



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: Grant Manning

Heard: December 18, 2015 in Toronto, Ontario
Reasons for Decision: January 25, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Kenneth Mann	Industry Representative
Colleen Waring	Industry Representative

Appearances:

Francis Roy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Chris Christopoulos)	Counsel for the Respondent
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BACKGROUND

1. By Notice of Hearing dated April 20th, 2015 the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Grant Monty Manning (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1. The Notice of Hearing set out the following allegations:

Allegation #1: Between March 8, 2002 and November 26, 2012, the Respondent engaged in personal financial dealings with client KK where:

- (a) client KK held \$390,000 in shares and promissory notes of Manning Insurance and Investments Co. Ltd. (“MIIC”), a corporation in which the Respondent had a direct or indirect interest, during the time the Respondent was responsible for servicing her mutual fund accounts; and
- (b) the Respondent recommended and facilitated a loan of \$36,000 by client KK to MIIC;

thereby giving rise to actual or potential conflicts of interest between the Respondent and client KK which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1;

Allegation #2: Between March 8, 2002 and November 26, 2012, the Respondent misled the Members with which he was registered by falsely stating that he had not engaged in personal financial dealings with a client, thereby failing to observe high standards of ethics and conduct in the transaction of business and interfering with the ability of the Members to conduct reasonable supervisory investigations of the Respondent’s activities, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1; and

Allegation #3: Commencing October 25, 2013, the Respondent has failed to attend an interview to provide a statement and to produce information, documents and records as

requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

2. Although represented by counsel, the Respondent did not attend the Hearing.

3. The Panel was advised at the outset of the proceedings, that the parties had executed an Agreed Statement of Fact, which was marked as Exhibit 4 in the proceedings. The Panel then considered the provisions of the Agreed Statement of Fact aided by submissions as to the applicable law, which should guide the Panel in reaching a decision in this matter.

4. The Agreed Statement of Fact sets out not only the factual assertions relating to this matter to which the parties have agreed, but also sets out an acknowledgement by the Respondent that the agreed facts amount to misconduct and that the three allegations set out in the Notice of Hearing dated April 20th, 2015 had been established.

5. The Agreed Statement of Fact further states that subject to the determination of the Hearing Panel, Staff and the Respondent do not oppose that the appropriate penalty to impose on the Respondent is as follows:

- (a) a ten (10) year prohibition prohibited from conducting 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 \$50,000, pursuant to section 24.1.(b) of MFDA By-law No. 1;
and
- (c) costs of this proceeding in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.

6. Staff and the Respondent's counsel agreed that in the present case, the Hearing Panel could accept or reject the parties' mutual assertion that the three allegations in the Notice of Hearing had been established, and further that the Hearing Panel could either accept or reject the penalties proposed in the Agreed Statement of Fact and might impose any of the penalties

prescribed in s. 24.1.1 of MFDA By-law No. 1. It was, however, mutually submitted to the Panel that in exercising its discretion, where there has been a joint submission, then a Hearing Panel should not interfere with a joint recommendation of Staff and the Respondent unless the recommendation is manifestly unfit. This was a proposition with which the Panel agreed in light of the case law to which it was referred, including

R. v. R.W.E., [2007] O.J. No. 2515 (Ont. C.A.) at paras. 33, 40 and 44,

In the Matter of McAuley, [2011] MFDA Central Regional Council, File No. 201018, Hearing Panel Decision dated April 11, 2011 (“*McAuley*”) at para. 5.

7. Accordingly, the Panel considered the agreed facts and the mutually proposed penalty in light of the above principle.

AGREED FACTS

Registration History

8. From 1997 to April 2010, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) and branch manager with IPC Investment Corporation (“IPC”). IPC became a Member of the MFDA on March 8, 2002.

9. The Respondent was registered in Ontario with Worldsource Financial Management Inc. (“Worldsource”) as a mutual fund salesperson (now known as a dealing representative) from April 21, 2010 to November 26, 2012 and as a branch manager from April 21, 2010 to September 12, 2011. Worldsource became a Member of the MFDA on May 10, 2002.

10. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

11. The Respondent, at the time of the Hearing, was not registered in the securities industry in any capacity.

Allegation No. 1 – Personal Financial Dealings

12. Commencing in the fall of 1998, the Respondent was the mutual fund salesperson responsible for servicing client KK's mutual fund accounts at IPC.

13. In or about early 1999, the Respondent recommended to client KK that she invest in MIIC, a corporation for which he was the sole shareholder and officer. The Respondent represented to client KK that he intended to operate MIIC as a financial planning and investment company, and that he could guarantee a lucrative return on client KK's monies if she invested in MIIC as a silent partner.

14. Between May 11, 1999 and March 10, 2000, the Respondent recommended, sold and facilitated the sale of shares and promissory notes of MIIC to client KK totaling \$390,000, as described below:

- (a) By two agreements dated May 11th, 1999, the client advanced a total of \$300,000 to the Respondent to purchase 29% of the shares of MIIC in exchange for the Respondent's agreement to pay to the client 29% of the net profits and trailer fees of MIIC, along with \$60,000 annually in equal monthly payments;
- (b) On December 23rd, 1999 and thereafter on March 10th, 2000, the client KK advanced \$40,000 and \$50,000, respectively to the Respondent who executed promissory notes in the aforementioned amount yielding annual interest at 7%. The promissory notes were to be repaid before May 1st, 2000 and September 30th, 2000, respectively.

15. The Respondent did not repay the aforementioned promissory notes in accordance with the terms of the note when they became due.

16. However, between June 1999 and February 2002, the Respondent paid the client KK, by four separate cheques, an amount of \$139,241 with respect to the shares the client held in MIIC.

17. On March 8, 2002, IPC became a Member of the MFDA and the Respondent became subject to the jurisdiction of the MFDA.

18. On June 17, 2003, the Respondent recommended and arranged for client KK to provide \$36,000 to MIIC as a shareholder loan. That same day, the Respondent, through MIIC, and client KK, executed a loan agreement stipulating that the loan would be repaid by the Respondent on or before January 31, 2004, with no interest payable to client KK.

19. Thereafter and between March 2002 and January 1st, 2010, the Respondent made nine payments to the client KK totalling \$276,200 in respect of shares the client held in MIIC.

20. In January 2010, the Respondent advised client KK that MIIC was suffering as a result of a weak economy. At that time, the Respondent ceased making regular monthly payments to client KK. Nevertheless, the Respondent assured client KK, as he had in the past, that all of her monies would be repaid in full.

21. In April 2010, the Respondent resigned from IPC and became registered with Worldsource, at which time client KK transferred her mutual fund accounts to Worldsource. The Respondent was the mutual fund salesperson responsible for servicing client KK's accounts at Worldsource.

22. At or about the time he joined Worldsource, the Respondent ceased operating MIIC, without disclosing this information to client KK.

23. On November 26, 2012, the Respondent resigned from Worldsource.

24. In or about February 2013, the client KK demanded that the Respondent immediately repay her investment in the shares of MIIC, the outstanding promissory notes and the shareholders loan. The client KK also submitted a complaint to the MFDA regarding the Respondent's conduct as described above.

25. On July 9, 2013, having not received any payments from the Respondent, client KK commenced a civil claim against the Respondent, MIIC and IPC.

26. The Respondent disclosed to IPC that he had incorporated MIIC for income tax purposes, and requested that IPC pay all commissions and fees owed to him through MIIC. The Respondent disclosed to Worldsource that he sold life insurance products through MIIC.

27. The Respondent did not disclose to IPC or Worldsource that, among other things:

- (a) client KK held \$390,000 in shares and promissory notes of MIIC during the time the Respondent was responsible for servicing her mutual fund accounts;
- (b) the Respondent, through MIIC, was making payments to client KK in respect of the shares she held in MIIC;
- (c) the Respondent, through MIIC, had entered into the Shareholder Loan with client KK; and
- (d) the Respondent had failed to repay the promissory notes held by client KK in accordance with the terms of these investments.

Allegation No. 2 – Misleading the Members

28. Between March 8, 2002 and November 26, 2012, the Respondent misled IPC and Worldsource when he falsely stated in registration forms and compliance questionnaires that he, among other things:

- (a) did not have any personal financial dealings with clients;
- (b) had notified the Members of any potential conflicts of interest;
- (c) had not borrowed any monies from clients; and
- (d) had not entered into any contracts with any clients with respect to non-Member business.

Allegation No. 3 – Failure to Cooperate

29. MFDA Staff (“Staff”) commenced an investigation into the Respondent’s dealings with client KK on or about February 1, 2013, when it received client KK’s complaint.

30. On February 14, 2013, Staff requested that the Respondent provide a written statement concerning his dealing with client KK. Between February 2013 and September 23, 2013, pursuant to requests made by Staff, the Respondent provided a written statement to Staff, copies of MIIC Investment agreements executed by client KK, promissory notes he provided to client KK, the shareholder loan agreement and the cheques described above, thereby providing evidence of the facts outlined at paragraphs 14 to 30 above.

31. On October 25, 2013, during the course of its investigation into the Respondent’s dealings with client KK, Staff sent a letter to the Respondent requesting that he contact Staff by November 8, 2013 to arrange for an interview to provide a statement.

32. On November 12, 2013, having not received a response to its October 25, 2013 letter, Staff sent an email to the Respondent requesting that the Respondent contact Staff by November 15, 2013 to arrange for an interview to provide a statement.

33. On November 26, 2013, the Respondent contacted Staff by telephone and agreed to attend an interview at the MFDA offices on February 12, 2014.

34. On February 7, 2014, the Respondent requested that Staff reschedule the February 12, 2014 interview. Staff agreed to reschedule the interview but requested that the Respondent contact Staff by no later than February 18, 2014 to schedule a new interview date.

35. Having not heard from the Respondent by February 18, 2014, Staff sent correspondence to the Respondent, on February 20, March 19 and April 10, 2014, informing him that the MFDA had scheduled an interview with him on April 16, 2014.

36. On April 16, 2014, the Respondent informed Staff, by telephone, that he would not attend at an interview with Staff on that date or any other date in the future.

37. In addition to failing to attend at an interview with Staff, the Respondent failed to provide a written statement, as requested by Staff on December 5, 2013 and February 26, 2014, concerning an allegation that he had recommended and implemented an unsuitable leveraged investment strategy for the account of client PV. On March 21, 2014, the Respondent responded to Staff's requests and advised that he would not provide a statement in response to the allegations concerning client PV.

38. The Respondent's failure to attend an interview with Staff has frustrated Staff's efforts to investigate the full nature and extent of the Respondent's misconduct.

MISCONDUCT, LAW AND ARGUMENT

39. The Panel considered that the relevant rules and provisions with respect to misconduct are:

- (a) MFDA Rule 2.1.1 (*standard of conduct*);
- (b) MFDA Rule 2.1.4 (*conflicts of interest*);
- (c) MFDA Rule 1.1.2 (*compliance by Approved Persons*);
- (d) MFDA Rule 2.5.1 (*Member responsibilities – Minimum Standards of Supervision*); and
- (e) s. 22.1 of MFDA By-law No. 1.

40. In coming to its conclusion with respect to Allegation No. 1, the Panel also reviewed the following three cases to which it was referred:

In the Matter of Lambros, MFDA Central Regional Council, MFDA File No. 201022, Hearing Panel Decision dated March 15, 2011.

Vitch (Re), MFDA Central Regional Council, MFDA File No. 201103, Hearing Panel Decision dated September 22, 2011.

See also *Brauns (Re)*, MFDA Central Regional Council, MFDA File No. 201203, Hearing Panel Decision dated October 15, 2013.

The Panel was satisfied that the Respondent's actions in the present case were no different than in the case of *Lambros* and *Vitch*, and that accordingly, the misconduct set out in Allegation No. 1 had been established.

41. It was submitted to the Panel that MFDA Rule 2.1.1 articulates the standard of conduct imposed upon all Members and Approved Persons. The Rule encompasses the most fundamental professional and fiduciary obligations of all registrants in the securities industry. It requires each Member and Approved Person to:

- (a) deal fairly, honestly and in good faith with clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) refrain from engaging in business conduct or practice which is unbecoming or detrimental to the public interest; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards of the industry.

42. The Hearing Panel was further referred to the following cases that confirmed that an approved person's failure to comply with policies and procedures of the Member, constitutes a contravention of the standard of conduct set out in MFDA Rule 2.1.1.

Tonnies (Re), 2005 LNCMFDA 7 ("*Tonnies*") at para 39.

Nunweiler (Re), 2012 LNCMFDA 46 ("*Nunweiler*") at paras 24-26.

Comeau (Re), 2013 LNCMFDA 44.

43. In light of the aforementioned submissions and in light of the agreed facts, the Panel concluded that Allegation No. 2 had been established.

44. It was submitted to the Panel that pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations into the conduct, business or affairs of an

Approved Person as it considers necessary or desirable in connection with any matter relating to compliance by the Approved Person with:

- (a) the By-laws, Rules or Policies of the MFDA;
- (b) any securities legislation applicable to such person; or
- (c) the by-laws rules, regulations and policies of any self-regulatory organization.

45. It was further submitted to the Panel that the corresponding obligation of Approved Persons to cooperate with MFDA examinations and investigations is codified in s. 22.1 of MFDA By-law No. 1, which states:

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (a) to submit a report in writing with regard to any matter involved in such investigation;
- (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- (c) to attend and give information respecting any such matters;

and the Member or person shall be obliged to submit such report, to permit inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation...

46. The Panel was referred to the following authorities for the proposition that an Approved Person must attend an interview with Staff or provide statements or documents to Staff when requested to do so. To hold otherwise would hinder the MFDA's ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

Parkinson (Re), [2005] MFDA Ontario Regional Council, File No. 200501, Hearing Panel Decision dated April 29, 2005.

Headley (Re), [2006] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006.

Westgard (Re), [2009] Hearing Panel of the Prairie Regional Council, MFDA File No. 200937, Hearing Panel Decision dated July 15, 2010.

47. In light of the above submissions and in light of the agreed facts, the Panel concluded that Allegation No. 3 had been established.

RESULT

48. For all the above reasons, the Panel concluded that the misconduct set out in Allegations 1, 2 and 3 in the Notice of Hearing dated April 20th, 2015 in respect of Grant Monty Manning had been established.

PENALTY – LAW AND ARGUMENT

49. In coming to its conclusion with respect to penalty, the Panel reviewed the factors to be considered when determining whether a penalty is appropriate. The factors are set out in detail in the case of *Re Headley* [2006], a decision of a Hearing Panel of the Ontario Regional Council in MFDA File No. 200509, dated February 21st, 2006. The Panel also considered the penalty guidelines of the MFDA and its recommendations with respect to established allegations as alleged herein.

50. The Panel also considered the additional agreed facts that:

- (a) The Respondent had not previously been the subject MFDA Disciplinary proceedings;
- (b) The Respondent had stated in January 2013 he was medically diagnosed as suffering from depression and bipolar. The Respondent responded that he had been receiving treatment for these other ailments since that time;
- (c) By admitting the facts and Allegations set out herein, the Respondent has:

- (i) Expressed remorse for his actions; and
- (ii) Saved the MFDA significant time and resources associated with conducting a fully contested hearing on the merits.

51. Finally, with respect to penalty, the Panel considered the penalties imposed in the *Lambros*, *Vitch* and *Brauns* cases referred to above.

52. Accordingly, for all of the above reasons, the Panel concluded that the penalty to which the parties had mutually agreed was appropriate and therefore made the following order:

- (a) If at any time a non-party to this proceeding requires production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rule 1.8(2) and (5) of the MFDA Rules of Procedure;
- (b) a ten (10) year prohibition prohibited from conducting 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;
- (c) a fine in the amount of \$50,000, pursuant to section 24.1.(b) of MFDA By-law No. 1; and
- (d) costs of this proceeding in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 25th day of January, 2016.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Kenneth Mann”

Kenneth Mann
Industry Representative

“Colleen Waring”

Colleen Waring
Industry Representative

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