



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: Madrie Ann Secord

Heard: August 7, 2019 in Toronto, Ontario

Decision: August 7, 2019

Reasons for Decision: March 9, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth
Timothy Pryor
Paige Wadden

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Madrie Ann Secord)	Respondent, in person
)	
)	

Background

1. On January 31, 2019, The Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing in respect of disciplinary proceedings commenced against Madrie Ann Secord (the “Respondent”). As appears from the Affidavit of Service of the Notice of Hearing, marked as Exhibit 2 in this proceeding, a copy of the Notice of Hearing was served on the Respondent. Thereafter, and on April 9, 2019, at a further appearance in these proceedings, the Chair of the Hearing Panel ordered that the Hearing proceed on August 7, 2019.

2. On June 10, 2019, the Respondent filed an Amended Reply in which she admitted Allegations 1 and 2 in the Notice of Hearing, and admitted and agreed to the facts set out in the Notice of Hearing.

The Contraventions

3. In the Notice of Hearing, it is alleged that:

Allegation #1: Commencing in July 2015, the Respondent engaged in personal financial dealings by borrowing \$7,000 from client DH, which gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member’s policies and procedures, and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

Allegation #2: In March 2016, the Respondent misled the Member by falsely denying that she had borrowed money from a client, thereby interfering with the ability of the Member to supervise the Respondent’s activities, failing to observe high standards and conduct in the transaction of business, and engaging in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

The Facts

4. The relevant facts are those set out in paragraphs 1 to 19 of the Notice of Hearing, which is attached as Appendix “A” to these Reasons. Again, the Respondent, in her Amended Reply dated June 10, 2019, admitted the above facts.

5. In addition to the admissions set out above, the Hearing Panel had the benefit of the evidence set out in the Affidavit of Sheila Daneshvaziri, sworn August 6, 2019, which was marked as Exhibit 5 in this proceeding. The evidence set out in the above Affidavit confirmed the existence of the factual assertions particularized in the Notice of Hearing.

Discussion

6. From August 2008 to December 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative), with Investors Group Financial Services Inc. (“Investors Group”), a member of the MFDA.

7. Investors Group terminated the Respondent on December 13, 2016 for matters related to the allegations set out above. The Respondent has not been registered in the securities industry in any capacity since her termination. At all material times, the Respondent conducted business in Huntsville, Ontario.

8. The standard of proof in administrative proceedings, such as those instituted pursuant to MFDA By-law No. 1, is the civil standard of balance of probabilities. Since 2008, it has been settled law in Canada that "there is only one civil standard of proof at common law and that is proof on a balance of probabilities." The Supreme Court of Canada has rejected the notion that the seriousness of the allegations or consequences change the standard of proof. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred. Evidence must always be sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test, but there is no objective standard to measure sufficiency.

Brauns (Re), supra at para. 15.

Section 24.1.1 of MFDA By-law No. 1.

9. As admitted by the Respondent, and confirmed by the Affidavit of Sheila Daneshvaziri, the Respondent engaged in personal financial dealings by borrowing \$7,000.00 from client DH, which gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member, contrary to the Member’s policies and procedures, and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

10. Again, as further admitted by the Respondent and confirmed by the Affidavit of Sheila Daneshvaziri, the Respondent misled the Member by falsely denying that she had borrowed money from client DH, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

11. The Respondent's conduct clearly contravened the MFDA Rules set out above.

12. The facts further disclosed that:

- a) Client DH was 71 years of age at the time that the account was opened with the Member and was a double amputee. Accordingly, the client was a vulnerable client given her advanced age and disabilities;
- b) In order to access the money that she agreed to lend the Respondent, the client DH redeemed investments that were held with the Member, thereby incurring deferred sales charges in an amount of \$402.66 as a result of the redemption from her investment account;
- c) The loan agreement between the Respondent and the client DH was not documented in writing and no collateral to secure repayment of the loan was provided, nor did the loan make provision for the payment of interest on outstanding amounts;
- d) During the tenor of the loan, the client DH did not receive the benefits that she would have otherwise received had her money remained invested;
- e) Although the Respondent provided client DH with a post-dated cheque to repay the loan, the post-dated cheque was returned "no sufficient funds" and the loan was not repaid for a period of 17 months;
- f) The loan was only repaid after the daughter of client DH complained to the Member;
- g) The Respondent did not disclose the conflict of interest arising from the loan, to the Member.

Penalty

13. Pursuant to s. 24.1.1(i) of MFDA By-law No. 1, if, in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any by-law, rule, or policy of the

MFDA, a Hearing Panel can impose any of the penalties set out in s. 24.1.1(a)-(t), including a permanent prohibition of the authority of the Approved Person to conduct securities related business and a fine, not exceeding \$5,000,000.

MFDA By-law No. 1, s, 24.1.1.

14. Pursuant to s. 24.2 of MFDA By-law No. 1, the Hearing Panel has the discretion to require a Member or Approved Person to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigations relating to that proceeding.

MFDA By-law No. 1, s. 24.2

15. The Hearing Panel considered that the primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets and the securities industry. In *Tonnies (Re)*, the Hearing Panel recognized that its role when imposing sanctions is not the punishment of the Respondent, but rather restraining future misconduct in furtherance of these goals. The Hearing Panel stated:

The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty. In *Re Mithras Management Ltd. et al.* (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:

... [T]he role of this Commission is to protect the public interest by removing from the capital markets - wholly or partially, permanently or temporarily as the circumstances may warrant - those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

Tonnies (Re), 2005 LNCMFDA 7 at para.45.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 12 S.C.R. 557 at paras. 59, 68.

Breckenridge (Re), supra at para. 74.

16. The Hearing Panel agreed with Staff's Submissions that sanctions imposed should therefore be protective and preventative to prevent likely future harm to the markets. To determine whether a sanction 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;
- f) the sanction guidelines of the MFDA.

Tonnies (Re), supra at paras. 44, 46.

Breckenridge (Re), supra at para.74.

17. Hearing Panels have also previously considered the following factors when determining whether a sanction is appropriate:

- 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
- k) previous decisions made in similar circumstances.

Tonnies (Re), supra at para.48.

Breckenridge (Re), supra at para.77.

18. In respect of the factors considered in this particular case, the Panel was mindful that:

- a) Engaging in personal financial dealings by borrowing money from a client was a serious misconduct, which exploited the position of trust that the Respondent had with the client;
- b) The serious misconduct described above was further aggravated by the Respondent's failure to advise the Member of the loan she had taken from the client and the conflict of interest that arose as a result. The Respondent's actions in this respect robbed the Member of its opportunity to deal with the contravention in a timely way;
- c) The sanction guidelines and MFDA Hearing Panels have identified the involvement of "vulnerable investors" as an aggravating factor. In this particular case, client DH was of advanced years and was disabled;
- d) The Respondent has not previously been the subject of an MFDA disciplinary proceeding. However, given the seriousness of the Respondent's misconduct, this is not a significant mitigating factor;
- e) The Hearing Panel was satisfied that the Respondent recognized the seriousness of her misconduct and admitted her misconduct in her Amended Reply, therefore avoiding the necessity of a full hearing on the facts;
- f) The Respondent benefited from the receipt of the loan from client DH while repayment of the loan was not made in a timely way and was only made after a complaint to the Member.

19. Staff proposed that costs in the amount of \$7,500.00 be imposed against the Respondent, and provided the Hearing Panel with a Bill of Costs which reflected total costs incurred of \$15,562.50.

20. At the Hearing it was submitted by the Respondent that she was impecunious. Evidence provided by the Respondent at the Hearing and marked as Exhibit 6, confirmed that the Respondent had a net worth of approximately -\$65,000.00, an extremely limited income and substantial debts. In addition, at the time of the Hearing, the Respondents income was subject to a garnishee by the Canadian Revenue Agency. The Hearing Panel acknowledged and agreed with Staff's Submission

that even if the Respondent was impecunious, that this was only one of many factors to be weighed by the Hearing Panel in assessing penalty. Having acknowledged the above, the Hearing Panel was of the view that the Respondent's impecuniosity should be given more weight as a factor than was submitted by Staff.

Result

21. For all the above reasons, the Hearing Panel concluded that the contraventions to which the Respondent had admitted were serious and required the imposition of the following penalty:

- a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 18 months commencing from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine to the MFDA in the amount of \$7,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, no later than August 7, 2021;
- c) The Respondent shall pay costs to the MFDA in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, no later than August 7, 2021; and
- 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 9th day of March, 2020.

“Frederick W Chenoweth”

Frederick W Chenoweth
Chair

“Timothy Pryor”

Timothy Pryor
Industry Representative

“Paige Wadden”

Paige Wadden
Industry Representative

DM 727872



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**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
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Re: Madrie Ann Secord

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council ("Hearing Panel") of the Mutual Fund Dealers Association of Canada ("MFDA") in the hearing room at the MFDA offices, 121 King Street West, Suite 1000, Toronto, Ontario on April 9, 2019 at 9:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Madrie Ann Secord ("Respondent").

DATED this 31st day of January, 2019.

"Michelle Pong"

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Commencing in July 2015, the Respondent engaged in personal financial dealings by borrowing \$7,000 from client DH, which gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

Allegation #2: In March 2016, the Respondent misled the Member by falsely denying that she had borrowed money from a client, thereby interfering with the ability of the Member to supervise the Respondent's activities, failing to observe high standards and conduct in the transaction of business, and engaging in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From August 2008 to December 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative)¹ with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.
2. Investors Group terminated the Respondent on December 13, 2016. The Respondent has not been registered in the securities industry in any capacity since her termination.
3. At all material times, the Respondent conducted business in Huntsville, Ontario.

¹ In September 2009, when National Instrument 31-103 came into effect, the registration category 'mutual fund salesperson' was changed to 'dealing representative – mutual fund dealer'.

Allegation #1: Borrowing Monies from a Client

4. At all material times, Investors Group policies and procedures expressly prohibited its Approved Persons from borrowing money from clients.
5. In 2014, client DH became a mutual fund client of Investors Group. At all material times, the Respondent was the mutual fund salesperson responsible for servicing client DH's account at Investors Group.
6. On or about July 15, 2015, the Respondent borrowed \$7,000 from client DH (the "Loan").
7. At the time of the Loan, client DH was 72 years old, retired, and had limited income and net worth. Client DH was a vulnerable client.
8. To fund the Loan, the Respondent facilitated a redemption of \$7,402.66 from client DH's Tax Free Savings Account. Client DH incurred deferred sales charges of \$402.66 as a result of the redemption.
9. Client DH received the net proceeds of the redemption in her personal bank account. Client DH then wrote a cheque in amount of \$7,000 payable to the Respondent to fund the Loan.
10. At about the time the Respondent received the Loan from client DH, the Respondent provided client DH with a post-dated cheque dated July 31, 2015 in the amount of \$7,000 payable to client DH for repayment of the Loan (the "Repayment Cheque").
11. The Respondent has stated she used the proceeds of the Loan to pay for her son's university tuition.
12. On or about July 31, 2015, client DH attempted to cash the Repayment Cheque but it was returned uncashed due to insufficient funds in the Respondent's account.
13. The Respondent did not disclose to Investors Group that she had borrowed monies from a client.
14. In or around December 2016, client DH's son-in-law contacted Investors Group and raised concerns that, amongst other things, the Respondent had borrowed money from client DH.

15. The Respondent subsequently repaid the Loan on about December 16, 2016.

16. By virtue of the foregoing conduct, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest between the Respondent and the client that the Respondent failed to disclose to Investors Group or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

Allegation #2: Misleading the Member

17. On March 2, 2016 (while the Loan from client DH was still outstanding), the Respondent completed Investors Group's 2016 Annual Consultant Certificate in which she falsely responded to an inquiry from Investors Group by denying that she had borrowed money from a client.

18. The Annual Consultant Certificate is a tool used by Investors Group to supervise its Approved Persons, and detect actual or potential conflicts of interest that may need to be addressed.

19. By engaging in the conduct described above, the Respondent mislead the Member, thereby interfering with its ability to supervise the Respondent's conduct, failing to observe high standards of ethics and conduct in the transaction of business, and engaged in conduct detrimental to the public interest, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: H. C. Clement Wai
Email: cwai@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file a Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts

alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.