



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: Rajbir Singh

Heard: December 19, 2018 in Toronto, Ontario
Decision and Reasons: January 23, 2019

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Michael-Murray Coulter
Joseph A. Yassi

Chair
Industry Representative
Industry Representative

Appearances:

David Babin)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Rajbir Singh)	Respondent, in person
)	
)	

Introduction

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on Wednesday, December 19, 2018. Rajbir Singh (the “Respondent”) attended the hearing and was not represented by counsel.
2. The Panel reserved its decision at the conclusion of the December 19, 2018, hearing, with reasons to follow. This is our decision and the reasons for the decision.
3. A Notice of Hearing was issued on April 12, 2018 against the Respondent and a first appearance was scheduled for August 14, 2018. At that appearance, a date was set for the hearing to be on December 19, 2018.
4. Staff of the MFDA and the Respondent presented the Panel with an Agreed Statement of Facts, dated December 19, 2018, which is available on the MFDA website. The task of the Panel was to determine the appropriate penalty based on the Agreed Statement of Facts.
5. From May 2013 to February 2016, the Respondent was registered in Ontario as a dealing representative with National Bank Investments Inc. (“National Bank”), a Member of the MFDA. From August 2005 to December 2008, the Respondent had been registered in Ontario as a mutual fund salesperson with Quadrus Investment Services Ltd., a Member of the MFDA. In the five years between those positions, the Respondent worked for a Canadian chartered bank. At all material times, the Respondent conducted business in the Richmond Hill, Ontario, area.
6. On February 24, 2016, National Bank terminated the Respondent as a result of the conduct described below. The Respondent is not currently registered in the securities industry.

Respondent’s Misconduct

7. The Notice of Hearing contained three allegations. The first two related to a single incident of funds loaned by the Respondent to a client, MS, to purchase securities and the third count alleged misleading the Member, National Bank.
8. The allegations are set out as follows in the Notice of Hearing:

Allegation #1: Between October 27, 2015 and December 14, 2015, the Respondent loaned client MS \$130,000, in order to enable client MS to purchase securities, thereby loaning or extending credit to a client contrary to MFDA Rule 3.2.1. and 2.1.1.

Allegation #2: Between October 27, 2015 and December 14, 2015, the Respondent loaned client MS [at] least \$130,000 to purchase mutual funds in order to help the Respondent to qualify for a bonus or other compensation through a branch incentive program, which conduct gave rise to a conflict or potential conflict of interest by putting the Respondent's interest ahead of any interest of client MS, and which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interest of client MS, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #3: On November 3, 2015, the Respondent misled National Bank Investment Inc. by falsely informing National as to the source of client MS's funds, thereby interfering with the ability of National to supervise the Respondent's conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rule 2.1.1.

9. The MFDA and the Respondent tried to reach a Settlement Agreement on these counts, but were not able to do so. They did, however, agree on a Statement of Facts. In the Agreed Statement of Facts, the first two allegations, which related to the exact same conduct, were combined and in paragraph 27 of the Agreed Statement of Facts, the Respondent admitted to the following conduct:

- a) between October 27, 2015 and December 14, 2015, he loaned client MS [at] least \$130,000 to purchase mutual funds in order to help the Respondent to qualify for a bonus or other compensation through a branch incentive program, which conduct gave rise to a conflict or potential conflict of interest by putting the Respondent's interest ahead of any interest of client MS, and which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client MS, contrary to MFDA Rules 3.2.1, 2.1.4 and 2.1.1; and
- b) on November 3, 2015, he misled National Bank Investment Inc. by falsely informing National as to the source of client MS's funds, thereby interfering with the ability of National to supervise the Respondent's conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rule 2.1.1.

10. National Bank maintained a compensation program whereby Approved Persons could earn a bonus based, in part, on the amount of mutual funds sold to clients. On or about October 22, 2015, the Respondent became concerned that he would not be eligible to earn a sales bonus for 2015. The Agreed Statement of Facts states in paragraph 11 that the Respondent “was informed by his Sales Branch Manager at National Bank that approximately \$200,000 worth of mutual fund sales would be deducted from his annual sales total as a result of a large referral to the Private Banking Department affiliated with the Member that was made earlier in the year.” The Respondent believed that the \$200,000 should have been credited to him.

11. In order to increase his sales volume for the year to the required level, the Respondent contacted his cousin MS and asked him to make an investment to help the Respondent reach his sales target for 2015. MS agreed to do so but would need time to sell some of his investments. The cut-off deadline was approaching. The Respondent suggested that he loan his cousin the money. He claimed at the hearing and in a formal “Reply” that he had sent to the MFDA before the Hearing on August 14, 2018 that he was not aware that it was against MFDA Rules to loan funds to a client.

12. On or about October 27, 2015 the Respondent loaned \$130,000 to MS. The next day MS became a client of National Bank. The Respondent opened a non-registered account for client MS at National Bank, and MS purchased \$100,000 of the low risk National Bank Short Term Canadian Income fund.

13. MS repaid the unused \$30,000 in early November 2015 and in mid-December redeemed all of the investments in his account at National Bank. Client MS closed the account and fully repaid the Respondent.

14. As it turned out, the Respondent met his 2015 sales target without counting the \$100,000 purchase by MS and received a bonus of about \$20,000 as a result of reaching his sales target.

15. At the end of October 2015, the Respondent was contacted by his Alternative Branch Manager about the source of the \$100,000 purchase by client MS. The Branch Manager was concerned about money laundering. The Respondent informed the Alternative Branch Manager that the funds came from a Guaranteed Investment Certificate that had recently matured which client MS held at another financial institution. This statement was false and misleading.

Legality of the Conduct

16. The conduct was wrong. The law is clear that Approved Persons cannot borrow money from clients or loan funds to clients. See *Re Shaw* 2017 LNCMFDA 129. Doing so creates an irresolvable conflict of interest. MFDA Rule 3.2.1 explicitly states that ‘No Member or Approved Person shall lend or extend credit to a client or permit the purchase of securities by a client on margin, except as provided for in Rule 3.2.3.’ This is well known in the securities industry. MFDA Staff Notice MSN-0047, dated October 3, 2005, ‘Personal Financial Dealings with Clients’, concludes a paragraph on ‘Lending to Clients’ by stating: ‘Approved Persons are prohibited...from directly or indirectly entering into arrangements that involve lending to clients.’

17. Hearing Panels have held that where an Approved Person misleads the Member either in the course of its supervision or during an investigation into his or her activities, the Approved Person’s conduct violates MFDA Rule 2.1.1. See, for example, *Re Romain* 2016 LNCMFDA 197; and *Re MacWhirter* 2016 LNCMFDA 13.

18. In *MacWhirter*, the Panel stated (at paragraph 10-11):

“The misleading of investigators or Compliance staff, whether of the MFDA or of the Member in fulfilling its regulatory obligations to supervise, interferes with the reasonable supervisory role and may result in an investigation being closed down prematurely or diverted down an avenue of inquiry that wrongly implicates others, both of which may result in misconduct going undetected.”

“The consequences of misleading the Member in its investigation are the same as when an Approved Person misleads the Member during its efforts to conduct a reasonable supervisory review.”

Our findings

19. The Respondent admits that the conduct violated MFDA Rules. It is clear that it did.

20. What is the appropriate penalty? The MFDA proposed the following penalties:

a) A fine of \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

- b) A suspension of the Authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA for a period of between two and six months, pursuant to section 24.1.1(e) of MFDA By-law No. 1; and
- c) Costs of at least \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.

21. The Respondent did not present a firm proposal as to penalty. He expressed concern, however, about the amount of the fine and the costs.

22. If this hearing were a Settlement Hearing, we would likely have accepted the MFDA's proposed penalty and costs. They are not outside a "reasonable range of appropriateness." But this is not a Settlement Hearing and the Panel can order the penalty that it finds most appropriate in the particular circumstances of this case.

23. There are a number of factors which we have taken into account in determining the penalty and costs. The Respondent worked in the securities industry as a mutual fund dealing representative for six years and has not previously been the subject of an MFDA disciplinary proceeding.

24. MFDA Staff investigation indicated that the loan in this case was an isolated incident and did not reveal any evidence of unauthorized trades or mishandling of trust moneys. There was no pattern of misconduct.

25. The Respondent expressed remorse for his conduct, and has cooperated fully with MFDA's investigations.

26. There were no client complaints. The Respondent's cousin, MS, was not harmed financially. The Respondent did not receive any commission on the transaction. As it turned out, he did not need this mutual fund sale to qualify for his bonus.

27. Although lending to or borrowing money from clients is serious misconduct, the conduct in the present case was at the lower range of seriousness.

28. Of more concern is misleading the Member. This is always serious misconduct.

29. Further, by entering into an Agreed Statement of Facts with Staff, the Respondent has accepted the responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

30. The Respondent has already paid a heavy price for his misconduct. He has been out of the securities industry for almost three years. In one of those years he was unemployed. His income for 2017 was very modest. Although, under the circumstances of this case – he was not represented by counsel – we were not presented by the Respondent with evidence of his present net worth, it seems likely to us that it is not significant. The new MFDA Sanctions Guidelines specifically mention in section 11 “ability to pay” as a factor that can be taken into account by a Panel.

31. The Panel has decided to impose the following penalty:

- a) A fine of \$3,000;
- b) A suspension of the authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA for a period of two months from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- c) The requirement to complete an industry compliance course before employment as an Approved Person; and
- d) Costs of \$1,000.

32. The fine is low. It is, however, not inconsistent with the one case of loaning funds to a client that was cited to us by counsel: *Re Shaw* 2017 LNCMFDA 129, where the fine was \$20,000. In that case the loan was \$440,000 and there were also pre-signed account forms with respect to 18 clients and four altered account forms for two clients. Other cases cited to us deal with borrowing money from a client.

33. Again, the costs are at the low end of the scale, but this was a very simple case, which required little investigation, and a relatively short hearing.

34. The Respondent has not been in the industry for almost three years and should take a compliance course before re-entering it.

35. Specific and general deterrence is important in these cases. (See *Re Cartaway Resources Corporation* [2004] 1 S.C.R. 672). We believe that the penalty we are imposing will provide the required deterrent effect on the Respondent and others in the industry.

36. For the above reasons, we find that the three charges have been proven to the satisfaction of the Panel and we impose the penalty and costs described above in paragraph 31.

DATED this 23rd day of January, 2019.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Michael-Murray Coulter”

Michael-Murray Coulter
Industry Representative

“Joseph A. Yassi”

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