



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: Daniel Lipovetsky

Heard: July 3, 2013 in Toronto, Ontario
Reasons for Decision: July 25, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney)	Chair
Linda J. Anderson)	Industry Representative
Robert C. White)	Industry Representative

Appearances:

Francis Roy)	Counsel, Mutual Fund Dealers Association of
)	Canada ("MFDA")
)	
Daniel Lipovetsky)	Did not appear either in person or by Counsel
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the MFDA concerning a disciplinary proceeding commenced against Daniel Lipovetsky (“the Respondent”).
2. A Notice of Hearing, dated April 5, 2013,¹ was issued by the MFDA setting the date of the first appearance before the Hearing Panel by teleconference in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario, on June 4, 2013 at 10:00 a.m.
3. In a News Release dated April 16, 2013, which was posted on its website, the MFDA announced disciplinary proceedings would commence in respect of the Respondent. The MFDA Staff alleged that the Respondent engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between 2007 and 2009, the Respondent engaged in personal financial dealings with at least two clients by borrowing \$10,000 from client PJ and \$10,000 from client DB, thereby giving rise to a conflict or potential conflict of interest between the Respondent and each of clients PJ and DB, which conflicts the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #2: Between 2007 and June 30, 2009, the Respondent failed to comply with the Member’s policies and procedures prohibiting Approved Persons borrowing from clients, thereby interfering with the ability of the Member to supervise the Respondent and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

Allegation #3: Commencing on or about May 4, 2012, the Respondent has failed to attend an interview to provide a statement as requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

¹ Exhibit 1

3. The Respondent was served with the Notice of Hearing² but did not appear at the appearance held on June 4, 2013.

4. On June 4, 2013, the Hearing Panel ordered that the Hearing on the Merits would take place before the Hearing Panel in the MFDA hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario, on July 3, 2013 commencing at 10:00 a.m. The MFDA issued a News Release dated June 4, 2013, which was posted on its website, announcing the date of the hearing.

5. The Respondent did not file and serve a Reply. He did not attend the hearing on July 3, 2013. In these circumstances,³ the Hearing Panel may accept the facts alleged and conclusions drawn by Staff of the MFDA in the Notice of Hearing dated April 5, 2013.

6. Counsel for the MFDA filed an affidavit of John James Gallimore, an investigator with the MFDA.⁴ This is a 35-page document in which Mr. Gallimore provides evidence of the Respondent's borrowing from clients and his failure to cooperate with Staff.

7. The Hearing Panel issued a confidentiality order pursuant to Rules 1.8(2) and (5) of the MFDA's Rules of Procedure, to protect the identities of the Respondent's clients.

SUBMISSIONS

8. Mr. Roy filed written submissions on the allegations, the penalties and the costs he was seeking. He also filed a book of MFDA Rules, By-law No. 1, Penalty Guidelines and relevant case law.

DECISION

9. The Chair of the Hearing Panel told Counsel that the Hearing Panel relied on Rule 8.4(1)(b) and, accordingly, accepted the facts alleged and conclusions drawn by Staff in the

² Exhibit 2 – Affidavit of Evaggelos Nikiforos dated April 12, 2013

³ MFDA Rule of Procedure 8.4(b)

⁴ Exhibit 3

Notice of Hearing and in Mr. Gallimore's affidavit. He had, therefore, proven his case on a balance of probabilities. The Chair then invited Mr. Roy to restrict his submissions to the appropriate penalty to be imposed.

PENALTIES

Allegations #1 and #2 – Borrowing from Clients

10. Mr. Roy noted that the Respondent had repaid the loans he had obtained from his clients albeit years after he had received the money. Nevertheless, the Respondent as an Approved Person knew or ought to have known that this practice breached the policies and procedures of the Member and contravened the MFDA Rules and a specific MFDA Notice.⁵

Allegation #3 – Failure to Cooperate

11. Mr. Roy alleged that this is serious misconduct by the Respondent. If an Approved Person fails to provide information in the course of an investigation, then the integrity of the self-regulatory system and the effectiveness of its operation are compromised.

REASONS

12. The members of the Hearing Panel are puzzled as to why the Respondent did not cooperate with the MFDA. After all, he had apparently repaid the loans. One would think that had he done so a significantly reduced penalty could have been negotiated. Yet, he ignored and insulted the MFDA by deliberately flaunting its Rules and those of the Member.

13. The Respondent has shown no remorse for his actions and deserves to be penalized accordingly. The penalty imposed by the Hearing Panel must be sufficient to deter others in the industry who might be inclined to engage in similar conduct.

14. The following penalties were proposed by Counsel for the MFDA and were accepted by the Hearing Panel as reasonable and appropriate in the circumstances. The Hearing Panel,

⁵ MFDA Rule 2.1 – MFDA Staff Notice – Personal Financial Dealings With Clients dated October 3, 2005

therefore, orders that these penalties be imposed against the Respondent.

- a) a permanent prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member;
- b) a fine of \$30,000 with respect to Allegations #1 and #2;
- c) a fine of \$50,000 with respect to Allegation #3; and
- d) costs of \$7,500.

DATED this 25th day of July, 2013.

“Terrance A. Sweeney”

Terrance A. Sweeney,
Chair

“Linda J. Anderson”

Linda J. Anderson,
Industry Representative

“Robert C. White”

Robert C. White,
Industry Representative

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