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: Adeleke Rasaq Olanrewaju

Heard: January 25, 2022 by electronic hearing in Vancouver, British Columbia
Decision and Reasons: February 14, 2022

DECISION AND REASONS

Hearing Panel of the Pacific Regional Council:

Michael Carroll, Q.C.	Chair
Nova Aitchison	Industry Representative
Barbara Fraser	Industry Representative

Appearances:

Zaid Sayeed	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Adeleke Rasaq Olanrewaju	)	Respondent, not in attendance or represented by counsel

Background

1. On April 21st, 2021 a Notice of Hearing for a first appearance on July 7th, 2021 was issued. The Respondent failed to appear on that date and the Chair acting on behalf of a Hearing Panel of the Pacific Regional Council issued an order that the Respondent had been appropriately served and scheduled a hearing for October 26th, 2021 (the "July 7th Order")

2. In accordance with the July 7th Order, Staff of the Mutual Fund Dealers Association of Canada (the "MFDA") then sent an email and a letter to the last known address of the Respondent notifying him of the date and time set for the hearing.

> Affidavit of Indira Nadarajan ("Ms. Nadarajan") sworn January 21, 2022 paras. 4 and 5.

3. On October 26th, 2021 the hearing was adjourned and rescheduled for January 25th, 2022 at 10 a.m. MFDA Staff ("Staff") sent a letter to the last known email address of the Respondent advising of the new date and time for the hearing.

> Affidavits of Service, Exhibits 2-4.

4. The Panel is satisfied that Staff has made all reasonable efforts to notify the Respondent of the date, time, location, and subject matter of the hearing as well as the Respondent's rights and obligations in connection with the hearing process. The Respondent has failed to file a Reply to the Notice of Hearing and also failed to appear at the hearing on January 25th, 2022. We find that it is appropriate to proceed with the hearing pursuant to MFDA Rule of Procedure 7.3 and to accept as proven the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing and to impose penalties and costs pursuant to MFDA Rules of Procedure 7.3(1) and 8.4(1).

The Allegations

5. There are two allegations made against the Respondent as follows:

Allegation #1

Between on or about August 13, 2018 and February 13, 2019, the Respondent misappropriated or failed to account for monies that he received from a client, contrary to MFDA Rule 2.1.1.

Allegation #2

On or about February 13, 2019, the Respondent made false or misleading statements to the Member during the course of an investigation into his conduct, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.5.1, and 1.1.2.

The Facts

6. The relevant facts as follows are set out in the January 21st, 2022 Affidavit of Ms. Nadarajan and other Exhibits filed in this proceeding.

7. At all material times the Respondent was registered as a Dealing Representative with the Member CIBC Securities Inc. (the "Member") and carried on business in the Vancouver, B.C. area at the time of the alleged misappropriation. The Client AU (the "Client") was a client of the Member whose accounts were serviced by the Respondent. He was a foreign student attending the University of British Columbia who was receiving a stipend of $20,000 per year.

8. In or about 2018 while attending at a church the Respondent offered to assist the Client with his finances and investments. He told the Client that he could facilitate the purchase of an investment that could provide a return of approximately 3% or $600 per month.

9. On or about August 13, 2018 the Client obtained a bank draft in the amount of $30,000 made payable to the CIBC and the Respondent and gave it to the Respondent to invest with CIBC. No documents were executed in relation to the investment.

10. On August 14, 2018 the Respondent deposited the bank draft into his personal bank account. At that time the Respondent's bank account had an overdraft of approximately $98.

11. On August 15, 2018 the Respondent used $19,945.43 of the $30,000 deposit to pay personal expenses and make investments for his own. Between August 21st and August 24th, 2018 the Respondent withdrew a further $8,000 from his account using ATMs. After other payments for personal matters only $1,458.44 remained in the account at the end of August. By the end of October the Respondent had emptied the account having made only two payments of $679.24 and $678.11 to the Client on October 1st and November 1st, 2018.

12. Contrary to the representations made by the Respondent to the Client none of the $30,000 given to the Respondent was invested with the Member on behalf of the Client.

13. On February 1, 2019 the Client complained to the Member that he had provided funds to the Respondent for an investment but had not been provided with any documentation by the Respondent. The Member then commenced an investigation of the Respondent's conduct.

14. On April 3rd, 2019 Staff wrote to the Member requesting information and documentation regarding the Client's investment of $30,000. On April 4th Staff wrote to the Respondent

requesting that he respond to the allegation that he had used the proceeds of the $30,000 bank draft for his own account as opposed to investing it for the Client. No response was provided by the Respondent. On April 25th the Member provided responses to the April 3rd inquiry and subsequently provided responses to further enquiries between May 22nd and September 24th, 2019. Based on the answers and documents provided by the Member, Ms. Nadarajan concluded that from the $30,000 given to the Respondent, the Client had received $21,819.95 in return. However, she noted that the large majority of this amount, namely $19,110 had been repaid on February 4th, 2019 some 3 days after the Client's complaint to the member, and prior to the date when the Member interviewed the Respondent and terminated his employment on February 13th, 2019.

15. As a result of the Respondent's misappropriation of the Client's funds the Member paid the Client $8,180.05 representing the outstanding principal amount remaining due from the $30,000 given to the Respondent.

False Statements made by the Respondent to the Member

16. On February 13th, 2019 the Member conducted an interview with the Respondent during which Ms. Nadarajan says the Respondent made several false statements including the following:

a) That he did not receive monies from the Client;
b) That the bank draft was made payable only to him;
c) That he gave the bank draft to his financial advisor to deposit;
d) That the monies that the Respondent received from the bank draft were sent to Nigeria.

Failure to Deliver a Reply and to Attend the Hearing

17. As noted earlier the Respondent failed to deliver a Reply to the Notice of Hearing. By virtue of MFDA Rules of Procedure 8.4. (1) and 7.3 the Hearing Panel is entitled to proceed with the hearing without further notice and in the absence of the Respondent and accept the facts and conclusions drawn in the Notice of Hearing as proven and impose any of the penalties and costs described in Sections 24.1 and 24.2 of MFDA By-law No. 1. However, in this case Counsel for the MFDA submitted the affidavit evidence of Ms. Nadarajan who was also sworn in as a witness and confirmed her affidavit evidence and answered questions from counsel.

Standard of Proof and Admissibility of Hearsay Evidence

18. The standard of proof in all MFDA and other regulatory proceedings in the securities industry is the civil standard of the balance of probabilities.

> *F.H. McDougall,* 2008 SCC as cited in *Desgroseilliers (Re)* [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201790 Decision dated August 21st, 2018 at para. 15.

19. Although much of the evidence in the affidavit of Ms. Nadarajan was hearsay in nature, Rule 1.6 of the MFDA Rules of Procedure permits hearsay statements to be admitted as evidence where the Hearing Panel considers it to be relevant to the matters before it. The Panel is not bound by technical or legal rules of evidence unless the evidence is inadmissible by reason of statute or legal privilege. We consider the hearsay evidence in the affidavit of Ms. Nadarajan to be relevant and admissible under this Rule.

20. As a result of all of the foregoing the Panel finds that the Respondent contravened MFDA Rule 2.1.1 by misappropriating $30,000 from the Client. Rule 2.1.1 requires inter alia that:

> *Each Member and Approved Person of a Member shall: deal fairly, honestly, and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.*

21. MFDA Hearing Panels have repeatedly held that an Approved Person who misappropriates client monies has engaged in conduct that contravenes MFDA Rule 2.1.1.

> *Douglas (Re)* [2007] Hearing Panel of the Central Regional Council, MFDA File No. 201824 Decision dated October 9th, 2018 at paras. 24-25.
>
> *Dew (Re)* [2018] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201738, Decision dated July 23rd, 2018 at para. 21.
>
> *Lam (Re)* [2019] Hearing Panel of the Prairie Regional Council, MFDA File No. 201856, Decision dated January 25th, 2019 at para.15.
>
> *Goodison (Re)* [2021] Hearing Panel of the Pacific Regional Council, MFDA File No. 202122, Decision dated September 13th, 2021.

22. The misappropriation of client monies is dishonest and strikes at the heart of the advisor-client relationship. It not only causes harm to the client and the Member, but it also undermines the reputation and integrity of the securities industry as a whole.

23. The Panel also finds that the Respondent misled the Member during the interview that was conducted to investigate his conduct. Contrary to what the Respondent stated he did receive the bank draft from the Client. Furthermore, it was made payable not only to him, as he stated in the interview, but to the CIBC as well. He also deposited the full amount of $30,000 into his personal account and did not give it to his financial advisor as he had stated. Finally some or all of the monies were used for personal matters and not sent to Nigeria as he had also stated on another occasion in the interview.

24. Misleading a Member by an Approved Person is serious misconduct. Not only is it a violation of the standard of conduct expected of an Approved Person, it also interferes with the ability of the Member to supervise the conduct of the Approved Person. In *MacWhirter (Re)* MFDA File No. 201541, the Hearing Panel in its decision dated February 19th, 2016 at para. 10 stated as follows:

> *The misleading of investigators or Compliance staff, whether of the MFDA or the Member in fulfilling its regulatory obligations to supervise, interferes with the reasonable supervisory role and may result in an investigation being closed down prematurely or diverted down an avenue of inquiry that wrongly implicates others, both of which may result in conduct going undetected.*

25. The untruthful statements made by the Respondent to the Member were violations of the Member's policies and procedures and MFDA Rules 2.1.1, 2.5.1, and 1.1.2.

Factors concerning the Appropriateness of Penalty

26. Factors Hearing Panels should consider in assessing penalties are:

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

27. Included in other factors Hearing Panels frequently consider in assessing appropriate penalties are:

a) the seriousness of the allegations proved;
b) the Respondent's past conduct including prior sanctions;

c) whether the Respondent recognizes the seriousness of the improper activity;

d) the harm suffered by investors as a result of the improper activity;

e) the benefits received by the Respondent as a result of the improper activity;

f) the risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in the capital markets in the jurisdiction;

g) 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;

h) the need to alert others of the consequences of the inappropriate activities to those who are permitted to participate in the capital markets; and

i) previous decisions in similar circumstances.

> *Tonnies (Re)* [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503 Decision dated June 27th, 2005 at paras. 14 and 23.

Considerations in the Present Case

Nature of the Misconduct

28. It goes without saying that the misconduct in the present case is serious. Misappropriating clients' funds is a serious breach of trust and undermines the reputation and integrity of the securities industry.

29. In this case the misconduct of the Respondent was aggravated by lying to the Member during its investigation into the misconduct. By doing so the Respondent impaired the ability of the Member to adequately supervise its salespersons, investigate allegations of misconduct effectively and report findings to the MFDA in a timely fashion. This type of conduct must also be sanctioned to demonstrate that other Approved Persons will suffer the consequences of misleading the Member or the MFDA in the course of investigating the misconduct.

Harm Suffered by Investors

30. The Client initially lost $30,000 as a result of the Respondent's misconduct. The Client was repaid $21,819.95 by the Respondent leaving the Client out of pocket by $ 8,180.05 from which the Respondent continued to benefit. The Panel has concluded based on the evidence in the Affidavit of Ms. Nadarajan that the Respondent repaid the Client $19,110 on February 4th, 2019 not out of a sense of duty or remorse but rather in a futile attempt to avoid termination by the Member.

Benefit to the Respondent

31. The Respondent used the $30,000 for his own purposes and despite repaying $21,819.95 to the Client he failed to return $8,180.05. It is clear that his conduct was motivated by a desire to obtain a financial benefit for himself which is another factor to be considered in assessing penalties.

Respondent's Recognition of the Seriousness of the Misconduct

32. During the investigation process the Respondent has demonstrated no remorse for his conduct nor has he acknowledged the harm done to the Client. Indeed, the Respondent filed no reply to the Notice of Hearing and failed to appear at the hearing either in person or through counsel. It would appear that the Respondent may have left Canada but that is irrelevant in assessing penalties.

Respondent's Past Conduct

33. The Respondent has not been the subject of any prior disciplinary proceedings with the MFDA. However, given the seriousness of his misconduct we place no weight on this factor.

Damage Caused to Integrity of Capital Markets and Risk to Investors

34. Theft of client monies is perhaps the most egregious example of misconduct that can bring the reputation of the securities industry into disrepute. In this case there are no extenuating circumstances that can be taken into account in assessing penalties such as health reasons or financial distress, or genuine remorse. The penalties in the present case must be severe and be seen to be severe by the public and other Approved Persons in the industry in order to preserve confidence in the securities markets and to deter others in the securities industry from similar behavior.

35. The Respondent would pose a significant risk to other investors were he to be permitted to return to the industry. His theft of the Client's money was deliberate and motivated by a desire to benefit himself. His lying to the Member was also deliberate and constitutes a blatant disregard for the truth all of which mandate a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member.

Previous Decisions in Similar Cases

36. Counsel for the MFDA has referred us to some cases with elements in common with the present case.

Bhathal (Re) [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201637, Decision dated November 21st, 2016;

Breukelman (Re) [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201729, Decision dated June 8th, 2018;

Ogalino (Re) [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201248, Decision dated January 31st, 2014;

Vandermay (Re) [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201702, Decision dated October 2nd, 2017;

Schwartz (Re) [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201740, Decision (Misconduct) dated June 8th, 2018;

Bytnar (Re) [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201015, Decision dated April 6th, 2011.

37. All but one of the above noted cases involved misappropriation of client monies. In all of them the Respondent was permanently prohibited from conducting securities related business. The range of the fines imposed for the misappropriation were for amounts roughly equal to and up to 3 times the amount stolen.

38. In the present case the Panel has concluded that a fine of twice the amount misappropriated or $60,000 is sufficient to demonstrate to the Respondent, the public, and other Approved Persons in the securities industry that misappropriation of client monies will result in harsh penalties significantly greater than the amount misappropriated. As stated earlier the Panel has placed little weight on the fact that $19,110 was repaid to the Client on February 4th, 2019 only after the Client's complaint to the Member. We have concluded that the balance of $2,709.94 repaid to the Client by the Respondent including the payments on October 1st and November 1st, 2018 were made for the sole purpose of misleading the Client into believing that he was receiving returns on his investment as promised by the Respondent.

39. In three of the above noted cases the Hearing Panels also imposed fines for misleading the member. In *Bhathal* the fine for misleading the member was $5,000, in *Schwartz* it was $25,000 for misleading clients and the member, and in *Bytnar* it was $10,000 for misleading the member.

40. In all of the above cases save *Bytnar* the Hearing Panels imposed fines for failing to cooperate in the investigation ranging from $50,000 to $75,000. In the present case the Respondent failed to reply to the letter of enquiry from Staff on April 4th, 2019. He did however attend an interview with the Member on February 13th, 2019 and answered questions albeit in many cases untruthfully.

Affidavit of Ms. Nadarajan, paras. 14- 26, Exhibit 6.

41. However, the Notice of Hearing in the present case contains no allegation for failing to cooperate in the investigation. Had such an allegation been made we would not have hesitated to impose a significant fine for the Respondent's failure to cooperate with the investigation.

Costs

42. We have been provided with a bill of costs amounting to $16,950 by counsel for the MFDA for conducting the investigation of this matter and prosecuting the case. Counsel suggested at the hearing that an amount of $10,000 for costs would be appropriate and we agree.

Conclusion

43. As a result of the foregoing, we impose:

a) A permanent prohibition on the Respondent from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member;
b) A fine of $60,000 for misappropriation of the Client's funds;
c) A fine of $25,000 for misleading the Member in the course of its investigation;
d) An order for payment of costs of $10,000.

DATED this 14th day of February, 2022.

"Michael Carroll"
Michael Carroll, Q.C.
Chair

"Nova Aitchison"
Nova Aitchison
Industry Representative

"Barbara Fraser"
Barbara Fraser
Industry Representative

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