



**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: Estrella Ogalino**

Heard: January 8, 2014, in Toronto, Ontario  
Reasons for Decision: January 31, 2014

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Kenneth P. Mann	Industry Representative
Greg Juby	Industry Representative

Appearances:

Francis Roy	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada
	)	
Estrella Ogalino	)	Respondent, Not in attendance or represented by
	)	counsel
	)	

## OVERVIEW

1. By Notice of Hearing dated April 4, 2013, the Mutual Fund Dealers Association of Canada (“MFDA”) alleged that the Respondent committed the following violations of the By-laws, Rules or Policies of the MFDA.

**Allegation #1:** Between July 2007 and March 2011, the Respondent misappropriated at least \$52,728 from at least 8 clients, thereby failing to deal fairly, honestly and in good faith with the clients, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Commencing on or about September 1, 2011, the Respondent has failed to attend an interview to provide a statement and to produce 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. The case came on for hearing before this Hearing Panel on January 8, 2014. The Respondent did not appear. She had not filed a Reply as is required by Rule 8 of the MFDA Rules of Procedure. Pursuant to the authority granted by Rules 7.3, 8.4 and 13.5 we decided to proceed with the hearing in the absence of the Respondent. Pursuant to the same authority, we also decided to accept the facts alleged and conclusions drawn in the Notice of Hearing. MFDA Enforcement Counsel also tendered as evidence the affidavit of Nadia Dedic, sworn January 6, 2014. He then presented argument respecting liability and penalty.

3. We then withdrew from the hearing room. We considered the evidence provided by the affidavit of Nadia Dedic, the facts alleged and the conclusions drawn in the Notice of Hearing and the submissions made by Enforcement Counsel. We reached the conclusions that the allegations had been proved to the requisite degree of proof and that the penalties suggested by Enforcement Counsel were appropriate ones.

4. We then returned to the hearing room. We announced our decision. We made an order permanently prohibiting the Respondent from conducting securities related business in any

capacity, fining her a total of \$110,000 and awarding \$7,500 as costs against her. We stated that reasons for the decision would be given later. These are those reasons.

### **THE ALLEGATIONS**

5. The allegations are quoted above. For ease of reference, however, we set them out again:

**Allegation #1:** Between July 2007 and March 2011, the Respondent misappropriated at least \$52,728 from at least 8 clients, thereby failing to deal fairly, honestly and in good faith with the clients, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Commencing on or about September 1, 2011, the Respondent has failed to attend an interview to provide a statement and to produce 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.

6. In substance the MFDA has alleged two specific types of misconduct. The first is misappropriation of clients' funds. The second is failure to cooperate with an investigation being conducted by the MFDA.

### **FACTUAL FINDINGS**

7. The provisions of Rule 7.3, 8.4 and 13.5 would have permitted us to make findings based solely on the facts and conclusions set out in the Notice of Hearing. Nevertheless, Enforcement Counsel tendered as evidence the voluminous and detailed affidavit of Nadia Dedic. It is unnecessary to review those facts and circumstances in any detail. We are satisfied, to the requisite degree of proof as required by *Bernstein v. College of Physicians and Surgeons* (1977), 51 O.R. (2d) 1, that the circumstances set out in paragraphs 1 to 19 of the Notice of Hearing have been proven. We attach those paragraphs as Appendix 'A' to these reasons. We will give a very brief summary of them.

#### **Misappropriation**

8. We are satisfied that the Respondent misappropriated funds from clients. The evidence

discloses that basically she used two methods of misappropriating funds belonging to her clients. The first method was to forge her clients' signatures on redemption forms and direct that the resulting funds be sent to bank accounts, belonging to her, to her husband and to certain other persons. The second method was to obtain cheques from clients payable to "cash" on the representation that the funds would be placed in the clients' investment accounts. She then caused the cheques to be deposited to bank accounts belonging to her, to her husband or to those other persons.

9. The total amount misappropriated was \$52,728. The money was taken from nine clients.

### **Failure to Cooperate**

10. In the course of its investigation, MFDA Staff, by letter, requested that the Respondent provide certain specific documents, give a statement and participate in an interview. The Respondent did not respond to the request and it was necessary for Staff to repeat it. Eventually, after further requests, the Respondent did provide a partial statement and agreed to provide the requested documents and to participate in an interview. She did not live up to her agreement. Staff never received a full statement, did not obtain the documents which it had requested nor was it able to have an interview with the Respondent.

## **LIABILITY DETERMINATION**

### **Allegation #1**

11. MFDA Rule 2.1.1(a) provides:

2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

(a) deal fairly, honestly and in good faith with its clients;

12. Misappropriation of clients' funds is the antithesis of the duty imposed by Rule 2.1.1(a).

The Respondent's theft from her clients constitutes a clear violation of this Rule. We therefore hold that Allegation #1 had been proven.

### **Allegation # 2**

13. Section 22.1 of MFDA By-law No. 1 provides in part:

22.1 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 any 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; and
- (c) to attend and give information respecting any such matters.

14. Our factual findings disclose that the Respondent has been in breach of each of the subparagraphs of section 22.1. We hold that Allegation #2 had been proven.

### **PENALTY**

15. We start by saying that we consider these contraventions to be extremely serious ones. The overriding concern of the MFDA is the protection of the investor. The investor must be protected from an Approved Person who would misappropriate her clients' funds. Because theft from a client is so egregious and detracts so gravely from the public trust, which is essential to the very survival of the investment industry, there can be no appropriate penalty less than banishment from the industry.

16. Jurisprudence is consistent that when determining a penalty a Hearing Panel must take into account circumstances of mitigation. If one could conceive of a circumstance which could

mitigate the extreme penalty for misappropriation, no such circumstance had been shown in this case. While Hearing Panels usually consider the fact that a Respondent has no disciplinary history as a circumstance of mitigation, we do not accept that, in this case, it can derogate from the necessity that this Respondent be removed from the industry.

17. We agree with the submission of Enforcement Counsel that this violation should also attract a fine. We have no way of knowing whether, as a practical matter, it could be collected. However a fine is well deserved and should act as a general and specific deterrent. It was our view that the fine should be not less than the amount of the misappropriation. A lesser fine could give the appearance that the Respondent was profiting from her theft. We therefore fix the fine at \$60,000.

18. The investment industry is a self-regulating one. Cooperation with an investigation is necessary if the MFDA is to appropriately regulate its Members and Approved Persons. Failure to cooperate affects the very integrity of the regulatory process. Therefore failure to cooperate must always be viewed seriously. In this case one must wonder what the documents, which were not produced, might have disclosed. Would they have shown that there was more misappropriation than was discovered by the Respondent's employer during its investigation? We are not prepared to infer, solely from the failure to produce documents, that the Respondent was hiding other thefts. However, her failure to produce documents puts her in such a bad light that we are dissuaded from considering her lack of disciplinary history as a circumstance of mitigation in respect to her failure to cooperate.

19. Enforcement Counsel suggested that we impose a fine of \$50,000 for failure to cooperate with the investigation. We think that a fine of that amount is a reasonable one in the circumstances of this case. We therefore fix the fine for Allegation #2 at \$50,000.

20. It is our opinion that the MFDA is entitled to recover its costs. We order that the Respondent pay costs which we fix in the amount of \$7,500.

21. Finally we direct that identity of the Respondent's victims, which appear in documents

forming part of the affidavit of Nadia Dedic, should be protected by appropriate redaction being made in the event that the documents, forming part of the Exhibits to this proceeding, are subject to a request for production

**DATED** this 31<sup>st</sup> day of January, 2014.

“Patrick T. Galligan”

The Hon. Patrick T. Galligan, Q.C.,  
Chair

“Kenneth P. Mann”

Kenneth P. Mann,  
Industry Representative

“Greg Juby”

Greg Juby,  
Industry Representative

**APPENDIX ‘A’**

1. From January 12, 2004 to March 23, 2011, the Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.

2. On March 23, 2011, Investors Group terminated the Respondent as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

**Allegation #1 – Misappropriation**

3. Between July 2007 and March 2011, the Respondent misappropriated at least \$52,728 from at least 8 clients for whom she was the mutual fund salesperson responsible for servicing their accounts. As described in greater detail below, the Respondent misappropriated the monies by either processing unauthorized redemptions in the accounts of the clients, the proceeds of which the Respondent directed be deposited in bank accounts in her own name or in the name of her husband, her cousin, her sister or her friend (collectively, the “Other Accounts”), or by receiving cheques or bank drafts provided to her by the clients for deposit in their Investors Group account and instead depositing the monies in one of the Other Accounts. Details of the amounts misappropriated by the Respondent are provided in the chart below:

<b>Date</b>	<b>Client</b>	<b>Gross Amount Misappropriated (before fees and taxes)</b>	<b>Net Amount Misappropriated</b>	<b>Relation of Other Account Holder to Respondent</b>
July 10, 2007	JD	\$734.12	\$734.12	Husband
August 31, 2007	JD	\$6,000	\$6,000	Husband
May 14, 2009	MM	\$1,599.09	\$1,383.69	Husband
June 29, 2009	CT	\$3,129.84	\$3,129.84	Husband
April 22, 2010	CM	\$5,000	\$5,000	Respondent
June 21, 2010	NDB/ RDB	\$25,787.19	\$25,787.19	Friend
July 19, 2010	VV	\$2,598.85	\$2,455	Friend
July 30, 2010	VV	\$2,914.02	\$2,753.88	Friend

<b>Date</b>	<b>Client</b>	<b>Gross Amount Misappropriated (before fees and taxes)</b>	<b>Net Amount Misappropriated</b>	<b>Relation of Other Account Holder to Respondent</b>
August 17, 2010	NDB/RDB	\$1,512.49	\$1,512.49	Respondent
Sept. 28, 2010	NDB/RDB	\$2,452.40	\$2,452.40	Sister
January 20, 2011	PS	\$634.96	\$634.96	Cousin
March 25, 2011	PS	\$365.04	\$365.04	Respondent
	<b>Total</b>	<b>\$52,728.00</b>	<b>\$52,208.61</b>	

4. With respect to the transactions that occurred on July 10, 2007 (client JD), August 31, 2007 (client JD), May 14, 2009 (client MM), June 29, 2009 (client CT), July 19 and 30, 2010 (client VV), September 28, 2012 (clients NDB and RDB) and January 20, 2011 (client PS), the Respondent misappropriated the clients' monies by taking the following steps, without the clients' knowledge or consent:

- (a) The Respondent completed Investors Group forms, on which she forged the clients' signatures, requesting that Investors Group change the clients' bank account information on record at Investors Group to one of the Other Accounts chosen by the Respondent;
- (b) The Respondent then processed unauthorized redemptions in the clients' accounts by forging the clients' signatures on redemption forms;
- (c) As a result of the unauthorized change in the client's banking information, the redemption proceeds were deposited in the Other Account chosen by the Respondent and not in the client's bank account; and
- (d) In response to communications received from some of the clients about the possibility that monies were missing from their Investors Group account, the Respondent led the clients to believe that their monies were still invested.

5. With respect to the transactions that occurred on April 22, 2010 (client CM), June 21, 2010 (client NDB and RDB), August 17, 2010 (clients NDB and RDB), and March 25, 2011

(client PS), the Respondent misappropriated the clients' monies by taking the following steps, without the clients' knowledge or consent:

- (a) The Respondent requested from the clients, and accepted, cheques made out to "cash", which she led the clients to believe would be deposited in their Investors Group accounts but which she instead deposited in one of the Other Accounts; and
- (b) In response to communications received from the clients, the Respondent led the clients to believe that their monies had been invested or were about to be invested in their Investors Group account.

6. The Respondent was not authorized or instructed by any of the clients to transfer to or deposit in the Other Accounts any of the clients' monies.

7. Since some of the unauthorized redemptions processed by the Respondent occurred in registered accounts, the redemptions triggered tax consequences for some of the clients.

8. On February 28, 2011, the Canada Revenue Agency contacted Investors Group concerning the redemption in client MM's registered account. As a consequence, Investors Group filed an electronic report on the MFDA's Member Event Tracking System ("METS") and commenced an internal investigation.

9. On March 4, 2011, Investors Group suspended the Respondent and, as noted above, on March 23, 2011, Investors Group terminated the Respondent based on the results of its investigation.

10. Investors Group compensated all but one of the clients for their losses.<sup>1</sup>

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<sup>1</sup> Investors Group was unable to locate or contact client MM, who denied redeeming any monies from her registered account to CRA but did not file a complaint directly with Investors Group or otherwise come forward.

11. By engaging in the conduct described above, the Respondent misappropriated at least \$52,728 from at least 8 clients, thereby failing to deal fairly, honestly and in good faith with the clients, contrary to MFDA Rule 2.1.1.

### **Allegation #2 – Failure to Cooperate**

12. On July 18, 2011, during the course of its investigation into the Respondent's activities, MFDA Staff ("Staff") sent a letter to the Respondent requesting that no later than August 3, 2011 the Respondent contact Staff to arrange for an interview to provide a statement and to produce copies of the following documents (the "Documents") in advance of the interview:

- (a) her bank account statements;
- (b) copies of all cheques depositing or withdrawing funds from her bank accounts; and
- (c) the client files she maintained for, among others, clients JD, MM, CT, CM, NDB, RDB, VV and PS.

13. Having not received a response from the Respondent to the July 18, 2011 letter, on August 4, 2011 Staff sent a second letter to the Respondent informing her of her obligation to cooperate with Staff's investigation and requesting that she provide the Documents and contact Staff to arrange for an interview to provide a statement no later than August 19, 2011.

14. On August 23, 2011, the Respondent contacted Staff by telephone and advised them that she would provide the Documents by September 1, 2011. The Respondent further agreed to attend at an interview with Staff to provide a statement on November 22, 2011. On August 23, 2011, Staff sent a letter to the Respondent confirming the arrangements agreed to by the Respondent.

15. On September 6, 2011, having not received the Documents from the Respondent, Staff sent a third letter to the Respondent requesting that she provide the Documents no later than September 19, 2011.

16. On September 26, 2011, having still not received the Documents or heard from the Respondent, Staff sent a fourth letter to the Respondent informing her of her obligation to cooperate with Staff's investigation and requesting that she provide the Documents no later than October 3, 2011.

17. On November 22, 2011, the Respondent did not attend at an interview with Staff to provide a statement.

18. Due to the failure of the Respondent to cooperate with MFDA Staff's investigation, the full nature and extent of the Respondent's misconduct, and in particular whether she may have misappropriated additional monies from the clients identified in this Notice of Hearing, or from other clients and other individuals, remains unknown.

19. By failing to attend at an interview to provide a statement to MFDA Staff, and by failing to produce the Documents, both of which were requested by MFDA Staff during the course of an investigation, the Respondent failed to comply with section 22.1 of MFDA By-law No. 1.

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