



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: Bruce Ian Mawer

Heard: August 18, 2014 in Edmonton, Alberta
Decision and Reasons (Penalty): September 22, 2014

**DECISION AND REASONS
(Penalty)**

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.)	Chair
Howard Mix)	Industry Representative
Richard Sydenham)	Industry Representative

Appearances:

Faye Emmanuel)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Bruce Ian Mawer)	In attendance in person: not represented by
)	Counsel
)	

I. INTRODUCTION

1. By Notice of Hearing dated October 25, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) made two allegations against Bruce Ian Mawer, (the “Respondent”) which read as follows:

Allegation #1: Between 2006 and 2007, the Respondent engaged in personal financial dealings with four clients of the Member by soliciting and accepting monies from them in the total amount of \$103,000, which monies he pooled with monies obtained from four insurance-only clients, his partner SS and his own monies, for the purposes of purchasing investment properties, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #2: Between 2006 and 2007, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by soliciting and accepting monies in the total amount of \$240,000 from four clients of the Member and four insurance only clients, which monies he pooled together with monies obtained from his partner SS and his own monies, for the purposes of purchasing investment properties, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

2. Following the Hearing on the Merits held February 10, 2014, this Hearing Panel concluded Allegation #1 was proven to the required standard and Allegation #2, in respect of three rather than four insurance clients, was proven to the required standard. (*Mawer (Re)*, Hearing Panel of the Prairie Regional Council, MFDA File No. 201331, Decision and Reasons dated April 3, 2014).

3. Staff of the MFDA (“Staff”) advised at the penalty hearing that MFDA was seeking by way of penalties, a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1, a fine in the range of \$50,000.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, and an award of costs in the range of \$7,500.00, pursuant to s. 24.2 of MFDA By-law No. 1.

II. SUBMISSIONS MADE BY ENFORCEMENT COUNSEL FOR MFDA

4. Staff submitted that the proposed penalties reflected the seriousness of the Respondent's misconduct and were consistent with the mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry and cited, *inter alia*, *Tonnies (Re)*, Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Decision and Reasons dated June 27, 2005, ("*Tonnies*") in support of that proposition.

5. Staff also referred to *Tonnies* for the following propositions of law:

- (i) In exercising its discretion to impose a penalty, a hearing panel should take into account the following considerations:
 - a. The protection of the investing public;
 - b. The integrity of the securities markets;
 - c. Specific and general deterrence;
 - d. The protection of the MFDA's membership; and
 - e. The protection of the integrity of the MFDA's enforcement processes.

- (ii) Other factors that hearing panels frequently consider in determining an appropriate penalty include the following:
 - a. The seriousness of the allegations proved against the Respondent;
 - b. The Respondent's past conduct, including prior sanctions;
 - c. The Respondent's experience and level of activity in the capital markets;
 - d. Whether the Respondent recognizes the seriousness of the improper activity;
 - e. The harm suffered by investors as a result of improper activities;
 - f. The benefits received by the Respondent as a result of the improper activity;
 - g. The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

- h. The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i. 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;
- j. The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k. Previous decisions made in similar circumstances. (at p. 23)

6. Staff also referred to the MFDA Penalty Guidelines which, while not mandatory, are intended to assist hearing panels in considering appropriate penalties in MFDA disciplinary proceedings, noting both the minimum penalties for misconduct proven in this matter and other previous decisions within the range sought by Staff in this case.

III. RESPONDENT'S SUBMISSIONS

7. The Respondent's submissions in relation to penalty were brief and are summarized as follows:

- (i) The loss of the investments resulted from the abandonment from the enterprise of his business partner and the result that the Respondent became overwhelmed by the subsequent events;
- (ii) Since the time of the loss, the Respondent has earned only approximately \$10,000 annually, and provided a Canada Revenue Agency Notice of Assessment dated June 2014 evidencing annual income in this range for 2013; and
- (iii) Currently, the Respondent has no employment, as he is a stay-at-home parent of his one-year old child.

IV. DECISION AS TO PENALTIES

8. Prior to arriving at its conclusion as to penalties, this Hearing Panel reviewed the factors

appropriate for penalty outlined in the *Tonnies* case, and listed above at paragraph 5 in light of the facts in this case.

9. The factors favouring the Respondent were that he had no prior disciplinary history with MFDA and he received no financial benefit of fees or commissions from the misconduct in question.

10. Against the mitigating factors, this Panel concluded that there were aggravating factors demonstrative of the fact that even up to the date of the hearing, the Respondent has acquired very little, if any, insight into the gravity of his conduct.

11. First, his testimony at the hearing and representations at the penalty phase included statements indicating the Respondent feels the blame for the consequences of his actions lies with others, including his business partner, and to some extent, the investors themselves.

12. Second, the Member's clients lost their entire investment for a combined total of \$103,000 and four other investors lost their entire investment for a combined total of \$137,000.

13. Third, it is evident from his representations that the clients have not been, and there is no reasonable expectation that they will be, repaid.

14. Fourth, the testimony of the Respondent as to whether he disclosed or withheld the facts of his involvement from the Member was inconsistent, whereas his involvement as a mutual fund salesperson since at least 2001 indicated he knew, or should have known, that his regulatory and dealer-imposed obligations required full disclosure of such investment activity.

15. Staff also cited *Tonnies* for the proposition that it is appropriate for a hearing panel to impose sanctions on the basis of past conduct that will protect the public interest and prevent future conduct detrimental to the integrity of the capital markets by removing from the capital markets, wholly or partially, permanently or temporarily as the circumstances may warrant, those whose past conduct leads to the conclusion that their conduct in the future may be detrimental to

the integrity of those capital markets. (Submissions of Staff at p. 24)

16. Staff fairly pointed out that its submissions as to penalty exceeded the minimum penalties set out in the MFDA Penalty Guidelines.

17. Two of the cases cited by Staff involved fact patterns similar to the case at hand, namely *Lui (Re)*, Hearing Panel of the Central Regional Council, MFDA File No. 201124, Reasons for Decision dated July 27, 2012 (“*Lui*”) and *Popen (Re)*, Hearing Panel of the Central Regional Council, MFDA File No. 201136, Reasons for Decision dated September 24, 2012, (“*Popen*”).

18. In *Lui*, the hearing panel found (i) that there had been soliciting of funds of at least \$118,000 from clients, which was aggravated by the placement of the monies so obtained in investments managed or controlled by the Approved Person creating a significant conflict of interest, (ii) that the Approved Person failed to act with integrity and good faith, as was also the case in *Tonnies (Re)*, and (iii) that he had failed to notify the Member of his outside business activities making it impossible for the Member to supervise his activities in a reasonable manner. There also, the amounts were never repaid. The hearing panel there imposed a global fine of \$150,000, a permanent prohibition, and costs of \$7500.

19. In *Popen*, the respondent borrowed \$225,000 from three clients, repaid a portion of the funds but left unpaid a total of \$185,500 and was not candid with his employer about the nature of his outside business activity. The hearing panel there imposed a fine of \$25,000 for conducting outside business activities, a fine of \$185,000 for personal financial dealings and an award of costs of the hearing of \$7500.

20. This Panel noted that the Respondent contended that he is impecunious and has no ability to pay a fine in the range sought by Staff. However, this Hearing Panel is also mindful of the need to impose sanctions that provide sufficient specific deterrence to this Respondent and general deterrence to others who might be like-minded in considering conduct of this nature.

21. This Panel concludes that the Respondent must have been well aware that his failing to

disclose to the Member his conduct at any time between 2006 and 2007 was wrong, and was intentionally committed without regard to the harm to his own clients, the Member, the investing public, and the integrity of the capital markets. He would otherwise have had no reason to suppress the fact of his activities to the Member over the period of time that he did so.

22. This Panel is not satisfied that the remorse the Respondent expressed demonstrates sufficient understanding of the nature and extent of his misconduct, centred as it was primarily on his own personal, financial and professional losses. Instead, the above listed circumstances as well as the Respondent's representations, led this Hearing Panel to conclude that Respondent would continue to present a risk to potential investors, Members and the capital markets, were he permitted to continue to operate in such markets.

23. For these reasons, this Panel is satisfied that a permanent prohibition is necessary for the specific deterrence of this Respondent and for general deterrence of any mutual fund Approved Persons who might be inclined to risk engagement in similar conduct.

24. This Panel is also satisfied that a fine of \$50,000 is appropriate since it demonstrates to the Respondent and to others that his conduct was a serious violation of the MFDA Rules and caused significant harm to a number of investors leaving financial consequences that impacted their lives. Moreover, as the sum of \$50,000 is an amount lower than the fines imposed in other cases cited, this Panel is satisfied that it properly reflects the mitigating factors in this case.

25. Finally, this Panel is satisfied that the costs award of \$7500 is consistent with the awards in similar cases.

26. In summary, after consideration of all the submissions of Staff and the Respondent, this Panel concluded that the following penalties were appropriate in this case:

- (i) a permanent prohibition of the Respondent's authority to conduct securities related business in any capacity over which the MFDA has jurisdiction;
- (ii) a direction that the Respondent pays a fine of \$50,000 for engaging in securities

- related business as described in allegations # 1 and #2; and
- (iii) a direction that the Respondent pays to the MFDA \$7500 for costs of the investigation.

DATED this 22nd day of September, 2014.

“Shelley L. Miller”

Shelley L. Miller, Q.C.
Chair

“Howard Mix”

Howard Mix
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

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