



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: Jose Ireneo Manalastas

Heard: May 13, 2020 in Toronto, Ontario
Decision and Reasons: June 19, 2020

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Honourable Robert P. Armstrong, QC Chair
Susan Dicks Industry Representative
Matthew Prew Industry Representative

Appearances:

Sarah Glickman) Enforcement Counsel for the Mutual Fund
) Dealers Association of Canada
)
)
Jose Ireneo Manalastas) Respondent, not in attendance or represented by
) counsel
)

I. INTRODUCTION

1. From May 16, 2014 to November 2, 2017, Jose Ireneo Manalastas (“The Respondent”) was registered in Ontario as a Dealing Representative with CIBC Securities Inc., a member of the MFDA (“The Member” or “CIBC”).

2. On November 22, 2019, Staff of the MFDA issued a Notice of Hearing in respect of the Respondent which contained the following allegations:

Allegation #1: Between January 2017 and November 2017, the Respondent borrowed a total of \$6,000 from two clients, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2;

Allegation#2: Commencing July 27, 2018, the Respondent failed to cooperate with MFDA Staff’s investigation into his conduct, contrary to section 22 of MFDA By-law No. 1.

3. A hearing in respect of the above allegations was held by video conference on May 13, 2020. The Respondent did not attend the hearing although he was duly served with the Notice of Hearing in accordance with the *Rules of Procedure* of the MFDA. Also, the Respondent failed to serve and file a Reply to the Notice of Hearing.

4. The hearing panel proceeded with the hearing in the absence of the Respondent in accordance with Rule 7.3(a) of the MFDA *Rules of Procedure*.

II. THE EVIDENCE AT THE HEARING

5. The evidence at the hearing consisted of two affidavits of Sheila Daneshvaziri, an investigator of the MFDA, and an affidavit of Brenda Bridge, a Senior Consultant, Corporate Security of CIBC.

6. The evidence established that the Respondent borrowed a total of \$6,000 from two clients as alleged in the Notice of Hearing contrary to the MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2, and the policies and procedures of CIBC. The facts in regard to these loans are simple and unchallenged.

7. The Respondent from May 16, 2014 to November 2, 2017 was registered in Ontario as a dealing representative with CIBC. The Respondent was employed at a CIBC branch in Scarborough. The policies and procedures of CIBC prohibited the Respondent from borrowing moneys from a client.

8. RR was a client of CIBC whose account was serviced by the Respondent. On January 3, 2017, the Respondent requested RR to lend him \$3,000. RR agreed to do so and the Respondent obtained \$3,000 from RR's personal line of credit. The Respondent used the moneys so borrowed to pay personal expenses.

9. The Respondent made three payments to RR as repayments of the funds owing in respect of the loan. The repayments included \$300 on January 13, 2017, \$200 on February 10, 2017 and \$150 on May 30, 2017.

10. On October 28, 2017, RR visited the bank to discuss the balance still owing on his loan to the Respondent. At that visit, RR spoke to another representative of CIBC other than the Respondent and advised that he had provided a personal loan to the Respondent. This resulted in CIBC commencing an investigation of the circumstances of the loan made by RR to the Respondent. The CIBC investigation was carried out by Brenda Bridge, Senior Consultant, Corporate Security – Integrated Investigations, Enterprise Security and Risk Services, Technology, Infrastructure and Innovation at CIBC and CIBC Bank. After the investigation by CIBC, the Respondent was terminated from his employment on November 7, 2017.

11. After the Respondent was terminated, he made two additional payments to RR of \$500 and \$100. In the result, the Respondent repaid only \$1,250 to RR in respect of the \$3,000 loan.

12. At the time of the investigation carried out by CIBC, the Respondent disclosed that he had borrowed \$3,000 from another client, EM, on February 7, 2017. As in the case of the loan to RR, he used the moneys borrowed to pay personal expenses.

13. When these matters came to the attention of the MFDA, MFDA Staff conducted their investigation into these matters pursuant to section 22.1 of MFDA By-Law No. 1. Under the aforesaid section, the MFDA is empowered to conduct examinations of and investigations into the

conduct, business or affairs of any of its members or Approved Persons within its jurisdiction as it considers necessary.

14. Under the authority of section 22.1, an Approved Person is compelled to cooperate with an MFDA investigation, including providing information to and attending an interview with MFDA Staff.

15. MFDA Staff made several attempts to contact the Respondent for the purposes of such an interview. These included letters to the Respondent by regular and registered mail at his last known place of address provided on the National Registration Database, which were unanswered. A registered letter was returned with a note that the letter was unclaimed by the Respondent. Similar letters to the last-known address of the Respondent provided by the CIBC were unanswered. In this respect, a registered letter was returned with a note that the Respondent was not located at that address. An attempt to reach the Respondent on his cellphone was unsuccessful. An automatic message indicated the cellphone number was no longer assigned. Further efforts to contact the Respondent were continued by MFDA Staff. At the request of MFDA Staff, CIBC provided an address used by the Respondent for his bank account. A registered letter was sent to the Respondent at the address provided by CIBC. In this case, the Respondent signed for the registered letter on June 15, 2018. MFDA Staff sent the Respondent another letter requesting an interview and advising that failure to attend such an interview may result in enforcement proceedings against him. The letter was served personally on the Respondent on July 3, 2018.

16. On July 17, 2018, the Respondent emailed MFDA Staff and he said he would attend an interview and would provide his availability by July 20, 2018. MFDA Staff answered the email from the Respondent on August 8, 2018 and provided him with potential dates and times for an interview. No response was ever made by the Respondent to the email of August 8, 2018. There have been no further communications from the Respondent since that time.

III. SUBMISSIONS OF COUNSEL FOR THE MFDA

17. Counsel submits that the hearing panel should make findings of misconduct against the Respondent on both allegations set out in the Notice of Hearing and that we should impose an appropriate penalty pursuant to section 24.1.1 of MFDA By-Law No. 1.

18. In respect of Allegation #1, counsel submits that the evidence establishes:
- a) at all material times, the Member's policies and procedures prohibited its Approved Persons from borrowing from clients; and
 - b) between January 2017 and November 2017, the Respondent disregarded the Member's prohibition and borrowed a total of \$6,000 from clients RR and EM.
19. Counsel for the MFDA made the following written submissions with respect to Allegation #1 as follows:

(14) MFDA Rule 2.1.1 describes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

(15) Pursuant to MFDA Rule 2.1.4, Members and Approved Persons must be aware of a possibility of conflict of interest arising in connection with dealings with clients. In the event such a conflict or potential conflict arises, Rule 2.1.4 replaces a mandatory obligation on the Approved Person to immediately disclose the conflict to the Member, and imposes a corresponding obligation on the Approved Person and the Member to ensure that the conflict is addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

(16) Previous MFDA Hearing Panels have held that where an Approved Person borrows money from a client, the Approved Person has breached the standard of conduct set out in Rule 2.1.1, and has entered into a conflict of interest with the client within the meaning of Rule 2.1.4. See the following cases:

Nunweiler (Re), [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201030, Panel Decision dated May 28, 2012.

Lipovetsky (Re), [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201252, Panel Decision dated July 25, 2013.

Popen (Re), [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201136, Panel Decision dated September 24, 2012.

...

(19) As stated by the hearing panel in *Nunweiler (Re)*,

Where an Approved Person borrows money from a client or arranges investment by the client or company in which the Approved Person has a personal interest, such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the client. It is patently obvious that [...] borrowing money from a client is not the exercise of responsible business judgment in the best interests of the client. (Emphasis added)

20. In respect of Allegation #2, counsel for the MFDA submits that the Respondent's failure to cooperate with the investigation carried out by MFDA constitutes a clear breach of section 2.2.1 of MFDA By-Law No. 1, which compels an Approved Person to cooperate with an MFDA investigation, including providing information to and attending an interview with Staff.

IV. FINDINGS OF THE HEARING PANEL

21. We note that pursuant to Rule 8.4 of the MFDA *Rules of Procedure*, for a Respondent who fails to serve and file a Reply to the Notice of Hearing, a Hearing Panel may accept the facts alleged in the Notice of Hearing as proven. Similarly, where a Respondent fails to attend a hearing, a Hearing Panel may accept the facts alleged and conclusions drawn in the Notice of Hearing as proven in accordance with Rule 7.3. That said, we have heard a significant body of evidence upon which we could make findings in respect of both Allegations #1 and #2.

22. In respect of Allegation #1, this hearing panel is satisfied that on the evidence before us, a breach of MFDA Rules 2.5.1 and 1.1.2 has been clearly established. Prior cases of other MFDA hearing panels have consistently determined that where an Approved Person breaches a Member's policies and procedures, that person has contravened MFDA Rules 2.5.1 and 1.1.2. See *Frank (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201407; *Careless (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201623, and *Halloran (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201905.

23. The Respondent by borrowing money from two clients of CIBC was in clear breach of CIBC's policies and procedures.

24. In respect of Allegation #2, this hearing panel accepts that the evidence establishes that the Respondent failed to cooperate with the investigation of his conduct by the MFDA, contrary to section 22 of MFDA By-Law No. 1.

25. We now turn to the issue of penalty. Both of the breaches in this case represent serious breaches by a person employed in the securities industry. In approaching the appropriate penalty, we accept the submissions of counsel for the MFDA that “the primary goal of securities regulation is the protection of the investor.” See *Pezim v. British Columbia* (Superintendent of Brokers), [1994] 2SCR557 at paras. 59 and 68 and *Breckenridge (Re)*, [2007] Hearing Panel of Central Regional Council, MFDA File No. 200718, Panel Decision dated November 14, 2007 at para. 74.

26. We also agree that the object of securities regulation includes fostering public confidence in the Capital Markets and the securities industry generally. See *Pezim, supra* at paras. 59 and 68.

27. Specific and general deterrence are also important factors to bear in mind when arriving at an appropriate penalty. The Respondent and the other participants in the securities industry must understand that conduct of this nature will be seriously addressed when the issue of penalty is determined.

28. The other factors to be taken into account in arriving at a fit penalty are well known and have been canvassed in many decisions of MFDA hearing panels, which were cited to us by counsel. It is not necessary to address those specific cases here.

29. In respect of this case, this hearing panel considers that the penalty proposed by counsel for the MFDA is appropriate. However, we would make a minor adjustment by increasing the proposed fine from \$55,000 to \$56,000. The figure of \$50,000 should be attributed to the failure to cooperate with the investigation, which appears to be in accord with previous cases of a similar nature. See *Legare (Re)* [2011], Hearing Panel of the Pacific Regional Council, MFDA File No. 200813, *Hylton (Re)* [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201829, *Travis (Re)* [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201799.

30. The \$6,000 portion of the fine represents the amount of money borrowed by the Respondent, and in our view is appropriate in the circumstances of this case.

31. We are also of the opinion that the Respondent should be subject to a permanent prohibition to conduct securities-related business as detailed below. Such a prohibition is consistent with prior cases of MFDA hearing panels. See *Legare, Hylton, and Travis supra*.

32. A Bill of Costs for \$10,375 was provided by counsel for the MFDA to the Hearing Panel.

V. CONCLUSION

33. In the result, we conclude that Allegation #1 and Allegation #2 in the Notice of Hearing in this case have been clearly established on the evidence before us. An order will go in respect of penalty as follows:

- a) a permanent prohibition on the authority of the Respondent to conduct securities-related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-Law No 1;
- b) a fine of \$56,000 pursuant to section 24.1.1(d) of MFDA By-Law No. 1; and
- c) costs in the amount of \$7,500 pursuant to section 24.2 of MFDA By-Law No. 1.

DATED this 19th day of June, 2020.

“Robert P. Armstrong”

The Hon. Robert P. Armstrong, QC
Chair

“Susan Dicks”

Susan Dicks
Industry Representative

“Matthew Prew”

Matthew Prew
Industry Representative

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