



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: Mark Lindsay

Heard: June 2, 2011, Toronto, Ontario

Reasons for Decision: June 10, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney
Teri L. Ryan
Kenneth Mann

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)	For the Mutual Fund Dealers Association of Canada
)	
Mark Lindsay)	Did not attend in person or by Counsel
)	

THE ALLEGATIONS

1. By Notice of Hearing, dated February 23, 2011,¹ the MFDA alleged that Mark Lindsay (“Respondent” or “Mr. Lindsay”) had violated the following By-laws, Rules or Policies of the MFDA:

Allegation #1: Between approximately October 2007 and December 2008, the Respondent failed to deal fairly, honestly and in good faith with clients KV, LL, M and ML, DG, AL, JJ, DD, PE and SE, TD and JW, FM and PH, HH and AC and SV by forging their signatures on documentation, misleading them about the source of money he gave to them and the use that he made of money received from them, and misappropriating more than \$300,000 from them, which he has failed to repay or otherwise account for, contrary to MFDA Rule 2.1.1.

Allegation #2: Between January 2007 and December 2008, the Respondent engaged in unauthorized trading in the accounts of, and processed unauthorized loan applications for, clients KV, LL, M and ML, DD, DG, AL, FM and PH, TD and JW, P and SE, and JJ, without obtaining instructions, authorization or approval from the clients, contrary to MFDA Rules 2.1.1 and 2.3.1.

SERVICE

2. The Notice of Hearing was served on the Respondent.² He advised Mr. Glanville of the MFDA by e-mail, dated March 1, 2011, that he had received the Notice of Hearing and accompanying documents but said that he was not going to participate in the MFDA proceeding.³

3. By Order, dated April 4, 2011, this Hearing Panel ordered that:

2. Notwithstanding the fact that pursuant to Rules 7.3(1)(a) and 8.4(1)(a) of the MFDA Rules of Procedure, the Respondent is not entitled to further notice with respect to this proceeding, Counsel for Staff shall inform the Respondent by e-

¹ Exhibit 1

² Exhibit 2, affidavit of Sofi Vasiliadis

³ Exhibit 3, Exhibit S to the affidavit of Stephen Glanville, p. 1 of 2

mail of the date and time of the hearing on the merits and shall extend an offer by e-mail to provide the Respondent with copies of any material to be filed at or prior to the hearing on the merits. Staff is not required to serve additional materials on the Respondent unless the Respondent responds to Staff's offer by requesting receipt of such materials.

4. Counsel e-mailed a copy of the Order to Mr. Lindsay on April 11, 2011.⁴ The Respondent replied on the same date.⁵

5. In an exchange of e-mails, dated May 17, 2011, counsel for MFDA offered,⁶ and the Respondent refused, copies of the materials the MFDA planned to file at the hearing on June 2, 2011.

6. By another e-mail, dated June 1, 2011, counsel advised the Respondent that the time for the hearing on June 2, 2011 had changed to 9:00 a.m. Mr. Lindsay replied, on June 2, 2011, in an e-mail and said, "I will not be attending the meeting."

7. In light of the foregoing, it is obvious that the Respondent was afforded ample notice of the case against him and the date when evidence against him would be presented to this Hearing Panel. He declined to participate and the Hearing Panel proceeded in his absence.

THE CASE FOR THE MFDA

8. Counsel for the MFDA tendered two affidavits to establish his case. The Hearing Panel is, of course, able to accept evidence in this form.⁷

The Affidavit of Stephen Glanville ("Mr. Glanville")⁸

9. Mr. Glanville is employed as an investigator with the MFDA. He conducted the investigation into the activities of Mr. Lindsay. His affidavit is comprehensive. It fills a thick volume and includes 21 exhibits.

⁴ *Ibid*, Exhibit T

⁵ *Ibid*, Exhibit T, p. 1 of 1

⁶ *Ibid*, Exhibit U

⁷ MFDA Rules of Procedure, July 16, 2010, Rule 13.4

⁸ Exhibit 3

10. The key elements of his testimony are summarized as follows:

a) The Respondent was registered as a mutual fund salesperson and was an Approved Person of Investors Group Financial Services Inc. (“IG”) from Sept 5, 2003 until he was terminated for cause by IG on December 5, 2008.

b) IG gave Mr. Glanville copies of Agreements of Approved Person that the Respondent had signed on May 5, 2003 and June 14, 2004. Under those Agreements the Respondent agreed, among other things, to be bound by, observe and comply with the By-laws, Rules or Policies of the MFDA and to submit to its jurisdiction.

c) On October 18, 2010, Mr. Lindsay pleaded guilty to one count of fraud over \$5,000.00. He was sentenced to two years probation and stand alone restitution. All other charges against him were dropped.

d) On January 21, 2010, Mr. Glanville and his associate, Mr. James Chee, interviewed the Respondent in Vancouver. The transcript of the interview is attached to Mr. Glanville’s affidavit.⁹ It is 140 pages long. Mr. Glanville and Mr. Chee questioned the Respondent about all of the complaints and allegations that his former clients had made against him. Mr. Lindsay freely admitted to all of the allegations with, in a few cases, some explanation or clarification.

e) In an e-mail dated March 1, 2011, attached as an exhibit to Mr. Glanville’s affidavit,¹⁰ the Respondent said, in part: “i am guilty of all the actions noted...i agree to all allegations.”

f) Mr. Glanville was present in the hearing room on June 2, 2011 and available for questioning by members of the Hearing Panel. In light of the extensive work done by Mr. Glanville and the admissions from Mr. Lindsay that he was able to obtain, the Hearing Panel had no questions.

⁹ *Ibid*, Exhibit P

¹⁰ *Ibid*, Exhibit S, p. 1 of 2

The Affidavit of Thomas H. Vowell (“Mr. Vowell”)¹¹

11. Mr. Vowell is the Vice-President, Compliance Investigations at IG. His affidavit is in three volumes and includes 125 exhibits. It chronicles, in exquisite detail, the investigation that IG conducted into the activities of the Respondent, the results of that investigation and the compensation that IG paid to the Respondent’s victims.

12. Mr. Vowell was available by teleconference for questioning by the Hearing Panel. The Members had no questions.

13. Counsel for the MFDA provided a chart showing how the conduct of the Respondent between January 2007 and December 2008 impacted his former clients and IG. The Hearing Panel reproduces this chart, without its footnotes, as a useful summary of the evidence in this case.

Client	Date Range	Unauthorized Transactions	Unauthorized Loans	Amount Misappropriated	Compensation Paid by IG
LL	Jan 30-08 to Dec 31-08	7	0	\$186,824.69	\$89,699.23
AL	Feb 20-08 to Aug 19-08	9	1	\$7,000	\$7,173.43
DG	Aug 25-08 to Aug 27-08	3	1	\$10,000	\$12,370.40
ML	Oct 8-08 to Nov 6-08	3	1	\$11,457.82	\$11,619.48
ML	July 14-08 to Dec 31-08	22	0	\$115,819.46	\$115,839.46
JJ	June 9-08 to June 26-08	2	1	\$4,000	\$4,039.79
DD	May 21-08 to Oct 14-08	2	0	\$13,662.93	\$13,829.84

¹¹ Exhibit 4

Client	Date Range	Unauthorized Transactions	Unauthorized Loans	Amount Misappropriated	Compensation Paid by IG
TD & JW	Jan 4-07 to Sept 2-08	11	0	\$38,801.44	\$47,011.96
FM & PH	Aug 1-07 to Oct 29-08	0	0	\$40,350	\$40,350
HH & AC	May 6-08 to Sep 6-08	0	0	\$38,500	\$38,500
KV	Oct 4-07 to Sept 26-08	4	1	\$2,064.11	\$15,475.69
SV	Nov 10-08	0	0	\$20,000	\$20,061.54
FM2	Sept 16-08 to Sept 18-08	2	0	\$5,927.95	\$5,980.59
Totals	Jan 4-07 to Dec 31-08	65	5	\$494,408.40	\$424,451.41

THE LAW

14. The MFDA must prove its case on a balance of probabilities.¹² The MFDA has met the burden of proof imposed upon it. The evidence collected by the MFDA and IG, coupled with the admissions of the Respondent, establish that he is a thief, forger, and liar who stole over \$300,000.00 from his clients, many of whom were close to him by blood or marriage. He not only abused the trust of his clients but also that of his sponsor, IG, who had to pay out over \$400,000.00 as compensation to his victims.

15. The Hearing Panel finds, therefore, that the Respondent breached the standard of conduct expected of Approved Persons and, thus, contravened MFDA Rule 2.1.1.

PENALTY

16. The Hearing Panel is well aware of the MFDA Penalty Guidelines and the need to protect

¹² *F. H. v. McDougall*, 2008 SCC 53

investors.¹³ Moreover, general deterrence is an important element in determining an appropriate penalty.

Penalty must re-affirm public confidence in the regulatory system, and to do this, it must be seen to act as a general deterrent.¹⁴

17. The Hearing Panel has considered all of the evidence and the submissions of counsel and imposes the following penalties:

- a) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA;
- b) The Respondent shall pay a fine in the amount of \$500,000; and
- c) The Respondent shall pay costs to the MFDA in the amount of \$10,000.

18. At the hearing on June 2, 2011, the Hearing Panel quickly determined that the MFDA had proven its case and executed the Order dated that day. The Chair of the Hearing Panel said that our Reasons would follow. These are those Reasons.

DATED this 10th day of June, 2011.

“Terrance Sweeney”

Terrance Sweeney,
Chair

“Teri Ryan”

Teri L. Ryan,
Industry Representative

“Kenneth Mann”

Kenneth Mann,
Industry Representative

Doc 257527

¹³ *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557

¹⁴ *Raymond Brown-John (Re)*, [2005] MFDA Pacific Regional Council, File No. 20052, Hearing Panel Decision dated June 27, 2005