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: Edward Andrew Rempel

Heard: November 2, 2015, Toronto, Ontario
Reasons for Decision (Penalty): December 18, 2015

REASONS FOR DECISION
(Penalty)

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Vlasios Kardaras	Industry Representative

Appearances:

Shelly Feld	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Ellen Bessner	)	Counsel for the Respondent
Julia Webster	)	
	)	
	)	

A. FINDINGS OF MISCONDUCT

1. On September 3, 2015, this Hearing Panel issued its Decision and Reasons (Misconduct) with respect to Edward Andrew Rempel (the "Respondent"). We concluded that Staff had established on a balance of probabilities that:

Allegation #1: On September 19, 2011, without the knowledge or prior written consent of the Member, the Respondent contacted client KS, who had filed a complaint against the Respondent with the Member, by telephone in order to:

(a) persuade client KS to withdraw part of his complaint against the Respondent;
(b) offer to compensate client KS for the deferred sales charges he would incur if he withdrew his complaint and collapsed the leveraged investment strategy that was the subject matter of the complaint; and
(c) impose conditions on his proposal to client KS in order to keep the proposal secret;

contrary to MFDA Rules 2.1.1 and 2.1.4, MFDA Policy No. 3 and the Policies and Procedures of the Member.

Allegation #2: On November 28, 2011, prior to learning that client KS had recorded the telephone conversation of September 19, 2011 referred to in Allegation #1, the Respondent sent a written statement to the MFDA in which he falsely denied that he had attempted to:

(a) persuade client KS to withdraw all or part of his complaint; and
(b) negotiate a settlement with client KS without the prior written consent of the Member;

contrary to MFDA Rule 2.1.1 and section 22.1 of MFDA By-law No.1.

B. PENALTY HEARING

2. On November 2, 2015, a Penalty Hearing took place before this Hearing Panel in Toronto, Ontario. At the commencement of the Penalty Hearing, the parties submitted a Joint Submission re: Penalty to the Hearing Panel. The following submission was made:

> "On the basis of the findings of fact made by the Hearing Panel and additional facts agreed upon between Staff and the Respondent that are referenced below, Staff and the Respondent jointly submit that the following penalties should be imposed on the Respondent in respect of the findings of misconduct in this proceeding:
>
> (a) a prohibition of the authority of the Respondent to conduct securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA until August 5, 2018, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
> (b) a fine in the amount of $100,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
> (c) costs in the amount of $25,000, pursuant to s. 24.2 of MFDA By-law No. 1; and
> (d) a requirement that if, after August 5, 2018, the Respondent applies to become re-registered to conduct securities related business while in the employ of, or associated with a Member of the MFDA, the Respondent shall be subject to strict supervision by the Member with which he becomes re-registered for a period of twelve (12) months from the date that he becomes re-registered."

C. JOINT SUBMISSION AS TO PENALTY

3. The Joint Submission contained a recitation of the chronology of this proceeding along with certain additional jointly submitted facts, the latter of which were relied upon by the Hearing Panel in coming to its conclusion on penalty.

4. The procedural history of this matter can be found in the Hearing Panel's Decision dated September 3, 2015. The salient portions of the Joint Submission re: Penalty are as follows:

"9. This submission is based upon the findings of fact with respect to the misconduct of the Respondent that are set out in the reasons for decision of the Hearing Panel dated September 3, 2015.

10. The agreement between Staff and the Respondent as to the appropriate penalties to be imposed in this case also take into account the following facts:

(a) the Respondent has been registered as a mutual fund salesperson or a dealing representative in Ontario since September 19, 1994;

(b) this is the first and only case in which a disciplinary proceeding has been commenced against the Respondent;

(c) the Respondent serviced a large number of client accounts; as of September 30, 2014, he was responsible for assets under administration of more than $89 million and he consistently earned substantial commission income as an Approved Person of A&Q;

(d) since the reasons for decision of the Hearing Panel were published, the Respondent's counsel has received and produced letters of support from 4 clients[1] who each expressed gratitude to the Respondent and commended him for the quality of investment advice and service that they have received from him over several years;

(e) on November 10, 2014, the Respondent successfully completed the Canadian Securities Institute Conduct and Practices Handbook Course;

(f) on June 2, 2015, the MFDA approved the amalgamation of A&Q with Sterling Mutuals Inc. ("Sterling") effective May 29, 2015 and the bulk transfer of clients and Approved Persons (including the Respondent) from A&Q to Sterling;

(g) on August 5, 2015, the Respondent voluntarily resigned from Sterling, terminated his registration with the Ontario Securities Commission (the "OSC") and ceased to be an Approved Person. An application was immediately submitted to the OSC to transfer his registration to Canfin Financial Group.

[1]Each of the clients confirmed in their letter that they had read the decision before preparing their letter.

(h) The OSC refused the Respondent's application to transfer his registration pending the outcome of this proceeding. As a result, the Respondent has not been registered in the Securities Industry since August 5, 2015."

D. DECISION ON PENALTIES

11. At the Penalty Hearing, on November 2, 2015, after carefully considering the Joint Submission re: Penalty and hearing the submissions of Counsel for the parties, we caused an Order to be issued, the operative paragraphs of which are as follows:

1) If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

2) From the date of this Order until August 5, 2018, the Respondent is prohibited from conducting securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

3) After August 5, 2018, if the Respondent seeks to become re-registered to conduct securities related business while in the employ of or associated with a Member of the MFDA, the Respondent shall be subject to strict supervision by the Member with which he becomes re-registered for a period of twelve (12) months from the date that he becomes re-registered;

4) The Respondent shall pay a fine in the amount of $100,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and

5) The Respondent shall pay costs of this proceeding in the amount of $25,000 pursuant to s. 24.2 of MFDA By-law No. 1.

E. REASONS FOR DECISION (PENALTY)

12. At the time of issuing the Order on November 2, 2015, we advised the parties that our Reasons would follow. These are those Reasons.

F. THE LAW

13. The law is clear that the Hearing Panel is not obligated to accept a joint submission with respect to penalty. On the other hand, multiple MFDA Hearing Panels have indicated that a joint recommendation should not be rejected unless it is manifestly unfit.

> *R. v R.W.E.*, [2007] O.J. No. 2515 (C.A.) at para. 22.
> *Chris McAuley* (*Re*), 2011 LNCMFDA 9 at para. 5.
> *Barry Allan Hunt*, 2014 LNCMFDA 54 at para.12.
> *Edward S. Brown*, 2015 LNCMFDA 32 at para. 30.

G. FACTORS CONCERNING THE APPROPRIATENESS OF PENALTY

14. The primary goal of securities regulation is the protection of the investor.

> *Pezim* v. *British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, 68.

15. We agree with the following statement of the MFDA Hearing Panel in *Hill & Crawford Investment Management Group Ltd. and Albert Rodney Hill (Re)*, 2009 LNCMFDA 62 at paras. 3-4:

> "Mutual Fund Dealers carry on business which is based upon the trust of their clients. Their clients rely upon the dealer for care and maintenance of the funds that they invest with them and rely upon them to act in compliance with MFDA rules and regulations. The punishments that are imposed must reflect the gravity of the breaches and the importance of the maintenance of the trust of clients and members of the public generally in the work of MFDA dealers.
>
> A business which is of necessity based upon trust must always do its utmost to preserve that trust and when that trust is breached, to ensure that penalties which are imposed will help to re-establish the trust of the public in the dealers."

16. Hearing Panels frequently consider the following factors when determining an appropriate penalty:

(a) the seriousness of the allegations proved against the Respondent;
(b) the Respondent's past conduct, including prior sanctions;
(c) the Respondent's experience and level of activity in the capital markets;
(d) whether the Respondent recognizes the seriousness of the improper activity;
(e) the harm suffered by investors as a result of the Respondent's activities;
(f) the benefits received by the Respondent as a result of the improper activity;
(g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
(h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
(i) 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;
(j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
(j) previous decisions made in similar circumstances.

Stephen Headley (Re), 2006 LNCMFDA 3 at para. 85.

17. We agree with the joint submission of the parties that it is appropriate to take into account the circumstances relevant to the particular respondent before us and to evaluate whether the penalties will have a proportionate impact on him.

18. We also must take into account the necessity for general deterrence.

19. In both cases, the deterrence is prospective and is aimed at preventing future conduct of a similar nature.

20. The parties made joint submissions with respect to the range of penalties recommended by the MFDA Penalty Guidelines for conduct of a similar or analogous nature. It was pointed out that these Guidelines are not mandatory but are intended to provide a basis upon which Hearing Panels can exercise discretion consistently and fairly in like circumstances.

21. The parties then provided the following list of previous Decisions which they took into account in the process of formulating their joint submission:

(a) *Qi and Huang*, 2013 LNCMFDA 87, Decision dated November 20, 2013 (Central Regional Council);
(b) *Kim*, [2006] I.D.A.C.D. No. 26, Decision dated October 16, 2006 (Pacific District Council);
(c) *Hayat* 2013 LNCMFDA 33, Decision dated May 21, 2013 (Central Regional Council);
(d) *Hsueh*, 2012 LNCMFDA 39, Decision dated May 1, 2012 (Central Regional Council);
(e) *Crackower***,** 2005 LNCMFDA 11, Decision dated August 22, 2013 (Ontario Regional Council);
(f) *Headley (Re)*, 2006 LNCMFDA 3, Decision dated February 21, 2006 (Ontario Regional Council);
(g) *Jain (Re)*, 2012 LNCMFDA 23, Decision dated March 14, 2012 (Central Regional Council);
(h) *Christopher Phillips*, MFDA File No. 201368, Decision dated August 28, 2015 (Atlantic Regional Council); and
(i) *Zhang (Re)* 2013 LNCMFDA 81, Decision dated October 30, 2013 (Central Regional Council).

H. JOINT CONCLUSION OF THE PARTIES

22. The parties concluded their joint written submissions as follows:

"Having regard to all of the foregoing considerations, Staff and the Respondent jointly submit that the proposed penalties are reasonable and proportionate having regard to the conduct of the Respondent and the circumstances of this case. The proposed penalties are sufficient to deter the Respondent and other MFDA registrants from engaging in similar misconduct in the future and will thereby improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry. In particular, the penalties proposed will convey to Approved Persons that those who attempt to deceive MFDA Enforcement Staff about the nature and extent of their conduct during the course of a regulatory investigation will be held accountable and that substantial penalties may be imposed against those who attempt to settle a complaint privately in order to avoid regulatory or supervisory scrutiny of their conduct.

Staff is satisfied that the proposed penalties are in keeping with the MFDA objective to enhance investor protection and strengthen public confidence in the mutual fund industry by ensuring high standards of conduct by Members and Approved Persons."

I. DECISION ON PENALTIES

23. After carefully considering the Joint Submission of the parties, both oral and written, the applicable law and the facts and circumstances set out in our Decision and Reasons (Misconduct), we unanimously concluded that we should accept the joint recommendation as to penalties and costs of Staff and the Respondent.

24. In our view, the conduct of the Respondent was egregious and the penalties imposed should reflect our condemnation of that conduct.

DATED this 18th day of December, 2015.

"Thomas J. Lockwood"

Thomas J. Lockwood, Q.C.
Chair

"Brigitte J. Geisler"

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Industry Representative

"Vlasios Kardaras"

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