



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: Edward Henry MacDermaid

Heard: September 8, 2021 by electronic hearing in Bathurst, New Brunswick
Decision (Penalty) and Reasons: October 4, 2021

DECISION (PENALTY) AND REASONS

Hearing Panel of the Atlantic Regional Council:

George W. MacDonald, Q.C.
Darrell Bing
Joshua Martin

Chair
Industry Representative
Industry Representative

Appearances:

Audrey Smith)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Edward Henry MacDermaid)	Respondent
)	
)	

1. A penalty hearing was convened by electronic hearing on September 8, 2021 (the “Hearing”) to allow the Hearing Panel to receive oral submissions from the parties dealing with the issue of sanctions to be imposed. On July 22, 2021, the parties executed an agreed statement of facts (“Agreed Statement of Facts”), which was marked as Exhibit 2 at this Hearing. Written submissions were received from Staff of the MFDA (“Staff”) in advance of the Hearing. Edward MacDermaid (the “Respondent”) did not provide any written submissions in advance of the Hearing. He did appear at the Hearing and made oral submissions, which appeared to deal both with whether he had acted contrary to regulations, and the appropriate sanctions to be applied given that he had violated the Regulations.

2. Counsel for the MFDA, Audrey Smith, made oral submissions at the Hearing, referring primarily to, and expanding somewhat, on her written submissions. She asked that the Hearing Panel impose a fine of at least \$25,000 on the Respondent, prohibit the Respondent from practicing for at least a period of 18 months, and award costs in the amount of \$5,000.

3. As noted, the Respondent also made oral submissions at the Hearing. He commented that he had been looking forward to making such submissions for approximately 25 months. The questioned conduct of the Respondent which gave rise to the disciplinary proceedings, as set out in the Agreed Statement of Facts, occurred between December 15, 2014 and October 25, 2019. The Respondent advised that he had been relieved of his position of employment in August 2019 as a result of the alleged conduct he carried on. At that time he was 72 years of age, and is currently 74 years of age. He commented during his submissions, and confirmed when questioned directly by the Hearing Panel, that he is not seeking to resume his role as an Investment Advisor in the industry. He did confirm his earlier agreement with the MFDA that he had violated the provisions of the MFDA by laws and should be required to pay a reasonable penalty. Given the fact he will no longer be practicing in the Industry, and what had transpired in his case, in particular the length of time it has taken the MFDA to have a Hearing Panel convened the Respondent suggested that the Hearing Panel impose a minimum fine of \$500, and find that the length of time he has in effect been suspended from practice in the industry while waiting for this Hearing be found to constitute the suspension of him from carrying on practice.

4. The Hearing Panel understands that the general practice followed by Members is to suspend the ability to practice of an Approved Person who is charged with committing an offence. In effect an Approved Person who is alleged to have acted contrary to the applicable rules and regulations is “guilty until proven to be innocent.” In those circumstances we consider there

should be a requirement imposed on the MFDA to conduct its investigation and have any required Disciplinary Hearing held at the earliest possible time. In this case the MFDA is asking that the Respondent be prohibited from practicing for at least 18 months. If that submission were accepted, the Respondent would have been prohibited from practicing, assuming he intended to resume practice, for the period of August 2019 until approximately April 2023, a period of 42 months. Given the nature of the misconduct involved here, and in particular the fact that there is no evidence that any of the Respondent's clients suffered any financial harm, obviously this would be an unacceptable penalty to be imposed. The Hearing Panel notes that the period of time the Respondent already has been unable to carry on practice, had he wished to do so, is approximately 25 months, which is more than an adequate penalty to be assessed in this case.

5. It is important to note that the Respondent agreed that he did deliberately violate the applicable MFDA Rules of Conduct on many occasions. These were deliberate acts. The Respondent deliberately violated the MFDA Rules, which are in place to protect clients. The Respondent appeared to "justify" his conduct because he was carrying on business in a location which was somewhat removed from many of his clients. That does not constitute a valid reason for deliberately violating Rules which exist to protect clients of members of the MFDA. A fine is called for. Given the situation of the Respondent, and the fact that there is no evidence of any client complaint or loss, the Hearing Panel considers a fine of \$5,000 to be appropriate.

6. The Respondent's conduct necessitated an investigation and the convening of a Hearing to deal with penalty. Necessarily the MFDA had to incur costs, and use time of its staff and Counsel. None of this would have been required if the Respondent had complied with the MFDA Rules. We consider the amount of \$5,000 being sought by the MFDA is reasonable and the Respondent is to pay that amount of costs.

7. In summary, the Hearing Panel finds that the Respondent shall pay a fine of \$5,000; costs of \$5,000; and be suspended from practice for a period of 24 months, which suspension has already been enforced.

DATED this 4th day of October, 2021.

“George W. MacDonald”

George W. MacDonald, Q.C.
Chair

“Darrell Bing”

Darrell Bing
Industry Representative

“Joshua Martin”

Joshua Martin
Industry Representative

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