



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: Paul Edward Lloyd

Heard: February 12, 2008

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C. Chair
Sandy Grant, Panel Member
Selwyn Kossuth, Panel Member

Appearances:

Jason Bennett)	Enforcement Counsel
Paul Edward Lloyd)	Unrepresented

DECISION AND REASONS

As set out in the Notice of Hearing, Paul Edward Lloyd (“Respondent”) was charged as follows:

Allegation #1: Between November 2004 and August 2005, the Respondent, as a designated branch manager of the Member, failed to ensure that all business conducted on behalf of the Member by an Approved Person at the branch was in compliance with applicable securities legislation and the By-laws and Rules of the MFDA, contrary to MFDA Rule 2.5.3(b) and MFDA Policy 2.

Allegation #2: Between November 2004 and August 2005, the Respondent, as a designated branch manager of the Member, failed to disclose to the Member the referral arrangement and unauthorized business activity of an Approved Person under his supervision and concealed such arrangement and activity by instructing an alternate branch manager to submit false or misleading information to the Member, contrary to MFDA Rules 2.5.3(b), 2.1.1(b) and (c).

Allegation #3: Commencing January 2007, the Respondent failed to produce bank records relevant to matters being investigated by the MFDA and failed to attend an interview and give information respecting those matters, contrary to section 22.1 of MFDA By-law No. 1.

The Panel, on December 6, 2007, ordered that the hearing of this matter on its merits was to take place on Tuesday, February 12, 2008. Before the opening of the proceedings, the Panel was informed that the parties had arrived at an Agreed Statement of Facts. The Agreed Statement of Facts was filed as Exhibit #4 in the proceedings. The Agreed Statement of Facts was reviewed by counsel with the Panel and discloses on page 2 that the Respondent has reviewed the Agreed Statement of Facts and admits the facts set out in the documents referred to in Part IV therein (“Agreed Facts”). The Respondent admitted that the facts contained in Part IV constitute misconduct as alleged in Allegations #1, #2 and #3.

The Panel heard the submissions of counsel for the Mutual Fund Dealers Association of Canada (“MFDA”). After hearing those submissions, the Panel retired to consider the issue of misconduct. The Panel, upon its return to the hearing room, advised counsel for the MFDA and the Respondent that upon a review of the submissions of Staff and the clear admission by the Respondent of the facts and allegations, the misconduct in Allegations #1, #2 and #3, found in the Notice of Hearing, have been proven beyond a balance of probabilities.

Facts

The Respondent was clearly aware that his son, Andrew Christopher Lloyd (“Andrew Lloyd”), who was a registered mutual fund salesperson with the same company as the Respondent, had entered into a referral arrangement which resulted in the transfer of substantial amounts of money to various offshore companies. The breach of the MFDA rules arises from the fact that an Approved Person may have, and continue in, other gainful occupation outside of his/her employment with the Member provided the Member is aware and approves. The Respondent did not disclose his son’s other gainful occupation and no approval was given by the Member. The gainful occupation of Andrew Lloyd outside of the employment with the Member should have been reported to, and approved by, the Member.

In addition, the acting alternate branch manager, who was responsible for completing and submitting branch manager’s reports to the Member’s head office, was aware of the referral arrangement but was told by the Respondent not to disclose it on three separate occasions. Finally, when the investigation was conducted by the MFDA, the Respondent did not attend an interview as requested and failed to provide certain information that was requested in breach of the obligation under the MFDA By-law No. 1. The Respondent admits to the allegations which are set out in detail at the conclusion of the Agreed Statement of Facts in paragraph 61, which reads as follows:

- (a) Between November 2004 and August 2005, the Respondent, as a designated branch manager of the Member, failed to ensure that all business conducted on behalf of the Member by an Approved Person at the branch was in compliance

with applicable securities legislation and the By-laws and Rules of the MFDA, contrary to MFDA Rule 2.5.3(b) and MFDA Policy 2.

(b) Between November 2004 and August 2005, the Respondent, as a designated branch manager of the Member, failed to disclose to the Member the referral arrangement and unauthorized business activity of an Approved Person under his supervision and concealed such arrangement and activity by instructing an alternate branch manager to submit false or misleading information to the Member, contrary to MFDA Rules 2.5.3(b), 2.1.1(b) and (c).

(c) Commencing January 2007, the Respondent failed to produce bank records relevant to matters being investigated by the MFDA and failed to attend an interview and give information respecting those matters, contrary to section 22.1 of MFDA By-law No. 1.

Penalty

After the Panel had returned to the hearing room and advised counsel and the Respondent of its decision that the misconduct had been proven, as noted above, we invited submissions from counsel for the MFDA as to penalty. MFDA counsel referred us to Exhibit #5, which is the Submissions of Staff. In the submissions, the following penalties are proposed by the MFDA:

- (a) pursuant to section 24.1.1(e) of MFDA By-law No. 1, a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of, or associated with, any MFDA Member;
- (b) pursuant to section 24.1.1(b) of MFDA By-law No. 1, a fine in the amount of \$20,000 in respect of the Allegations 1 and 2;
- (c) pursuant to section 24.1.1(b) of MFDA By-law No. 1, a fine in the amount of \$50,000 in respect of Allegation 3; and

- (d) pursuant to section 24.2 of MFDA By-law No. 1, costs attributable to conducting the investigation and prosecution of this matter in the amount of \$2,500.

The issue of penalty is a matter of great concern. We are aware of the applicable principles found in the cases referred to by MFDA counsel and in the brief of authorities filed. It is essential that the penalties imposed reflect the following principles:

1. the protection of the investor;
2. a reflection and condemnation of abusive conduct;
3. affirmation of public confidence; and
4. most importantly, specific and general deterrence.

We have directed our attention to the numerous factors referred to in the submission of counsel for the MFDA, at paragraphs 50 to 59 inclusive.

We have also considered the aggravating factors and the mitigating factors.

It is our view that the proposed sanctions suggested by counsel for the MFDA under normal circumstances for a branch manager would be entirely appropriate. However, there are very important factors which must be considered in favour of the Respondent:

1. The Respondent has no previous past misconduct or disciplinary history;
2. The response of the Respondent recognizes the seriousness of his conduct and expresses his remorse;
3. The Respondent received no benefits as a result of what has taken place;

4. The Respondent has cooperated with the Member since it discovered his son's referral activities and, in particular, responding to the Member's inquiries and providing a number of documents;

5. The Respondent has maintained his admission of his misconduct;

6. He accepts that an order for a permanent prohibition, as suggested by counsel for the MFDA, is entirely appropriate; and

7. He does not quarrel with the suggested costs of the investigation and prosecution fixed in the amount of \$2,500.

His concern is that the sum sought under paragraphs (b) and (c), totalling \$70,000, is inappropriate for what has taken place in this case. He submitted to the Panel that his reason for not reporting arose from his misunderstanding that the gainful occupation of his son was not one which required him to report. We pause to observe that this is the first time that a case of this nature involving these principles has come before an MFDA panel.

In addition, we accept the fact that the Respondent received information or advice from his solicitor as to the non-presentation of materials requested by the MFDA. We find that, though he refused to provide information, he did so upon the advice of counsel.

Under all of the circumstances, and given the facts of this case only, we conclude that the following sanctions are appropriate:

- (a) pursuant to section 24.1.1(e) of MFDA By-law No. 1, a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of, or associated with, any MFDA Member;

- (b) pursuant to section 24.1.1(b) of MFDA By-law No. 1, a fine in the amount of \$20,000 in respect of the Allegations 1 and 2;
- (c) pursuant to section 24.1.1(b) of MFDA By-law No. 1, a fine in the amount of \$25,000 in respect of Allegation 3; and
- (d) pursuant to section 24.2 of MFDA By-law No. 1, costs attributable to conducting the investigation and prosecution of this matter in the amount of \$2,500.

Dated at Toronto, this 26th day of February 2008.

“John B. Webber”
The Honourable John B. Webber, Q.C.
Chair

“Sandy Grant”
Sandy Grant, Panel Member

“Selwyn Kossuth”
Selwyn Kossuth, Panel Member