

Decision and Reasons (Misconduct)

File No. 2018118



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: Peter Anthony Varteresian

Heard: November 20-21, 2019 in Halifax, Nova Scotia
Decision and Reasons (Misconduct): February 27, 2020

**DECISION AND REASONS
(Misconduct)**

Hearing Panel of the Atlantic Regional Council:

George W. MacDonald, QC
Barbara Leighton
Darrell Bing

Chair
Industry Representative
Industry Representative

Appearances:

Lyla Simon)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Peter Anthony Varteresian)	Respondent, not in attendance or represented by
)	counsel
)	
)	

1. On February 19, 2019, The Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing in respect of disciplinary proceedings commenced against Peter Anthony Varteresian (the “Respondent”). The Notice of Hearing was personally served on the Respondent on March 26, 2019. The first appearance was held by teleconference on May 13, 2019 and was attended by Counsel for the MFDA. The Respondent did not attend, and was not represented. At the first appearance, various dates were fixed, addressing scheduling and other procedural issues and the dates of November 19-21, 2019 were fixed for the Hearing on the Merits (the “Hearing”).

2. On October 17, 2019, a second appearance was held by teleconference. The Respondent was provided with notice of the second appearance, but did not attend. The dates for the Hearing on the Merits were adjusted and the dates of November 20-22, 2019 were fixed. By email dated November 7, 2019, the Respondent communicated with Staff of MFDA and advised he did not plan to attend at the Hearing.

3. The objectionable actions of the Respondent are listed in the Notice of Hearing (Exhibit 1) as follows:

Allegation #1: Between May 2016 and October 2016, the Respondent implemented a strategy for 13 clients to fund the purchase of new insurance policies for the clients from the proceeds of redemptions from the registered retirement savings accounts of the clients without obtaining authorization to process the redemptions or adequately explaining the costs associated with the redemptions, contrary to MFDA Rules 2.2.1, 2.4.4 and 2.1.1.

Allegation #2: In or about June 2015, the Respondent made an unsuitable investment recommendation to his 65 year old client, DS, when he recommended that she purchase mutual funds subject to deferred sales charges (“DSCs”) when he knew or ought to have known that she would require access to some of the invested money prior to the expiry of the DSC schedule and he failed to adequately disclose to client DS that she might be required to pay DSCs upon the subsequent sale of those investments, contrary to MFDA Rules 2.2.1, 2.4.4 and 2.1.1.

Allegation #3: In or about July 2015, the Respondent failed to use due diligence to learn or update material changes to client GR’s Know-Your-Client information, contrary to MFDA Rules 2.2.1, 2.2.4(b) and 2.1.1.

4. At the commencement of the Hearing, Counsel for the MFDA asked to have the Affidavit of Stephen Davis, sworn to on November 12, 2019 marked as an exhibit. The Hearing Panel was satisfied that a copy of the Affidavit had been served on the Respondent in a timely manner, and the Affidavit of Mr. Davis was marked as Exhibit 3. Mr. Davis also gave *viva voce* evidence at the Hearing. RJW and DS, both former clients of the Respondent, also gave evidence at the Hearing.

5. The Respondent was a registered mutual fund salesperson in Nova Scotia from January 6, 2014 to January 12, 2017 with Sun Life Financial Investment Services Canada Inc. (“Sun Life”). The Respondent resigned from Sun Life effective January 12, 2017. The Respondent was also licensed to sell insurance products until his insurance license expired, approximately June 30, 2018. Sun Life’s *Code of Business Practice for Advisors* required the Respondent, as an Advisor, to adhere to high ethical standards in all interactions with clients. The Respondent signed an acknowledgement of his intention to abide by Sun Life’s *Code of Business Practice for Advisors*.

6. Additionally:

- On January 8, 2014, the Respondent signed an *Agreement of Approved Person* confirming, among other things, that he agreed to be bound by, observe, and comply with the MFDA Rules, that he was conversant with the MFDA Rules, and would keep himself fully informed of the MFDA Rules as they became amended or supplemented; and
- On May 4, 2016, the Respondent signed an *Advisor’s Agreement*, confirming, among other things, that he agreed to carry out his Member activities honestly, in good faith, and in the best interests of Sun Life and its clients.

7. MFDA has referred the Hearing Panel to the provisions of Rule 7.3(1)(b) of the MFDA *Rules of Procedure*, which provides that where a Respondent fails to attend a Hearing, the Hearing Panel may:

- b. accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of

the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-Law No. 1.

8. As noted above, *viva voce* evidence was presented from former clients of the Respondent in relation to Allegations #1 and #2. There is no evidence that any of the other eleven clients of the Respondent referred to in the Notice of Hearing approached MFDA to lodge complaints. Rather, they were contacted by MFDA staff and consented to have their names added as former clients of the Respondent, who suffered losses in relation to Allegations #1 and #2. As will be noted below, the Hearing Panel did not find that the *viva voce* evidence given by the two former clients of the Respondent proved the allegations being advanced. In those circumstances, the Hearing Panel has decided not to consider or rely on the “evidence” of the other eleven former clients referred to in the Notice of Hearing.

9. In the Affidavit of Stephen Davis it was noted, at paragraph 51, that: “The Respondent was subject to close supervision at the material time”. In the Investigation Summary prepared by Sun Life (Exhibit 79 – Davis Affidavit) it is stated that the Respondent was under close supervision between June 15, 2015 and July 19, 2016. Many of the questionable occurrences took place during that period of time. We assume, therefore, that the activities of the Respondent giving rise to these proceedings were known to Sun Life and did not cause them any concern.

10. RJW gave evidence in connection with Allegation #1. The evidence appeared to establish that he certainly understood what was being proposed by the Respondent. Exhibit 6A, introduced through RJW, is a spreadsheet of a “proposed retirement cash flow” for RJW, prepared by the Respondent but containing numerous handwritten notations placed thereon by RJW. He testified that there were at least two additional such illustrations provided to him by the Respondent. RJW also testified in connection with Exhibit 8A, the “Transfer Authorization for Registered Investments”, that he executed the document, but considered that it was only effectively a letter of intent. We concluded, based on the evidence, that RJW was fully aware of, and understood, the proposal being put forth by the Respondent.

11. DS testified with respect to Allegations #1 and #2. Concerning Allegation #1, her evidence, and the documentation, appeared to establish that she was completely aware of what was being proposed by the Respondent. Her sole complaint related to the alleged difference in the

Respondent's quoted costs for insurance premiums which she would have to pay, versus the actual charges that were brought forward.

12. Concerning Allegation #2, Sun Life reviewed the situation when DS expressed her concerns. By letter dated December 12, 2016, Exhibit 22A, Sun Life set out its conclusions following its investigation. In particular, it referred to an exchange of emails between her and the Respondent detailing the DSC Fees that she did, and would, incur for any redemptions to the funds she required to assist her in her various activities. There does not appear to be any question that the Respondent did disclose to DS that she would be required to pay DSCs upon any sale of investments, contrary to the statements in Allegation #2.

13. The Affidavit and evidence of Mr. Davis was helpful. It is clear that the MFDA launched an investigation into the activities of the Respondent. Exhibit 24A was prepared by Mr. Davis. It is a chart identifying the 13 former clients of the Respondent who were prepared to file a complaint. The Respondent had many more than 13 clients. The factual information found in Exhibit 24A concerning each client was obviously taken from the Sun Life Investigation Summary. It does not appear that anyone on behalf of the MFDA actually carried out an investigation of the practices followed by the Respondent. Given that the Hearing Panel Members were not prepared to accept the evidence of the two former clients of the Respondent who testified, the Hearing Panel is not prepared to consider the "evidence" found in Exhibit 24A.

14. Concerning Allegation #3, it appears that, in July 2015 the Respondent commenced to service the account of client GR. The New Account Application form was completed and included information that client GR's income was between \$50,000-\$100,000 annually. Within a short period of time, the Respondent assisted client GR in completing a Financial Hardship Application which contained the statement that client GR's total expected income for the following twelve months was to be \$20,000. It appears that the Respondent continued to assist client GR, but did not update the KYC information on file for client GR.

15. The Hearing Panel concludes that the Respondent did commit a technical breach of the MFDA Rules when he failed to update the KYC for client GR.

16. In the result, the Hearing Panel finds that the MFDA have not met the burden of proof to enable the Hearing Panel to conclude that the Respondent violated the MFDA Rules in relation to Allegation #1 and Allegation #2. The Respondent did fail to update the client's KYC form in the case of client GR, contrary to MFDA Rules 2.2.1, 2.2.4(b) and 2.1.1.

17. The Hearing Panel will hear submissions on penalty and costs from MFDA Staff.

DATED this 27th day of February, 2020.

"George W. MacDonald"
George W. MacDonald, QC
Chair

"Barbara Leighton"
Barbara Leighton
Industry Representative

"Darrell Bing"
Darrell Bing
Industry Representative

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