



**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 Popen**

Heard: September 20, 2012 in Toronto, Ontario  
Reasons for Decision: September 24, 2012

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney	)	Chair
Robert C. White	)	Industry Representative
T. Hugh McNabney	)	Industry Representative

Appearances:

Francis Roy	)	For the Mutual Fund Dealers Association of
	)	Canada (MFDA)
Daniela Capozzolo	)	Investigator for MFDA
	)	
Stephen Popen	)	Did not appear in person or by counsel
	)	

## BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the MFDA to hear the case. In the Notice of Hearing dated April 27, 2012,<sup>1</sup> Staff of the MFDA alleged as follows:

**Allegation #1:** From April 9, 2007 to September 17, 2009, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by operating a business services and consulting company, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

**Allegation #2:** Between July 8, 2008 and September 17, 2009, the Respondent engaged in personal financial dealings with clients by borrowing directly or indirectly through his company:

- a) \$110,000 from clients WK and DK; and
- b) \$115,000 from client HB

thereby giving rise to actual or potential conflicts of interest between the Respondent and clients WK, DK and HB which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

**Allegation #3:** Commencing February 15, 2011, the Respondent has failed to produce for inspection copies of documents and records requested by the MFDA during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

2. The Respondent did not appear although duly served.<sup>2</sup>

3. Counsel for the MFDA referred to a fulsome affidavit of Ms. Capozzolo<sup>3</sup> which is 49

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1 Exhibit 1

2 Exhibit 3 - Affidavit of Sofi Vasiliadis

3 Exhibit 4 – Affidavit of Daniela Capozzolo

paragraphs long with attachments from A to X. The key parts of her affidavit refer to the fact that the Respondent admitted to the allegations against him in an interview with MFDA Staff.

## **SUBMISSIONS**

4. The Respondent attended an interview with MFDA Staff on February 15, 2012. The interview was transcribed.<sup>4</sup> During the interview the Respondent admitted that he engaged in outside business activities, borrowed money from three clients and did not inform his employer of what he had done<sup>5</sup> and that he had defaulted to a large extent on such loans.

5. Moreover, he lied to his employer about his outside business activities.<sup>6</sup>

6. The Respondent undertook to provide certain documents.<sup>7</sup> He failed to honour his undertaking and ignored a number of requests in this regard from MFDA Staff.

7. The only other communication from the Respondent was an email he sent to the MFDA on May 21, 2012<sup>8</sup> in which he again confirmed that he had engaged in outside business activities and had borrowed money from clients.

8. In these circumstances, and after counsel had completed his submissions, we advised counsel that the Hearing Panel was satisfied, on a balance of probabilities, that he had satisfied the onus on him of proving Allegations #1, #2 and #3.

9. We invited MFDA counsel to address what penalties would be appropriate.

## **PENALTIES**

10. Previous jurisprudence has established the principles to be applied in cases of this kind. We have considered the following in rendering our judgment:

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4 Exhibit 4, Tab A

5 Exhibit 4, paras. 16, 17, 18, 19 and 25

6 Exhibit 4, para. 17

7 Exhibit 4, para. 44

8 Exhibit 3, Tab A

- (a) the protection of the public;
- (b) general and specific deterrence;
- (c) whether the Respondent recognizes the seriousness of his conduct; and
- (d) the benefits illicitly obtained by the Respondent.

11. In this case, the Respondent knowingly and blatantly breached the Rules of the MFDA and those of his employer by engaging in outside activities, borrowing money from his clients and failing to honour his undertakings to the MFDA. The Hearing Panel noted that the Respondent showed no remorse for his actions.

12. The Respondent received a warning letter from the MFDA on October 13, 2004. He had been conducting a securities related business outside the Member.

13. The investing public needs to be protected from the likes of this Respondent and his ilk.

14. The members of the Hearing Panel, at the end of the hearing, unanimously agreed on the penalties suggested by MFDA counsel, which are as follows:

- (a) a permanent prohibition on the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member due to the overall seriousness of the three Contraventions;
- (b) a fine of \$25,000 with respect to Contravention #1;
- (c) a fine of \$185,000 with respect to Contravention #2; and
- (d) a fine of \$50,000 with respect to Contravention #3.

15. These penalties are reasonable in the circumstances.

16. The imposition of costs on the Respondent in the amount of \$7,500 is reasonable and appropriate.

17. The Chair of the Hearing Panel said that brief reasons for our decision would follow. These are those reasons.

**DATED** this 24<sup>th</sup> day of September, 2012.

“Terrance A. Sweeney”

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Terrance A. Sweeney,  
Chair

“Robert C. White”

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Robert C. White,  
Industry Representative

“T. Hugh McNabney”

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