



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: Sean William Maxwell

Heard: March 6, 2018 in Toronto, Ontario

Decision: March 6, 2018

Reasons for Decision: April 16, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth)	Chair
Edward V. Jackson)	Industry Representative
Guenther W. K. Kleberg)	Industry Representative

Appearances:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Sean William Maxwell)	Respondent, not in attendance nor represented
)	by counsel
)	

Background

1. By Notice of Hearing dated the 11th day of July, 2017 (“Notice of Hearing”), a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to hear evidence and submissions with respect to allegations against Sean William Maxwell (“Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation #1: On March 9, 2015, the Respondent engaged in discretionary trading when he processed a trade in the account of a client and used his discretion to determine the amount and timing of the trade, contrary to MFDA Rules 2.3.1 and 2.1.1.

Allegation #2: On March 9, 2015, the Respondent created a note on the Member’s back office system which falsely indicated that he spoke with a client and obtained the client’s authorization for a trade, contrary to MFDA Rule 2.1.1.

Allegation #3: Between February 6, 2015 and March 5, 2015, the Respondent failed to create a record of client trade instructions with respect to four trades that he processed in the account of a client, contrary to the Member’s policies and procedures, and MFDA Rules 1.1.2, 2.1.1, 2.10 and 5.1(b).

Allegation #4: Commencing in about June 2016, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

3. On July 18, 2017, the Respondent was personally served with the Notice of Hearing. The Respondent did not serve or file a Reply to the Notice of Hearing, did not attend the first appearance, and has not communicated with Staff in any way since the commencement of the proceeding.

4. In spite of there being no obligation to do so, enforcement counsel sent the Respondent an email providing full details of the notice and time of the Hearing on the merits, which was set by an order of the Panel dated the 12th day of September, 2017.

5. In the face of the facts set out above, this Hearing Panel made an order on March 6, 2018, that in the absence of the Respondent, the Hearing with respect to the allegations as against the Respondent should proceed. The said order was made pursuant to Rule 13.5 and Rule 7.3(a) of the Rules of Procedure of the MFDA.

6. The Hearing Panel also made an order pursuant to Rule 7.3(b) of the Rules of Procedure of the MFDA that the facts and allegations set out in the Notice of Hearing were to be regarded as proven.

7. In spite of the aforementioned order, enforcement counsel saw fit to file as Exhibit 3, the Affidavit of Sheila Daneshvaziri, sworn February 27, 2018

The Facts

8. Accordingly, the relevant facts are set out in the Affidavit of Sheila Daneshvaziri, marked as Exhibit 3 and the Notice of Hearing dated the 11th day of July, 2017. The facts are, in brief:

- a) From October 2012 to September 2015, the Respondent was registered as a dealing representative with CIBC Securities Inc. (“CIBC Securities”), a Member of the MFDA.
- b) At all material times, client SEG was a client of CIBC Securities.
- c) Client SEG held four Guaranteed Investment Certificates (“GICs”) in her account at CIBC Securities.
- d) In 2014, client SEG advised the Respondent that she intended to use the proceeds of the GICs to purchase a mutual fund when the GICs matured in 2015.
- e) The Respondent and client SEG gave conflicting statements to CIBC Securities regarding whether client SEG indicated which mutual fund she intended to purchase. According to the Respondent, client SEG intended to purchase the CIBC

Managed Income Portfolio Fund (“Income Portfolio Fund”). According to client SEG, she did not identify which mutual fund she intended to purchase.

- f) On February 6, February 20 and March 5, 2015 (after the GICs held by client SEG reached maturity), the Respondent processed four trades in client SEG’s account which transferred the balance of the matured GICs (“GIC Balances”) to the CIBC Money Market Fund (“Money Market Fund”). The Respondent stated that CIBC Securities internal trade process “required funds from a GIC to be placed first into a Money Market Fund, and then into the appropriate investment”.
- g) The Respondent failed to create a record of the instructions he received from client SEG with respect to the four trades described above.
- h) On February 10, February 23 and March 9, 2015 (after transferring the GIC Balances to the Money Market Fund), the Respondent processed three trades in client SEG’s account which transferred the GIC Balances from the Money Market Fund to the Income Portfolio Fund.
- i) The Respondent admitted that he did not discuss the trade described above that was processed on March 9, 2015 (“Trade”) with client SEG.
- j) On March 9, 2015, the Respondent created a record/note on CIBC Securities’ back office system which falsely indicated that he had discussed the Trade with client SEG and obtained her authorization for the Trade.
- k) Commencing in about June 2016, the Respondent failed to cooperate with Staff’s investigation into his conduct.

9. Accordingly, based on both the Affidavit of Sheila Daneshvaziri marked as Exhibit 3, and based on the Rule 7.3(b) order made by this Panel, the Panel concluded that Allegations #1, #2, #3 and #4 were proven.

10. In doing so, the Panel was mindful of the fact that:

- a) pursuant to s. 24.1.4 of the MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA notwithstanding the fact that such individual has ceased to be an Approved Person. The MFDA is entitled to

commence disciplinary proceedings against an Approved Person up to five years from the date upon which the individual ceased to be an Approved Person.

Section 24.14 of the MFDA By-law No. 1.

- b) The Respondent was an Approved Person registered with CIBC Securities until September 2015. Therefore, this proceeding was commenced within the five-year limitation period set out in s. 24.1.4 of MFDA By-law No. 1.

Penalty

11. In exercising its discretion to impose a penalty, the Hearing Panel took into account the following considerations:

- a) The protection of the investing public;
- b) The integrity of the securities market;
- c) The specific and general deterrence;
- d) The protection of the MFDA's membership; and
- e) The protection of the integrity of the MFDA's enforcement process.

Tonnies (Re), MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005.

12. Other factors that Hearing Panels frequently consider when determining whether a penalty is appropriate, 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 the Respondent's 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.

Tonnies (Re), supra.

13. The Panel also considered that the MFDA penalty guidelines are an additional source of factors to be taken into account with regard to penalty. The Panel understood that the penalty guidelines are not mandatory, but are intended to assist Hearing Panels, Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. The Panel also considered the numerous similar cases to which it was referred by Staff.

14. The Panel further considered that discretionary trading is serious misconduct because it undermines the ability of a client to make decisions for and control his/her account.

Wallace (Re), [2017] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201683, Panel Decision dated January 13, 2017.

15. The Panel was mindful that recording falsified client trade instructions is dishonest conduct, which has no place in the mutual fund industry. In addition, failing to record a client's trading instructions, frustrates the Member's ability to respond to inquiries and complaints concerning the propriety of trading activities in their account.

16. The Panel was also of the view that failing to cooperate with an MFDA investigation is very serious misconduct, which demonstrates a fundamental breach of a registrant's obligations and illustrates that the registrant is ungovernable.

17. The Panel finally considered that although the Respondent has no past disciplinary history with the MFDA, the seriousness of the allegations found against the Respondent demand substantial penalties.

18. According, for all the above reasons, the Panel imposed the following penalties on the Respondent:

- a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine in the amount of \$15,000 in respect of allegations #1, #2 and #3 in the Notice of Hearing;
- c) a fine in the amount of \$50,000 in respect of allegation #4 in the Notice of Hearing; and
- d) costs in the amount of \$5,000.

DATED this 16th day of April, 2018.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

DM 609627