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: William Leonard Maynes

Heard: August 12 - 16, 2013 in Toronto, Ontario
Decision and Reasons: September 10, 2013

DECISION and REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
David W. Kerr	Industry Representative
Brian Nowak	Industry Representative

Appearances:

Michelle Pong	)	Counsel, Mutual Fund Dealers Association of Canada
	)	
	)	
E. Anthony Ross, Q.C.	)	Counsel for the Respondent
Katrina Marciniak	)	

Background

1. William Leonard Maynes, the Respondent, was registered in Ontario as a mutual fund salesperson with Investia Financial Services Inc. ("Investia"). He was also registered as Branch Manager with Investia between December 18, 2009 and August 17, 2010. The Respondent began his career in the mutual fund industry in 1987 as a franchisee with Money Concepts Canada, which was later acquired by Aegon Dealer Services, which in turn was merged with Investia in 2008. His mutual funds assets under administration was, he estimates, "somewhere in the area of $20 million."

2. The Respondent's association with Investia was terminated by Investia on August 17, 2010 for failure to cooperate with an investigation by Investia, as well as for compliance deficiencies and issues relating to the notification of the Respondent's retirement. Mr. Maynes is no longer registered in the securities industry in any capacity.

3. Mr. Maynes' problems are part of a serious family dispute between the Respondent and his two children, Kevin Maynes, who had worked with the Respondent as an Approved Person in the same branch office in Oakville, Ontario, between 2003 and December 2009, and the Respondent's daughter, Colleen Kimber. Colleen Kimber told the Mutual Fund Dealers Association of Canada ("MFDA") on July 24, 2011 that she has "no further interest in pursuing this affair so I will not be giving any interviews." The dispute arose sometime after the Respondent's wife died of cancer in 2003. William Maynes subsequently remarried.

4. These family issues are part of a Superior Court case commenced on December 7, 2011, in which the Respondent is claiming damages of $500,000 against Investia and Kevin Maynes. The Respondent's counsel states: "As against Investia, the Respondent claims damages in the amount of $500,000 for breach of contract, intentional interference with contractual relations and conversion. As against [Kevin Maynes], the Respondent claims damages of $500,000 for breaches of fiduciary duty and obligations of employment, misappropriation of corporate opportunities, intentional interference with contractual relations and conversion."

5. The plaintiff's allegations in the civil suit include claims that Kevin Maynes acquired through a court order the Respondent's premises, which contained the Respondent's business and his home, which forced the Respondent to move to other premises. Kevin Maynes had been

a joint owner of the property, although the Respondent alleges that Kevin Maynes had not contributed to its purchase. Other claims by the Respondent are that Kevin Maynes, with the collusion of Investia, had improperly taken clients away from him, that his son had refused to communicate with him except through e-mails, and that on one occasion the police were called to the Respondent's home because of alleged assaults between father and son. The Respondent wrote to Investia on May 2, 2010, stating: "Kevin Maynes and Colleen Kimber are my son and daughter who are determined to **take away** my home, business, and monies and financially destroy me. This is a family conflict and they are attempting to use outside institutions to their advantage."

6. The investigation of the Respondent's conduct in the present case was triggered by allegations dated April 10, 2010 by his son and daughter that the respondent had forged or caused their signatures to be forged on documents dealing with six family accounts, which allowed the accounts to be solely in William Maynes' name and not in joint names. Those accounts related to funds set aside for the Respondent's grandchildren as well as for a memorial fund for the late Mrs. Maynes that assisted children in West Africa.

7. This dispute formed an important part of the background to this hearing, but the Panel is not in a position to determine the merits of the various charges and counter-charges. That should be left to the civil case. Kevin Maynes and his sister Colleen Kimber did not appear as witnesses at this hearing, even though they were the persons who had formally complained to Investia about their father's alleged forgeries. Those complaints were, as required, passed on to the MFDA on April 19, 2010, which caused the MFDA to commence an investigation later that month.

8. The validity of the forgery charges were investigated by Investia and the MFDA. The Respondent participated in a lengthy interview with the MFDA on September 29, 2011. He had, he stated, contributed the funds to the family accounts and took the position (page 59 of transcript) that "the person who put the money in should be the one that has the authority."

9. On August 12, 2010, Casimir Litwin of the compliance section of Investia informed the Respondent that Investia wanted to do an audit – a so-called fifty-file audit – of the Respondent's files. The Respondent agreed with the request and told Investia that his current address was now in Mississauga, not in Oakville, where his office had been located. Because of the previously-mentioned court order, his Oakville office had been closed and he had removed the files to the

basement of his new Mississauga residence. To add to his problems, the Respondent's mother died during this period.

10. When Investia showed up the next morning, August 13, 2010, the Respondent refused to allow Investia to see his files, claiming that they had no right to do so, that they had given him inadequate notice, and that he had already resigned. Investia claims not to have received any resignation letter before August 13, 2010.

11. On August 17, 2010, Investia terminated its relationship with the Respondent and requested the return of all his Investia files.

12. Investia informed the Respondent's clients about the termination and suggested that their accounts could be handled by another Investia dealer. The Respondent, in turn, told his clients that he had confidence in another Member – not associated with Investia – and suggested that they transfer their accounts there.

13. Investia subsequently – on March 30, 2012 – obtained a Superior Court order that the Respondent was required to turn over all its files to Investia, which for the most part he did in June 2013, Twenty two files were missing from the fourteen banker's boxes. The six files relating to the family, the Panel finds, which were not in the banker's boxes, have still not been returned.

14. The sums involved in the half dozen family accounts is not large. Indeed, it is comparatively small, considering it was partly responsible for the Respondent's problems. In total, the sum of all the family accounts is less than $20,000 dollars, perhaps about $15,000. Each side was apparently concerned that the funds would disappear if the other side got control. The Respondent feared that his son, if named on the account, would withdraw the funds. Kevin Maynes probably thought that his father would use the funds for his own purposes if the Respondent was in control of the account. The funds continue to be in the Respondent's control. The latest evidence is that the Respondent has maintained the funds for the benefit of his grandchildren.

15. That, in brief, is the background to the present case.

The Specific Allegations

16. The two specific allegations in the Notice of Hearing, dated February 8, 2013 are as follows:

Allegation #1: On August 13, 2010, the Respondent failed or refused to cooperate with a client file review to be performed by the Member, contrary to the terms of an agreement between the Respondent and the Member, thereby:

(a) interfering with the Member's ability to handle a client complaint promptly and fairly in accordance with the requirements of MFDA Rule 2.11 and MFDA Policy No. 3, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1; and

(b) failing to comply with the policies and procedures of the Member;

contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

Allegation #2: Commencing August 13, 2010, the Respondent failed or refused to provide access to or remit, return and deliver to the Member client files and information in his possession, contrary to the terms of an agreement between the Respondent and the Member, thereby:

(a) interfering with the Member's ability to handle a client complaint promptly and fairly in accordance with the requirements of MFDA Rule 2.11 and MFDA Policy No. 3, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1;

(b) failing to ensure the client files and information were available for review by and delivery to the Member, contrary to MFDA Rules 1.1.2 and 1.1.5(f) and MFDA Rule 2.1.1;

(c) failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1; and

(d) interfering with the Member's ability to keep such books, records and other documents as are necessary for the proper recording of its business transactions, financial affairs and the transactions it executes on behalf of others in accordance with the requirements of MFDA Rule 5.1;

contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

The Preliminary Motion

17. On Friday, August 9, 2013, just before the hearing was to commence on Monday, August 12th, counsel for the Respondent filed a motion for:

a) A dismissal of the allegations for lack of jurisdiction and breach of procedural fairness and natural justice.

b) In the alternative, a stay of the subject proceedings, subject to certain conditions governing the Respondent, pending the conclusion of the ongoing civil litigation involving the Respondent, the Member, Investia Financial Services Inc. ("Investia), and one of the Complainants, Kevin Maynes ("KM").

18. The MFDA Rules of Procedure (Rule 6.1(1)) provide that "A motion may be brought at any stage of a proceeding," but the next subsection (6.1(2)) goes on to say that "the Moving Party shall serve on every other party and file a Notice of Motion at least 10 days prior to the date of the motion, unless the nature of the motion or the circumstances giving rise to the motion make it unnecessary or impractical to do so."

19. It cannot be argued that it was not "unnecessary or impractical" to give notice at an earlier stage. The Notice of Hearing had been given on February 8, 2013 – over six months ago. Disclosure of documents took place several months before the scheduled hearing. Counsel conducting this hearing for the Respondent was part of the same small law firm that had been involved since about the time the notice of hearing was given.

20. Nevertheless, we considered the motion, but dismissed it, stating that our reasons would be set out in our written decision.

21. We dismissed the motion because a civil action cannot trump a disciplinary hearing, just as it cannot block a criminal case. The MFDA has a clear public interest in proceeding expeditiously with disciplinary proceedings to protect the public from improper conduct and to deter others from engaging in such conduct. This does not mean that there may not be situations where a regulatory tribunal may be wise to postpone a hearing because of another related case. So, for example, if the civil case was actually about to be heard or was about to be settled it might be reasonable to consider postponing the disciplinary hearing. But that is not this case. The parties are still in the disclosure stage and have not started the oral discovery process. The Respondent's counsel notes that the Respondent "swore his Affidavit of Documents on May 23, 2013, which attached a 547 page list of documents, and produced the documents electronically. The Respondent is still waiting to receive Investia's Affidavit of Documents." It might be many years before the civil case is concluded, even if it is vigorously pursued by the parties. Moreover, counsel for the Respondent suggested that the MFDA would have to wait until the appeal process was over.

22. Counsel for the Respondent argued that the Respondent had "already sued Investia prior to the commencement of the within proceedings, which is now being curtailed by the MFDA." The Panel takes the view that Members and Approved Persons should not be able to avoid disciplinary proceedings by starting civil actions.

23. The Respondent's counsel argued that the "proceeding involves two allegations as against the Respondent with respect to his conduct on and after August 13, 2010, at which time the Respondent was neither employed by Investia, nor was he carrying on any business of any kind that is subject to regulation by the MFDA." The Panel finds, however, as a matter of fact, that notice of an intention to retire was not given to Investia by the Respondent until August 13, 2010 when Investia came to examine his files. The Respondent may well mistakenly believe that he gave notice on or around August 1, but there is limited evidence to support it and considerable evidence against it. The witness from Investia says that his inquiries led him to believe that the letter was not received until after August 13th. Respondent admits that he did not mention his "retirement" in his conversation with Investia on August 12th. Moreover, other documents said to have been sent by the Respondent to his clients were not received before August 13th.

24. In any event, we do not think that anything should turn on the date of resignation. The Ontario Court of Appeal has determined that the self-regulatory organizations, such as the MFDA, have jurisdiction over former employees, even if they have retired. (See *Taub v. Investment Dealers Association of Canada* 2009 ONCA 628; see also *Dass v. Investment Dealers Association of Canada* 2008 BCCA 413). It is true that the Taub case dealt with conduct alleged to have taken place before his resignation. But that is what we are dealing with in the present case. The complaints concerning forgery took place while the Respondent was an Approved Person. The fact that the MFDA has chosen not to proceed with charges involving forgery should not be decisive. MFDA counsel correctly states in her closing argument: "Even if the Respondent did not commit the forgeries as alleged, it does not diminish his obligation to help Investia fulfill its obligations under MFDA Rule 2.11 and MFDA Policy No. 3 to investigate client complaints and protect the investor."

25. The Respondent had an obligation to make his records available to the Member. Section 1.1.5 of the MFDA rules states:

> "A Member may conduct its business by Approved Persons retained or contracted by it as agents provided that:
>
> (f) all books and records prepared and maintained by the agent in respect of such business of the Member shall be in accordance with Rule 5 and applicable legislation, shall be the property of the Member and shall be available for review by and delivery to the Member during normal business hours."

26. Such a rule is necessary because MFDA Rule 5 sets out the records that must be kept by the Member and provides under Rule 5.5 that "all books, records, documentation and other information required to be kept and maintained by a Member or Approved Person shall be available for review by the Corporation [i.e., the MFDA] and the Corporation shall be entitled to make copies thereof and retain them for the purposes of carrying out its objects and responsibilities under the applicable securities legislation, the By-laws or the Rules."

27. Keeping accurate records and making them available for inspection by the Member and by the MFDA is a key component of the scheme of securities regulation in Canada. It is necessary to protect the public, to permit prompt and fair response to complaints (MFDA Policy

No. 3), to deter improper conduct, and to give investors confidence in the integrity of capital markets.

28. In addition, the Respondent's agreement with Money Concepts, Aegon, and Investia authorize the Member to inspect an Approved Person's records. (The earlier agreements were automatically incorporated into the later agreement.) The Franchise Agreement with Investia, for example, authorized Investia to conduct inspections of branch offices as follows:

> **"Inspection of Centre**
>
> 8.8 A representative of the Company shall be entitled at any time and from time to time to inspect the Centre and to observe its operations and the operation of the Franchised Business and to review the documents, books and records pertaining to the operations of the Centre and the Franchised Business and to discuss such operation with the Manager or any Principal, employee, agent or representative of the Franchisee, provided that any inspection or discussion shall not unreasonably interfere with the operation of the Centre or the Franchised Business."
>
> The Agreement goes on to state:
>
> **"Centre"** means the premises at and from which the Franchisee is to carry on the Franchised Business as described in section 2.2.

29. The Respondent was also required to comply with Investia's Compliance Policy and Procedure Manual, which states with respect to client files and related documentation:

> "VI. ACCESS TO BOOKS AND RECORDS
>
> All books, records, documentation and other information required to be kept and maintained shall be available for review by Investia Head Office and the MFDA or other regulators. Investia shall be entitled to make copies thereof and retain them for the purposes of carrying out its responsibilities under the applicable securities legislation and the By-laws or the Rules of the MFDA."

Mr. Casimir Litwin's evidence shows that the Respondent confirmed his agreement to adhere to the Policy and Procedure Manual by executing an acknowledgment dated March 1, 2010.

30. We therefore rejected the motion for dismissal or a stay of proceedings.

The Hearing

31. MFDA staff relied on two witnesses. The first witness was Casimir Litwin, a compliance officer with Investia. He took us through the exhibits relating to the agreements with Money Concepts, Aegon, and Investia, with the complaints of forgery, with a routine Investia audit in January 2010 of the Respondent's files, with a telephone interview with the Respondent in July 2010 in which the Respondent refused to answer who had signed the letters of direction relating to the family accounts, with the demand by Investia for a 50-file review in August 2010, and with the Respondent's refusal to give his files to Investia.

32. The second MFDA witness was Daniela Capozzolo, a senior investigator with the MFDA, who took us through the various steps taken by the MFDA in this case, including a lengthy interview with the Respondent on September 29, 2011.

33. The Respondent gave evidence on his own behalf. No other witnesses were called.

Our Findings

34. The Panel had no difficulty in concluding that the Respondent was in breach of his obligation to provide the files to Investia. The requirement to do so was discussed above. They are not his files, but belong to Investia. The fact that he may have resigned has no bearing on the case – and, in any case, we do not believe that he resigned before August 13, 2010. Not to provide the files is a breach of the standard of conduct required under Rule 2.1.1(b) which states: "Each Member and each Approved Person of a Member shall 'observe high standards of ethics and conduct in the transaction of business.'"

35. The allegations in this case properly sets out that the conduct is a breach of MFDA Rule 2.1.1. The allegations also refer to MFDA rule 1.1.2, but not every rule and regulation of a

Member is automatically a breach of the MFDA rules. The words "By-laws and Rules" in MFDA Rule 1.1.2, we believe, refer to MFDA By-laws and Rules, not those of Members. This is a point made by the MFDA Panel in *Re: Muchoki Fungai Simba* (February 20, 2012), where the Panel stated (paragraph 25): 'It is not the breach of *any* Member rule that can be considered MFDA misconduct, but it is limited to conduct where the Respondent does not 'observe high standards of ethics and conduct in the transaction of business.'"

36. Breaches of the rules and regulations of the Member will in almost all cases be a breach of Rule 2.1.1. In the *Re Michael Franco* decision (May 6, 2011) the Panel stated (paragraph 38):

"The obligation of the Approved Persons to comply with the policies and procedures of the Members that they are registered with is a cornerstone of the self-regulatory system. MFDA Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interest of clients and the public is undermined."

We agree with this statement and note that the Panel in the Franco case also linked the failure to follow the rules with a breach of MFDA Rule 2.1.1 (b), that is, the requirement to "observe high standards of ethics and conduct in the transaction of business." (See, to the same effect, *Re: Luc Marc Andre Laverdiere* (May 12, 2010.)

37. As stated earlier, the fact that the Respondent may already have resigned does not affect his responsibility to provide the files requested by Investia. The Respondent had other arguments. One was that the files were in his home, not in his business. We have dismissed that argument. The fact that the files were in his house is enough to make his house a "centre" within the meaning of the Investia agreement with the Respondent.

38. The Respondent also argued that his territory was Western Oakville, but his home is now in Mississauga. We are rejecting that argument. The responsibility of an Approved Person cannot be dependent on whether they are in the exact territory set out in the franchise agreement.

39. Another argument advanced by the Respondent was that Investia already had the original of his transactions. "The only files that were kept," he told the MFDA interviewer, "would be the

copy that was for our independent office." "That's my file, not theirs," he added. While it may be true that the Member had the original of each transaction, the Respondent's files would normally contain other information that enables the Member to obtain a fuller understanding of the actions of the Approved Person. The Member would not have, for example, any "know-your-client" forms, any pre-signed forms, any notes made by the Approved Person, any insurance documents, or any financial plans. The Respondent was also a financial planner and as a person having a dual occupation is required under Rule 1.2.1(C) (vii) (C) to "ensure that...the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons."

40. We therefore find that the two allegations against the Respondent set out earlier have been proved.

The Sanction

41. MFDA staff have proposed the following penalty against the Respondent:

a) a prohibition of at least one year on the authority of the Respondent to conduct securities related business in any capacity 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 at least $15,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and

c) costs in the amount of $10,000 attributable to conducting the investigation and the prosecution of the matter, pursuant to section 24.2 of MFDA By-law No. 1.

42. We have accepted Staff's proposed penalty of a prohibition of one year, a fine of $15,000 and costs of $10,000.

43. The unique circumstances of this case have influenced our decision. Normally a case of wilful refusal to cooperate would bring about a much larger penalty, including in many cases a lifetime ban. Some of the special circumstances in this case are that there is, as previously stated,

a major civil suit looming in the background. Moreover, life has not been easy for the Respondent. There is the fact of the death of his first wife, the sad circumstances of the breakdown of family relationships, the loss of half of his home, and the death of his mother during a crucial period. Further, the Respondent has no past discipline history with the MFDA, there is no evidence of client loss, and apart from the refusal to provide the files, he cooperated with the Staff investigation. It also appears that his business suffered over the years because of the events that occurred and he is no longer a registrant.

44. We therefore find that the two allegations have been proved against the Respondent and we have accepted Staff's suggested penalty of a prohibition of one year from the date of our decision and reasons for judgment, a fine of $15,000, and costs of $10,000.

DATED this 10th day of September, 2013.

"Martin L. Friedland"
Martin L. Friedland, C.C., Q.C.,
Chair

"David W. Kerr"
David W. Kerr,
Industry Representative

"Brian Nowak"
Brian Nowak,
Industry Representative

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