



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: Stephen Mark Pigeau

Heard: March 19, 2013 in Toronto, Ontario
Reasons for Decision: April 5, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney
Brian Nowak

Chair
Industry Representative

Appearances:

Clement Wai)	Counsel, Mutual Fund Dealers Association of
)	Canada (“MFDA”)
Stephen Mark Pigeau)	Did not appear either in person or by Counsel
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the MFDA concerning a disciplinary proceeding commenced by the MFDA against Stephen Mark Pigeau (“the Respondent”).

2. In the Notice of Hearing dated the 6th day of September, 2012,¹ the MFDA alleged as follows:

Allegation #1: In October 2007, the Respondent borrowed approximately \$15,000 from client RR, which amount he did not repay or arrange to be repaid in full until July 2011, thereby giving rise to a conflict or potential conflict of interest between the interests of the Respondent and the interests of client RR which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #2: Commencing in March 2011, the Respondent has failed or refused to provide documents, information, and a written statement to the MFDA and to attend an interview requested by the MFDA during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

3. On the day before the Hearing, our colleague, Ms. Traczuk, regrettably became ill. The Hearing Panel proceeded as a Hearing Panel of two as we are allowed to do.²

4. The Respondent was served with the Notice of Hearing, but did not appear at the first appearance held on October 30, 2012.

5. On October 30, 2012, the Hearing Panel ordered that the hearing on the merits would take place before the Hearing Panel in the MFDA hearing room located at 121 King Street West, Toronto, Ontario on March 19, 2013 commencing at 10:00 a.m.

¹ Exhibit 1

² MFDA By-law No. 1, paragraph 19.9(b)

6. The MFDA posted the Order on its website on October 30, 2012.

7. The Respondent failed to file and serve a Reply. He did not attend the Hearing on March 19, 2013. In these circumstances,³ the Hearing Panel may accept the facts alleged and conclusions drawn by Staff of the MFDA in the Notice of Hearing dated September 6, 2012.

8. Counsel filed an affidavit of Ian Smith, a senior investigator for the MFDA⁴. In his affidavit, Mr. Smith provided ample evidence of the borrowing of \$15,000 by Mr. Pigeau, an Approved Person, from a client and his failure to repay the loan. Mr. Pigeau's father did repay the loan to the client on or about July 4, 2011. Mr. Smith also swore that the Respondent failed to reply to numerous requests from the MFDA for information and that he failed to attend an interview with Staff of the MFDA.

SUBMISSIONS

9. Mr. Wai filed written submissions on the allegations, the appropriate penalties and the costs he was seeking. He also filed an extensive book of MFDA rules, By-law No. 1, penalty guidelines and relevant case law. He relied on Mr. Smith's affidavit and submitted that in October 2007, the Respondent borrowed approximately \$15,000 from client RR, which amount he did not repay or arrange to be repaid in full until July 2011. This gives rise to a conflict or potential conflict of interest between the interests of the Respondent and the interests of client RR, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

10. Mr. Wai then addressed the Hearing Panel. He argued that the MFDA Rules require an Approved Person, like the Respondent, to 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.⁵ He cited previous decisions of MFDA Hearing Panels

³ MFDA Rule 8.4(1)(b)

⁴ Exhibit 3

⁵ MFDA 2.1.1(b)(c)

which held that where an Approved Person borrows money from a client it gives rise to a conflict of interest.⁶

11. Mr. Wai submitted that the Respondent had failed to observe high standards of ethics and that he had engaged in unbecoming conduct with a client by borrowing from him and thus breached MFDA Rules and By-law No. 1.

12. Commencing in March 2011, the Respondent has failed or refused to provide documents, information, and a written statement to the MFDA and to attend an interview requested by the MFDA during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

13. Counsel argued that failure to cooperate with the MFDA by an Approved Person is serious misconduct. If an Approved Person fails to provide information in the course of an investigation then the integrity of the self-regulatory system and the effectiveness of its operation are compromised.

14. The Respondent ignored the MFDA's requests for information and for a meeting and in doing so breached By-law No. 1.⁷

15. Counsel argued that the Respondent should be prohibited for life from conducting securities related business in any capacity. He also asked for the minimum penalty for failure to cooperate with the MFDA of \$50,000 and an additional penalty in respect of the money the Respondent borrowed. Finally, costs should be imposed to indemnify the MFDA, at least in part, for the costs incurred for preparing the case and acting at the Hearing.

DECISION

16. After Counsel had completed his submissions, the Hearing Panel ruled that he had proven his case on a balance of probabilities. Moreover, the penalties and costs were appropriate. The Hearing Panel accordingly signed the Order dated March 19, 2013, which was published on the

⁶ In the Matter of Arnold Tonnie, [2005], MFDA File No. 200503; in the Matter of Glenn Murray Greyeyes, [2006], MFDA File No. 200510

⁷ Section 22

MFDA's website. The Chair said that the Hearing Panel would, in due course, deliver brief reasons. The following are those reasons.

REASONS

17. The Respondent, as an Approved Person, became subject to the rules of the MFDA when he was registered as an Approved Person. He knew, or ought to have known, the MFDA's position on borrowing from clients and cooperating with the MFDA in an investigation. Yet he chose to flaunt those rules.

18. The MFDA, in its Staff Notice dated October 3, 2005,⁸ warned Approved Persons against borrowing from clients. The Notice reads, in part, as follows:

“Borrowing from a client by...Approved Persons raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client...”

19. Previous Hearing Panels have consistently held that an Approved Person puts himself in a conflict of interest when he borrows money from a client⁹. The Respondent ignored numerous requests from the regulator to assist it in assessing the damage the Respondent may have caused. This is a serious breach of duty by the Respondent. It prevents the MFDA from performing its regulatory function. It inhibits its investigation as it is unable to determine all of the facts and the full extent and implications of the underlying events.

PENALTIES

20. The Respondent, by his actions, has ruined his securities career and will be punished. The Hearing Panel is, however, more concerned with protecting the public, deterring others and maintaining the integrity of the public securities markets and the MFDA's enforcement processes.

21. The Hearing Panel notes that the Respondent has no previous disciplinary record. His

⁸ MFDA Staff Notice 0047, Personal Financial Dealings with Clients

⁹ Op.cit., footnote 6

unfortunate father did repay the loan, but years after he obtained it. The Hearing Panel gave very little weight to those factors as they were more than offset by the failure to cooperate and lack of remorse by the Respondent.

22. The following penalties are appropriate and within the standards applied in previous cases.

23. For these reasons the Hearing Panel imposes the following:

- (a) a permanent prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member;
- (b) a fine of \$65,000; and
- (c) costs of \$7,500.

DATED this 5th day of April, 2013.

“Terrance A. Sweeney”

Terrance A. Sweeney,
Chair

“Brian Nowak”

Brian Nowak,
Industry Representative