evidence that the Respondent received any benefit as a result of his activities.

31. Further, the Respondent, who we were advised is 27 years of age, has no past disciplinary history with the MFDA. The Respondent is not currently registered in the securities industry in any capacity.

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

(a) *In the Matter of Martin Horvath* (2009) Hearing Panel of the Central Regional Council, MFDA File No. 200919, Hearing Panel Decision dated November 11, 2009, including the four authorities cited at para. 11; and

(b) *In the Matter of Lip Fee Chan* (also known as Philip Chan) (2007) Hearing Panel of the Central Regional Council, MFDA File No. 200607, Hearing Panel Decision dated April 3, 2006, at p. 3-4.

33. A review of the previous decisions indicates that Hearing Panels ordered a permanent prohibition and a substantial fine in situations similar to this case. MFDA Staff submits that the imposition of a permanent prohibition, and the $20,000 fine in this case will provide both specific and general deterrents, insofar as the Respondent will be prohibited from participating in the industry, and Approved Persons generally will be deterred from engaging in similar activity. We agree.

Costs

34. As a result of the Respondent's cooperation, including making the admissions set out in the ASF, and by not opposing the imposition of the penalty sought by MFDA Staff, MFDA Staff submitted an award of costs against the Respondent in the amount of $2,500 would be appropriate in the circumstances. We agree.

35. In summary, this Panel has considered all of the evidence, and the authorities submitted, and have taken into account both the aggravating and the mitigating factors present in this case. We have considered previous similar cases, and the range set out in the Guidelines. We have also taken in to account the submissions of counsel for both parties. Based on the foregoing, at the hearing on May 3, 2010, we assessed and fixed the penalties and costs as set out above in paragraph 25.

36. These Reasons may be signed in counterpart.

DATED this 12th day of May, 2010.

"Stephen D. Gill"
Stephen D. Gill,
Chair

"Susan Monk"
Susan Monk,
Industry Representative

"Sharon Moskalyk"
Sharon Moskalyk,
Industry Representative

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