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: Saifur Sarker

Heard: February 6, 2014, in Toronto, Ontario
Reasons for Decision: February 28, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance Sweeney	Chair
Simon Destrempes	Industry Representative

Appearances:

Charles Toth	)	Senior Enforcement Counsel, Mutual Fund Dealers Association of Canada
Saifur Sarker	)	In person

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") concerning a disciplinary proceeding commenced against Saifur Sarker (the "Respondent").

2. A Notice of Hearing, dated July 22, 2013,[1] was issued by the MFDA in which it alleged three cases of misconduct against the Respondent and set October 22, 2013 as the date of first appearance.

3. In a press release dated August 13, 2013, which was posted on its website, the MFDA announced disciplinary proceedings would commence in respect of the Respondent. The Staff of the MFDA ("Staff") in its Notice of Hearing alleged that the Respondent had engaged in the following conduct contrary to the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between January and June 2008, the Respondent prepared and submitted loan applications and New Account Application Forms for client TO and client VO which the Respondent knew or ought to have known contained false, incorrect or misleading information, thereby failing to observe high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Between January and June 2008, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of a leveraged investment recommendation that he made to client TO, thereby failing to ensure that the leveraged investment recommendations were suitable for client TO and in keeping with client TO's investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Between January and June 2008, the Respondent failed to ensure that the leveraged investment recommendation he made to client TO was suitable for the client and in keeping with the client's investment objectives, having regard to:

[1] Exhibit 1

a) the client's relevant "Know-Your-Client" information and financial circumstances, including but not limited to the client's ability to afford the costs associated with the investment loans and withstand investment losses; and
b) the Member's requirements regarding the use of leveraging, as set out in the Member's policies and procedures;

contrary to MFDA Rules 2.2.1 and 2.1.1.

4. The Respondent filed a Reply dated August 10, 2013[2] in which he essentially admitted the allegations against him but pleaded extenuating circumstances.

5. On October 22, 2013, the Hearing Panel ordered that the Hearing on the Merits would take place before the Hearing Panel in the MFDA hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario, on February 6, 2014 commencing at 10:00 a.m. (Eastern).

6. Our colleague, Ms. Teri L. Ryan, was unable to attend the hearing on February 6, 2014. The Hearing proceeded as Hearing Panel of two as we are allowed to do.[3]

7. At the opening of the hearing, Staff tendered an Agreed Statement of Facts signed by the parties on February 4, 2014.[4]

8. The Chair closely questioned the Respondent to ensure that he fully understood the allegations against him and the penalties proposed. The Hearing Panel is satisfied that he signed the Agreed Statement of Facts of his own volition. Accordingly, the Hearing Panel admitted the Agreed Statement of Facts into the record as evidence.

[2] Exhibit 3
[3] MFDA By-Law No. 1, s. 19.9(b)
[4] Exhibit 4

SUMMARY OF AGREED FACTS

Registration History

9. From August 10, 2007 to January 19, 2010, the Respondent was registered in Ontario as a mutual fund salesperson with WFG Securities of Canada Inc. ("WFG"), a Member of the MFDA.[5]

10. At all material times, the Respondent conducted business out of a WFG branch located in Richmond Hill, Ontario (the "Richmond Hill Branch").

11. WFG terminated the Respondent on January 19, 2010 as a result of compliance deficiencies it detected during a review of the Richmond Hill Branch.

12. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1: Loan Applications and New Client Account Forms ("NCAFs")

(a) Client VO

13. (i) In January 2008, the Respondent induced a new client, VO, to borrow $150,000.00 from two financial institutions to purchase mutual funds.

(ii) The Respondent filled in most of the information on the NCAF of VO.

(iii) The Respondent knew or ought to have known that the information he inserted was false. For example, he inflated the client's assets in the two applications by over $215,000.00 and said that VO had "good" investment knowledge in the NCAF when he had only limited investment knowledge.

[5] Effective July 1, 2013, WFG changed its name to Transamerica Securities Inc.

(b) Client TO

14. The Respondent's actions with TO, a new client, were similar to what he did with VO. He induced TO to borrow $140,000.00 from two financial institutions to buy mutual funds. He then inflated the client's assets and misrepresented TO's investment knowledge on the NCAF.

Allegation #2: Failure to explain leveraged investment strategy (client TO)

15. The Respondent had a poor understanding of the leveraging investment strategy. Consequently, he was unable to explain to TO the risks and potential costs of the strategy. Among the risks he failed to disclose were the following:

i. If the mutual funds declined in value, then TO would incur greater investment losses than if he had purchased the same investments using his own moneys;
ii. TO might not be able to repay the loan if the mutual funds declined below their initial value;
iii. A rise in interest rates might adversely affect TO's financial position.

Allegation #3: Unsuitable leveraging recommendation (client TO)

16. The Respondent ignored WFG's policies and procedures for leveraging. In particular, borrowed moneys were not to exceed 40% of a client's net worth and the client's investment knowledge must be good or excellent. The Respondent knew that TO's investment knowledge was limited but he still induced him to borrow more than 40% of his net worth.

17. VO incurred about $32,000.00 of investment losses and TO about $37,000.00 thereof as a result of the Respondent's actions. He also lost about $150,000.00 on his own account by taking out an investment loan to buy mutual funds.

18. The Hearing Panel advised the parties that, as the only evidence submitted at the hearing was the Agreed Statement of Facts, the misconduct alleged against the Respondent had been

proven. The Hearing Panel then asked the parties to proceed to the penalty phase.

PENALTIES

19. Staff filed an extensive book of authorities, including MFDA Rules 2.1.1 and 2.2.1, the MFDA Penalty Guidelines and a number of relevant cases.

20. Rule 2.1.1 requires an Approved Person, among other things, to:

a) deal fairly, honestly and in good faith with clients;
b) observe high standards of ethics and conduct in the transaction of business.

21. Rule 2.2.1 is the "Know-Your-Client" rule. It requires an Approved Person to use due diligence with his clients to learn the essential facts about them. In particular, if the use of borrowing to invest is unsuitable, he is to address that issue.

22. The Ontario Securities Commission has said the know-your-client and suitability requirements:

> ... are an essential component of the consumer protection scheme of the Act and a basic obligation of a registrant and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter.[6]

23. Staff submitted that the Hearing Panel must protect investors[7] and the MFDA by imposing penalties which reflect both general and specific deterrence. Staff also acknowledged that the Respondent had acknowledged his indiscretions and had cooperated with Staff.

24. The Respondent addressed the Hearing Panel. He readily acknowledged that he had breached Rules 2.1.1 and 2.2.1 and was responsible for the losses suffered by his clients. He said that he was close to completing a college degree and hoped to embark on a new career outside

[6] *E.A. Manning Ltd. et al.* (*Re*), 1995 LNONOSC 377 (OSC) p. 34 of 44
[7] *Pezim v. British Columbia* (*Superintendent of Brokers*), [1994] 2 S.C.R. 557 (S.C.C.)

the securities industry. He did say that he did not feel that he had received proper training from WFG which led him to make mistakes. He did not oppose the following penalties proposed by Staff:

a) a three year prohibition;
b) a fine of $20,000.00; and
c) costs of $2,500.00.

25. The Hearing Panel briefly convened to consider its decision. It then announced that the penalties proposed were fair and reasonable and within the range of appropriateness, and that brief reasons would follow.

REASONS

26. It is well established that Hearing Panels, in determining appropriate penalties, should consider the protection of the investing public, the integrity of the security markets, specific and general deterrence, and the protection of the MFDA's membership and its enforcement process.[8]

27. The Respondent inserted false information in the loan applications and NCAFs for two clients. The Respondent properly admitted that this breached the standard expected of him in Rule 2.1.1. Moreover, he breached the policies and procedures of WPG in doing so. Furthermore, he, obviously, had no idea of his duty under the "Know-Your-Client" obligation in Rule 2.2.1.

28. He must be punished for his actions. Yet, the Respondent is somewhat unique in cases of this kind. Unlike many whom the MFDA penalizes, he acknowledged his errors, took responsibility for them and cooperated with Staff. In doing so, he allowed them to avoid the cost of a contested hearing and gave them a favourable result. Also, he appeared at the hearing to accept his punishment. He must be credited in the penalty imposed for these mitigating factors.

[8] *Dickson* (*Re*) 2011 LNCMFDA p. 11 of 13

29. The Respondent "took his own medicine" by taking out a $150,000.00 loan to buy mutual funds which led to financial ruin for him and his family. He has, therefore, already suffered grievously for his actions.

30. The Hearing Panel has carefully considered the facts, the law and previous rulings of MFDA hearing panels, courts and administrative bodies. In these circumstances, the penalties imposed are reasonable and appropriate. They punish the Respondent and will deter others who might be inclined to act as he did.

DATED this 28th day of February, 2014.

"Terrance Sweeney"

Terrance Sweeney,
Chair

"Simon Destrempes"

Simon Destrempes,
Industry Representative

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