



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: Allan Douglas Rombough

Heard: August 22, 2018 in Toronto, Ontario
Decision: August 22, 2018
Reasons for Decision: October 24, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Joseph Yassi	Industry Representative
Michael-Murray Coulter	Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Allan Douglas Rombough)	Respondent, not in attendance or represented
)	by counsel
)	

PART I. GENERAL

The Misconduct

1. By Notice of Hearing dated January 19, 2018 Staff of the MFDA alleged against Allan Douglas Rombough (the “Respondent”) the following:

Allegation #1: Between February 2009 and April 2014, the Respondent photocopied signature pages from Know-Your-Client forms that had been signed by clients and re-used the signature pages to complete 24 additional Know-Your Client forms in respect of nine clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Between April 2007 and February 2012, the Respondent obtained, possessed, and in four instances, submitted to the Member for processing, six pre-signed account forms in respect of four clients, contrary to MFDA Rule 2.1.1.

Allegation #3: Commencing in about September 2016, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.I of MFDA By-law No. 1.

2. The Notice of Hearing was duly served on the Respondent.

No contention

3. In spite of earlier communications with staff and admission of misconduct to staff, the Respondent did not appear at the first appearance in this matter following the issue of the Notice of Hearing and has not since communicated with staff in any way. He has not filed a Reply and did not appear at the hearing in person or by agent, and has not taken any other steps to answer the allegations against him.

Failure to deliver a Reply

4. Under the MFDA Rules of Procedure, a respondent is required to serve and file a Reply within 20 days of service of the Notice of Hearing. Where a respondent fails to serve and file a Reply to the Notice of Hearing, a Hearing Panel may do one or more of the following:

- a) proceed with the hearing without further notice to and in the absence of the respondent;
- b) accept the facts alleged and conclusions drawn 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;
- c) order that the respondent pay costs, at any stage of the proceeding, regardless of the outcome of the proceeding and in addition to any other penalties and costs imposed on the respondent, in an amount which reflects the extent to which, in the Hearing Panel's discretion, the hearing will be or has been unnecessarily prolonged or complicated by the failure of the respondent to deliver a proper Reply; and
- d) prohibit, restrict, or place terms on the right of the respondent to call witnesses or present evidence at the hearing.

Failure to Attend Hearing

5. Where a respondent fails to attend a hearing, a Hearing Panel may:

- a) proceed with the hearing without further notice to and in the absence of the respondent; and
- b) accept the facts alleged and conclusions drawn by 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.

6. The panel announced that it would proceed with the hearing in the absence of the Respondent and would accept as proven the facts and conclusions drawn in the Notice of Hearing,

including the particulars, as permitted by section 20.4 of MFDA By-law No. 1, and Rules 7.3 and 8 of the MFDA Rules of Procedure.

PART II. DECISION ON THE MERITS

7. Notwithstanding this, staff introduced in evidence through Mr. Lamshead an affidavit setting out the facts he investigated in this matter.

8. The evidence in the affidavit of Mr. Lamshead was clear, convincing and uncontroverted and substantiated on a balance of probabilities the facts and conclusions drawn in the Notice of Hearing.

9. The panel determined that the misconduct alleged against the Respondent in the three allegations were violations of the Rules, By-law, and Policies referred to in the allegations.

PART III. ISSUES

10. Accordingly, the issues the panel faced revolved around an appropriate penalty for the Respondent.

PART IV. PENALTIES

Staff's proposal

11. Staff proposed the following penalties against the Respondent:

- a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine in the amount of \$15,000 in respect of allegations #1 and #2;
- c) a fine in the amount of \$50,000 in respect of allegation #3; and

- d) costs in the amount of \$5,000.

MFDA Penalty Guidelines

12. The MFDA penalty guidelines suggest among other things a minimum fine of \$5,000 and a prohibition of various lengths for breach of the standard of conduct in Rule 2.1.1.

13. They suggest one or more of a minimum fine of \$50,000 and a permanent prohibition for failure to co-operate with or for misleading the MFDA contrary to section 22.1 of MFDA By-law No. 1.

Precedent cases

14. The panel considered the precedent cases submitted to us by staff.

Decision as to penalty

15. We decided that the appropriate penalties were:

- a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine of \$10,000 in respect of allegations #1 and #2; and
- c) a fine of \$60,000 in respect of allegation #3.

Reasons for penalty decision

Permanent Prohibition

16. The failure of the Respondent to cooperate indicated under allegation #3 was egregious.

17. Staff advised us that due to the Respondent's failure to cooperate with staff's investigation, staff was unable to determine the full nature and extent of the Respondent's conduct, including whether he discussed the information on the forms at issue in this proceeding with the relevant clients, and whether he engaged in additional instances of signature falsification.

18. Failing to cooperate with an MFDA investigation is very serious misconduct which demonstrates a fundamental breach of a registrant's obligations and illustrates that the registrant is ungovernable.

19. The failure of the Respondent to participate in the process against him did not demonstrate remorse on his part or any indication that he would heed in the future the regulatory requirements of the MFDA or of its Members.

20. A permanent prohibition is appropriate to prevent any future harm to the industry and the public that could occur if the Respondent was allowed to participate in the industry.

21. A permanent prohibition in this case is consistent with the recommendations in the MFDA penalty guidelines and the precedent cases, and in accordance with the mandate of the MFDA to be protective of the securities industry and preventative of harm, as outlined in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] S.C.R. 132.

Fines

22. The panel decided that the appropriate fine for the misconduct in allegations #1 and #2 was \$10,000. This is in accordance with suggestions in the MFDA penalty guidelines and is in accordance with fines imposed in precedent cases with similar facts submitted by staff.

23. The panel decided that the fine for failure to cooperate under allegation # 3 should be \$10,000 higher than the minimum fine suggested by the MFDA penalty guidelines and by staff because of the number of occasions where the Respondent failed to respond, in some cases

adequately and in other cases at all, to requests for information concerning facts and events being investigated by staff, and the outright refusals of the Respondent to attend interviews requested by staff.

Other considerations in setting amounts

24. Although the Respondent had no past disciplinary history with the MFDA, we gave this factor very little weight in light of the serious misconduct associated with subverting the ability of the regulator to fully investigate the Respondent's conduct and to determine, in an expeditious manner, all of the relevant facts.

Costs

25. Staff submitted a bill of costs for \$6,325 which did not include time charges for Mr. Lambshead, affidavits of service, correspondence, or hearing attendance; nor did it include charges for disbursements attributable to process servers, photo-copying, preparation of binders, other office supplies or courier or postal charges. It did cover time charges for MFDA enforcement counsel for reviewing documents, preparation of the Notice of Hearing, First Appearance attendance and preparation, preparation of evidence for the hearing, and preparation of submissions for the hearing.

26. Staff requested a costs award for a lower amount, namely \$5,000. This was appropriate and reasonable and we granted it.

DATED this 24th day of October, 2018.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Joseph Yassi”

Joseph Yassi
Industry Representative

“Michael-Murray Coulter”

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