



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

File No. 200703

**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: John Quigley

HEARING PANEL: The Hon. Peter Cory Q.C., Chair
 Selwyn Kossuth
 Darcy Lake

HEARD: 28 May 2007

REPRESENTATION: Maria Abate appeared for the MFDA

DECISION

It appears that the Respondent, John Quigley, (“Quigley”) was properly served with the Notice of this hearing and all relevant documents. Although duly served, he did not attend at this hearing and no one appeared on his behalf.

Factual Background

The documents filed establish that between June 2003 and November 2006 Quigley misappropriated approximately \$239,000 from six clients, contrary to MFDA rule 2.1.1(a). That rule states that each member and each approved person of a member shall: (a) deal fairly, honestly and with good faith with its clients. On at least 18 separate occasions between June 2003 and November 2006, Quigley misappropriated funds from his clients in two ways. First, clients gave Quigley cheques payable to Tudhope's Investment Centre ("Tudhope's") for the purpose of mutual funds or other investments. However, the respondent deposited the cheques in Tudhope's account and did not purchase any investments for the clients. Secondly, Quigley processed unauthorized redemptions in clients' accounts and directed the proceeds to be deposited in the client's bank account. Quigley then led his clients to believe that the redemptions had been processed in error and requested them to provide him with cheques in order to repurchase the investments and correct the errors. Quigley then deposited the replacement cheques in Tudhope's account and did not purchase any investments for the clients.

We find that this misappropriation by dishonest conduct constituted a breach of MFDA Rule 2.1.1.

In circumstances similar to those in the present case, a hearing panel in Raymond Brown-John, case no. 200502, 27th June 2005, found that misappropriation by dishonest conduct constituted a breach of MFDA rule 2.1.1.

Failure to Cooperate

Quigley, although requested to provide documents, information and a report, failed to do so. It has been held that this clearly constituted a failure to cooperate, contrary to Section 22.1 of MFDA Bylaw No. 1. Other hearing panels have come to the same conclusion in similar cases. See for example, Parkinson disciplinary hearing, case no. 200501, Brown-John, supra, and Crackower, July 20, 2005, case no. 200506.

Nature of Offence and Appropriate Penalty

(a) Misappropriation

The misappropriations that Quigley made were repeated on some 18 occasions. The acts were clearly dishonest, repetitive and carefully planned. The amount misappropriated, \$239,000 was substantial. Some of the clients of Quigley were seniors. The actions of Quigley justify the imposition of a penalty.

There is nothing in the actions of Quigley that indicate any real remorse. Although he did repay \$15,000 to two of his clients, he used their own funds to make the payment. Further, the restitution was only made when it must have been apparent to Quigley that his acts of misappropriation were known.

- (i) In the circumstances, a fine in the amount of \$240,000 for misappropriation of clients' funds is appropriate.

- (ii) The misconduct of Quigley was such that there should be a permanent prohibition preventing him from conducting securities related business in any capacity.

(b) Failure to Cooperate

It must be readily apparent that any self-regulating organization must have complete cooperation from its members. This is true of doctors and lawyers and must be applicable to members of the MFDA. They have the control of their client's funds and honesty to their clients is an essential part of their operation. The self-governing body must have the cooperation of all members in order to operate efficiently for the benefit and protection of the client and for the well being of the industry itself.

In general, the goal of the MFDA regulation must be the protection of the investor. It follows that the failure to cooperate cannot be treated lightly. It is the life blood of self-governing organizations. Quite simply, they cannot function without that cooperation.

As we have said, Quigley did not take any steps to cooperate with the MFDA, although requested to do so on numerous occasions. We have considered the reasons of Iacobucci, J. in *Pezim v. British Columbia* (Superintendent of Brokers) 1994 S.C.J. 58. The Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission) [2001] S.C.J. 38 per Iacobucci, J. paras. 42 and 42. Further, other hearing committees have pointed out that general deterrence should be considered in the making of orders which are both protective and preventative (see *Cartaway Resources Corp.* [2004] 1 S.C.R. 672).

In assessing the appropriate penalty, we have taken into account the following factors:

1. The protection of the investing public;
2. The integrity of capital markets;
3. Specific and general deterrence; and
4. The protection of MFDA's membership.

Although Quigley has no disciplinary history, his actions were dishonest, planned and repeated. Further, he failed to cooperate and has persisted in his uncooperative attitude. In the circumstances, a fine for failure to cooperate in the amount of \$50,000 is appropriate.

There should as well be an order for costs in the amount of \$7,500 payable by Quigley. This represents, we are sure, a very small portion of the costs arising from the investigation and the prosecution of this matter.

In summary, a fine of \$240,000 is imposed for misappropriation.

A fine of \$50,000 is imposed for failure to cooperate.

\$7,500 for costs are to be paid by Quigley.

There will be an order of prohibition prohibiting Quigley from acting in security matters.

Date: July 12, 2007

“Peter Cory”
The Hon. Peter Cory, Chair

“Selwyn Kossuth”
Selwyn Kossuth, Industry Panelist

“Darcy Lake”
Darcy Lake, Industry Panelist

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