



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: David Len Carleton Richard

Heard: March 16, 2021 by electronic hearing in Toronto, Ontario

Decision: March 16, 2021

Reasons for Decision: May 28, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth
Edward V. Jackson
Guenther W. K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
David Len Carleton Richard)	Respondent, not in attendance or represented by
)	counsel
)	

BACKGROUND

1. By Notice of Hearing dated May 5, 2020 (“Notice of Hearing”), a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to hear evidence and submissions with respect to allegations against David Len Carleton Richard (“Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation #1: Between 2015 and 2018, the Respondent misappropriated or failed to account for approximately \$98,550 that he received from two clients, thereby failing to deal fairly, honestly and in good faith with the clients, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #2: In about 2017, the Respondent produced a fabricated account statement which concealed that he had misappropriated or failed to invest a client’s monies, thereby failing to observe high standards of ethics and conduct in the transaction of business, and engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

3. By order of the Hearing Panel, dated August 11, 2020, the Respondent was determined to have been served with the Notice of Hearing and to have been notified of the within proceedings.

4. The Respondent, following the service of the Notice of Hearing, failed to deliver or serve a Reply to the Notice of Hearing, failed to attend the first appearance in this matter and failed to attend, or be represented at the Hearing on the Merits, although duly served with notice of all proceedings, including the Hearing on the Merits.

5. Given the numerous failures of the Respondent to respond in this proceeding as set out in paragraph 4, the Hearing Panel made an order pursuant to Rules of Procedure 13.5 and 7.3(a) that it would proceed with the Hearing on the Merits without further notice to and in the absence of, the Respondent.

6. At the Hearing, Staff at the MFDA (“Staff”) filed the Affidavit of John James Gallimore, containing the facts and documents on which Staff relied. The said Affidavit was marked as Exhibit 3. In addition, the Hearing Panel had the benefit of the evidence of clients AS and AL as to how their funds, in the approximate amount of \$98,550 had been misappropriated by the

Respondent, and how the Respondent had produced and presented to client AS, a fabricated account statement concealing that he had failed to invest the funds of client AS.

7. The above evidence disclosed, and confirmed to the Hearing Panel, that:

- a) From July 2013 to April 2018, the Respondent was registered in Ontario as a dealing representative with Assante Financial Management Ltd. (the “Member”), a Member of the MFDA.
- b) In about 2015, the Respondent recommended that client AS invest in an unspecified investment. The Respondent represented to client AS that the unspecified investment would generate high yields, and that she should trust him with regard to the investment.
- c) Between July 2015 and May 2016, the Respondent solicited and accepted 18 payments from client AS totaling approximately \$62,200 (the “AS Payments”) purportedly for the purpose of making investments for client AS in the unspecified investment.
- d) After he received the AS Payments from client AS, the Respondent did not use the AS Payments to make any investments for client AS. Instead, the Respondent deposited at least \$58,200 of the AS Payments into his personal bank accounts.
- e) The Respondent did not repay or otherwise account to client AS for the AS Payments.
- f) In approximately 2017, client AS’s daughter MO became aware of one of the AS Payments, and she questioned the Respondent about how the money that had been provided to the Respondent by AS had been invested. In response to MO’s query, the Respondent falsely represented to MO that he had invested the AS Payments for client AS in a product offered by “Fidelity”.
- g) The Respondent produced and provided a fabricated account statement (the “Fabricated Statement”) to MO. The Fabricated Statement falsely indicated that client AS held accounts at “Fidelity Investments” with a total value of \$115,310.
- h) The Respondent then ceased communicating with client AS and her daughter, MO.
- i) In 2016, the Respondent recommended to client AL that he invest in shares of “BlackBerry”. The Respondent represented to client AL that BlackBerry shares would be a financially lucrative investment, and that the value of BlackBerry shares was increasing each year.

- j) Between September 2016 and February 2018, the Respondent solicited and accepted 12 payments from client AL totaling approximately \$36,350 (the “AL Payments”) purportedly for the purpose of making investments for client AL in BlackBerry shares.
- k) After he received the AL Payments from client AL, the Respondent did not use the AL Payments to purchase any investments for client AL. Instead, the Respondent deposited at least \$31,050 of the AL Payments into his personal bank account.
- l) The Respondent did not repay or otherwise account to client AL for the AL Payments.
- m) The Respondent then ceased communicating with client AL.

8. In weighing the facts set out above, the Hearing Panel considered that the standard of proof in this case was the civil standard of balance of probability. The Hearing Panel also considered the submissions of Staff, the Rules of the MFDA, and the numerous cases to which it was referred. After having done so, the Hearing Panel unanimously concluded that Allegation #1 and Allegation #2 had been proven as against the Respondent.

Penalty

9. In coming to its conclusion, with respect to appropriate penalties, the Hearing Panel was mindful that the primary goal of Securities Regulation is the protection of the investor.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007.

10. The Hearing Panel further considered that in addition to protection of the public, the goals of Securities Regulation also include fostering public confidence in the capital markets and the securities industry.

Pezim v British Columbia (Superintendent of Brokers), supra

Tonnies (Re), MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005.

11. The Hearing Panel concluded that sanctions imposed by a Hearing Panel should therefore be protective and be exercised to prevent likely future harm to the markets.

12. The Hearing Panel was also aware that when determining whether a penalty is appropriate, the Hearing Panel should consider:

- a) The protection of the investing public;
- b) The integrity of the securities markets;
- c) Specific and general deterrence;
- d) The protection of the MFDA's membership; and
- e) The protection of the integrity of the MFDA's enforcement processes.

Tonnies (Re), supra

13. Additionally, the Hearing Panel considered the MFDA Sanction Guidelines ("Guidelines") as a further source that might be consulted when determining the appropriateness of the penalty to be imposed, understanding at all times, that the Guidelines are not mandatory, but set out penalty types that are designed to assist Hearing Panels.

14. Other factors that Hearing Panels frequently consider when determining whether a penalty is appropriate, were understood to include the following:

- a) the seriousness of the allegations proven 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;
- 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
- k) previous decisions made in similar circumstances.

Tonnies (Re), supra, at P. 23.

Considerations in the Present Case

15. Misappropriation is amongst the most serious types of misconduct encountered by securities regulators. Accordingly, onerous penalties were required.

Roskaft (Re), [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201317, Panel Decision dated May 2, 2014, at para. 9.

16. By misappropriating or failing to account for \$98,550 that he received from clients AS and AL for investment purposes, the Respondent breached the trust of clients who relied on him for investment advice, and caused them significant financial harm.

17. The Respondent's misconduct is aggravated by the following factors:

- a) The misconduct was not isolated. Rather, it was part of a larger pattern of conduct that spanned a period of almost three years and affected two different clients.
- b) Client AS was a senior, suffered from anxiety and was an unsophisticated investor. She was therefore a vulnerable client.
- c) Client AL was a business owner but an unsophisticated investor.
- d) The Respondent attempted to conceal his misconduct by providing client AS's daughter MO, with a fabricated account statement which falsely indicated that the Respondent had invested AS's monies in products held at "Fidelity".

18. The Respondent's conduct was so outrageously outside the bounds of conduct required by an Approved Person that significant penalties were warranted.

19. The Hearing Panel was mindful that although there was no allegation of failure to cooperate, the Respondent's non-attendance at both the first appearance and the Hearing on the Merits was an aggravating factor.

20. The Respondent's misconduct allowed him to wrongfully obtain a total of \$98,550 at the expense of clients AS and AL. This represents significant client harm, and a substantial monetary benefit that the Respondent has never repaid.

21. Thankfully, the Member paid compensation to clients AS and AL thus avoiding continued financial harm to the clients. As a result, the Member also suffered financial harm due to the Respondent's conduct.

22. The Respondent did not recognize the seriousness of his misconduct. The Respondent's failure to participate in this proceeding demonstrates his unwillingness to comply with the regulation of the securities industry and a lack of remorse.

23. Although the Respondent has no past disciplinary history with the MFDA, this factor should be given very little weight in light of the seriousness of the misconduct at issue in this proceeding.

24. The Hearing Panel concluded that the Respondent poses a serious risk to other investors and the market at large if he were allowed to return to the industry. His misconduct was egregious and deliberate, and it resulted in significant client harm. A permanent prohibition was necessary to protect investors.

25. The Respondent had caused significant damage to the integrity of the capital markets. The ability of mutual fund dealers to facilitate the participation of the public in the capital markets requires that investors trust mutual fund dealers with their money. The misappropriation of clients' funds undermined this trust, harming the mutual fund industry and the capital markets more broadly.

Lee (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201914, Panel Decision dated September 3, 2019, at para. 20.

26. Finally, the penalty must be such as to prevent the Respondent from causing any further harm to the mutual fund industry, and should deter others in the capital markets from engaging in similar activity, thereby achieving both general and specific deterrence.

27. When considering the matter of costs, the Hearing Panel was mindful of the Bill of Costs prepared by Staff and marked as Exhibit 4 in the proceeding.

Result

28. For all the above reasons, the Hearing Panel imposed the following penalties:

- a) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a total fine in the amount of \$275,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, consisting of the following:

- i. a fine in the amount of \$200,000 in respect of allegation #1 in the Notice of Hearing;
- ii. a fine in the amount of \$75,000 in respect of allegation #2 in the Notice of Hearing;
- c) The Respondent shall pay costs of this proceeding in the amount of \$11,612.50, pursuant to section 24.2 of MFDA By-law No. 1.
- d) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this 28th day of May, 2021.

“Frederick Chenoweth”

Frederick Chenoweth
Chair

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

“Guenther W. K. Kleberg”

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