



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: Piotr (Peter) Lipski

Heard: October 12, 2010, Vancouver, British Columbia
Reasons for Decision: November 3, 2010

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. H. Benjamin Casson, Q.C.
Elaine Davison
Susan Monk

Chair
Industry Representative
Industry Representative

Appearances:

Charles A. Toth)	For the Mutual Fund Dealers Association of
)	Canada
)	
Piotr (Peter) Lipski)	Respondent
)	
)	

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A. LIST OF EXHIBITS

Exhibit #	Description
1.	Notice of Hearing dated May 14, 2010
2.	Affidavit of Service sworn June 29, 2010
3.	Letter dated September 17, 2010 from Peter Lipski to the MFDA
4.	Agreed Statement of Facts
5.	Written Submissions of Staff
6.	Book of Authorities Filed by Staff

B. BACKGROUND

1. By Notice of Hearing dated May 14, 2010, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Piotr (Peter) Lipski (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1. (Exhibit 1).

2. The Notice of Hearing was served on the Respondent in compliance with Rule 4 of the MFDA’s Rules of Procedures and is marked as Exhibit 1.

3. The Notice of Hearing set out the following allegations:

Allegation #1: Between July 2005 and December 2007, the Respondent prepared and submitted new account application forms and loan applications for clients which he knew contained false and misleading information, thereby failing to observe the high standards of ethics and conduct in the transaction of business and be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

Allegation #2: Between July 2005 and December 2007, the Respondent recommended to clients that they borrow monies to invest and assisted the clients to obtain investment loans without:

(a) learning the essential facts relative to each client, contrary to MFDA Rules 2.2.1(a) and 2.1.1; and

(b) ensuring the leveraging recommendations were suitable for the clients and in keeping with the clients’ investment objectives, contrary to MFDA Rules 2.2.1(c) and 2.1.1.

Allegation #3: Between May 2005 and April 2008, the Respondent had and continued in another gainful occupation that was not properly disclosed to or approved by the Member, contrary to MFDA Rule 1.2.1(d).

Allegation #4: Between March 2008 and April 2008, the Respondent provided false and misleading information to the Member and the MFDA during the course of their respective investigations of the Respondent's conduct, thereby failing to observe the high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1 and section 22.1 of MFDA By-law No. 1.

4. A First Appearance was held, by teleconference, on July 20, 2010. The Respondent did not appear nor was he represented.

5. The MFDA was represented by Charles A. Toth ("Enforcement Counsel") who informed the Panel that the Respondent was unable to attend the First Appearance and that the MFDA, subject to the Panel's ruling, would consent to a new interim hearing date at which the Respondent would attend.

6. A Hearing proceeded by teleconference on September 17, 2010. The Respondent appeared, in person, at the MFDA offices at 121 King Street West, Suite 1000, Toronto, Ontario.

7. As it appeared to the Panel that the Respondent wished to make an inculpatory statement, it was decided that the hearing be adjourned to October 12, 2010, at which time Parties would appear in person before the Panel and make any submissions.

8. On October 7, 2010, the Panel received from Enforcement Counsel an Agreed Statement of Facts (Exhibit 4) signed by the Respondent on October 4, 2010 and the Submissions of Staff of the MFDA. (Exhibit 5).

C. ADMISSIONS OF FACT

9. On October 12, 2010, a Hearing was held with the Respondent present and ready to proceed.

10. Enforcement Counsel tendered an Agreed Statement of Facts which was admitted into evidence as Exhibit 4 without objection from the Respondent.

11. In Exhibit 4, the Respondent made the following admissions of fact:

- The Respondent was registered in British Columbia as a mutual fund salesperson with Aegon Dealer Services of Canada Inc. (“Aegon”) from May 26, 2005 until April 2, 2008, when he was terminated as a result of the events described below. The Respondent is not currently registered in the securities industry in any capacity.
- In October 2008, the Respondent’s life insurance license was cancelled by the Insurance Council of British Columbia as a result of the events described below.
- Aegon became a member of the MFDA on March 13, 2002. Aegon amalgamated with Investia Financial Services Inc. (“Investia”) on September 30, 2008 and thereafter continued to operate as Investia. Investia has been a member of the MFDA since June 7, 2002.

Allegation #1: False and Misleading NAAFs and Loan Applications

- Between July 2005 and December 2007, the Respondent prepared Aegon new account application forms (“NAAFs”) and AGF Trust loan applications (“Loan Applications”) for signature by 12 clients which he knew contained false and misleading information insofar as the Respondent had, among other things:
 - (a) inflated the incomes of at least 9 clients in their NAAFs and Loan Applications;
 - (b) falsely indicated that at least three clients held employment positions, which they did not in fact hold, in their NAAFs and Loan Applications;
 - (c) created and submitted with the Loan Applications at least 10 fictitious employment pay stubs;
 - (d) altered and submitted with the Loan Applications at least three Notices of Assessment purportedly issued by the Canada Revenue Agency; and
 - (e) created, signed and submitted with the Loan Application at least one letter

from a fictitious employer.

The Respondent submitted the NAAFs and Loan Applications to open new accounts at and obtain investment loans in the amount of \$1,525,000 from Aegon and AGF Trust respectively for the 12 clients.¹

Allegation #2: Failure to Learn Essential Facts of Clients and Ensure Suitability of Loans

- Between July 2005 and December 2007, the Respondent recommended to clients that they borrow monies to invest and assisted the clients to obtain investment loans without:
 - (a) learning the essential facts relative to each client, contrary to MFDA Rules 2.2.1(a) and 2.1.1; and
 - (b) ensuring the leveraging recommendations were suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1(c) and 2.1.1;

Allegation #3: Undisclosed Dual Occupation

- Stantax Services Inc. (“Stantax”) is a corporation which was registered pursuant to the laws of British Columbia on August 18, 1993.
- At all material times, the Respondent owned and operated Stantax and through it, personally provided income tax preparation, bookkeeping and payroll services to clients and other individuals.
- The Respondent did not disclose to and obtain approval from Aegon to operate Stantax and personally provide tax preparation, bookkeeping and payroll services to clients and other individuals.

- On or about May 12, 2005, the Respondent completed an Aegon Representative Agreement (“Representative Agreement”) and a Registered Representative Personal Profile (“Representative Profile”) in order to become registered as a mutual fund salesperson with Aegon. The Representative Agreement and Representative Profile required the Respondent to identify any interests he held in other businesses. The Respondent did not disclose his interest in and operation of Stantax.
- On or about March 22, 2006, the Respondent completed an Aegon Dual Occupations disclosure form. The Respondent did not disclose his interest in and operation of Stantax.
- On or about July 31, 2007, the Respondent completed an Aegon Compliance Certification form, in which he disclosed that he used the business or trade name “Stantax Services Inc.” in relation to Member business but did not disclose the nature of his association with Stantax or any details regarding the business conducted by Stantax.

Allegation #4: False and Misleading Responses to the Member and the MFDA

- In November 2007, AGF Trust notified Aegon that the Loan Applications and supporting documents submitted by the Respondent contained questionable income and employment information. Aegon immediately suspended the Respondent’s leveraging privileges and commenced an internal investigation, which it concluded in April 2008.
- The MFDA commenced its own investigation with regards to the Respondent’s conduct in April 2008.
- The Respondent provided false and misleading information to Aegon and the MFDA during the course of their respective investigations into his conduct, as set out below:
 - (a) Among other things, the Respondent did not disclose that: (1) he owned and operated Stantax; (2) Stantax provided income tax preparation, bookkeeping

and payroll services to clients and other individuals; and (3) the Respondent personally prepared income tax returns and provided bookkeeping services to clients and other individuals.

- (b) On or about January 30, 2008, the Respondent completed an Aegon Dual Occupations disclosure form. The Respondent described the nature of the business conducted by Stantax but failed to disclose, and subsequently denied in a written statement to Aegon dated April 7, 2008, that he personally provided income tax preparation, bookkeeping and payroll services to clients and other individuals.
- (c) In an email to Aegon dated March 3, 2008, the Respondent claimed that his clients had obtained, and submitted to the Respondent in support of their loan applications, inaccurate financial documentation which had been provided to them by an alleged mortgage broker, MW. MW is unknown to the clients and did not provide any financial documentation to them.
- (d) In response to a telephone call from Aegon on March 28, 2008, the Respondent answered the telephone as, and pretended to be, an individual named PK. The Respondent, while pretending to be PK, advised Aegon that he employed a client and had previously sent a letter to Aegon detailing the client's employment history and earnings.³ The client was not employed by PK and PK is not known to the client.
- (e) In an email to Aegon dated April 7, 2008 and in a letter to MFDA Staff dated June 3, 2008, the Respondent stated that: (1) he did not personally prepare income tax returns for clients and other individuals; and (2) all income tax preparation services were performed by his wife. At all material times, all income tax preparation services provided to the clients were performed solely by the Respondent.

12. By admitting the facts which support Allegation 1, the Respondent admits to conduct which violates the standard prescribed by the MFDA's Rule 2.1.1 (Standard of Conduct).

13. By admitting the facts which support Allegation 2, the Respondent admits to conduct which violates the MFDA's Rule 2.2.1 (Know your Client) and the MFDA's Rule 2.1.1 (Standard of Conduct).

14. By admitting to the facts which support Allegation 3, the Respondent admits to conduct which violates the MFDA's Rule 1.2.1(a) (Dual Occupations).

15. By admitting the facts which support Allegation 4, the Respondent admits to conduct which violates the MFDA's Rule 2.1.1 (Standard of Conduct) and s. 22.1 of the MFDA's By-law No. 1 (Investigating Powers).

D. PENALTY

16. The Enforcement Counsel has proposed a penalty as follows, to which the Respondent has not objected:

(a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

(b) a fine in the amount of \$25,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and

(c) costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.

17. The Panel agrees with Enforcement Counsel that in reviewing and considering the appropriateness of a penalty, the Panel should not, without good reason, interfere with a disposition agreed to by the Parties.

18. The Panel has considered the following factors in assessing the appropriateness of the proposed penalty:

- The seriousness of the allegations proved against the Respondent;

- The Respondent's past conduct, including prior sanctions;
- The Respondent's experience and level of activity in the capital markets;
- Whether the Respondent recognizes the seriousness of the improper activity;
- The harm suffered by investors as a result of the Respondent's activities;
- The benefits received by the Respondent as a result of the improper activity;
- The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- 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;
- The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- Previous decisions made in similar circumstances.

19. In the present case, the Panel agrees with the submissions of Enforcement Counsel, at pages 13 to 15 (Exhibit 5), in which he states, in part, as follows:

31. *The Respondent's conduct was serious, deliberate and prolonged.*

32. *First, the Respondent prepared and submitted NAAFs and Loan Applications, which he knew contained false and misleading information, to Aegon and AGF Trust in order to open accounts and obtain investment loans in the amount of \$1,525,000 for the 12 clients.*

33. *Second, the Respondent recommended to clients that they borrow monies to invest and assisted the clients to obtain investment loans without learning the essential facts relative to each client, and ensuring the leveraging recommendations were suitable for clients and in keeping with their investment objectives.*

34. *Third, the Respondent engaged in an undisclosed and unapproved business*

activity which involved income tax preparation, bookkeeping and payroll services for clients.

35. Fourth, the Respondent provided false and misleading information to Aegon and the MFDA during the course of their respective investigations of his conduct. The Respondent did, however, attend a subsequent interview with MFDA Staff. There is no allegation that the Respondent misled or otherwise failed to cooperate with MFDA Staff during the course of the interview.

36. The MFDA's investigation did not reveal any client losses.

37. By his conduct the Respondent has demonstrated that he would pose a risk to investors and the capital markets were he to continue to operate in the capital markets. The proposed penalty, which includes a permanent prohibition, will eliminate this risk to the extent permitted under the MFDA's jurisdiction.

38. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

39. In October 2008, the Respondent's life insurance license was cancelled by the Insurance Council of British Columbia as a result of the events at issue in this proceeding.

40. The Respondent was registered in British Columbia as a mutual fund salesperson from December 2003 until April 2008. He is not currently registered in the securities industry in any capacity.

41. By admitted [sic] his misconduct at the interview stage of MFDA Staff's investigation and later entering into the ASF, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full hearing.

42. A permanent prohibition on the authority of an Approved Person to conduct

securities related business with an MFDA Member is a serious penalty, which will deter others in the capital markets from engaging in similar activity.

43. *In addition, the proposed fine of \$25,000 is significant and should not be viewed as a license fee or cost of doing business...*

46. *In the present case, the Respondent's willingness to admit his misconduct at the interview stage of the investigation and to later sign the ASF are mitigating factors which weigh in favour of a fine which is less than the minimum amount identified in the Penalty Guidelines.*

20. The Panel concludes, therefore, that the proposed penalties are reasonable and proportionate, having regard to the conduct of the Respondent and the circumstances of the case, and has signed the necessary Order dated October 12, 2010, confirming the disposition.

DATED this 3rd day of November, 2010.

"H. Benjamin Casson"
The Hon. H. Benjamin Casson, Q.C.
Chair

"Elaine Davison"
Elaine Davison,
Industry Representative

"Susan Monk"
Susan Monk,
Industry Representative