



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: Wijaysri Sivasubramanian
*also known as Siva Wijayabaskaran, Bobby Siva,
Bobby Wigey and Bobby S. Wijey*

Heard: April 13 and 14, 2011 in Toronto, Ontario
Reasons for Decision: May 4, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.	Chair
David W. Kerr	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Lyla Simon)	For the Mutual Fund Dealers Association of Canada
)	
Wijaysri Sivasubramanian)	Did not appear either personally or by counsel
)	

Background

1. By Notice of Hearing dated September 10, 2010, Wijaysri Sivasubramanian (hereinafter referred to as the “Respondent”) was notified that a first appearance would take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel” or the “Panel”) on October 29, 2010, concerning a disciplinary proceeding commenced by the Mutual Fund Dealers Association of Canada (“MFDA”).

2. On the date fixed for the first appearance, Staff of the MFDA (“Staff”), having been unable to serve the Respondent with the Notice of Hearing by the usual means, moved for an Order for substituted service in the form of a one-week advertisement in the Legal Notices section of the *Toronto Star*. Upon hearing of the various attempts made to serve the Notice of Hearing on the Respondent, the Panel granted the motion and ordered that a further appearance in this proceeding take place on December 14, 2010.

3. On the date fixed for the further appearance, the Respondent again failed to appear or file any materials in the proceeding. The Panel, after hearing from Staff, declared itself satisfied that service was effected in accordance with its previous Order. All reasonable attempts to serve the Respondent having failed, the Panel ordered that the hearing on the merits shall take place on April 13-15, 2011, in the hearing room of the MFDA.

4. Subsequent to the Order fixing the hearing dates, Staff moved to amend the Notice of Hearing by adding further details and increasing the amounts involved in four of the five allegations (the fifth dealing with the Respondent’s alleged failure to provide answers to certain undertakings arising from an interview with an MFDA investigator).

The Allegations

5. **Allegation #1:** Between 2002 and 2009, the Respondent engaged in securities related business that was not carried on for the account of and through the facilities of the Member by recommending and facilitating loans by at least eight clients and two individuals to three companies that the Respondent owned and/or operated, contrary to MFDA Rules 1.1.1 and 2.1.1.

6. **Allegation #2:** Between 2002 and 2009, the Respondent had and continued in another gainful occupation that was not disclosed to or approved by the Member by recommending and facilitating loans by at least eight clients and two individuals to three companies that the Respondent owned and/or operated, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

7. **Allegation #3:** Between 2002 and 2009, the Respondent failed to disclose to eight clients and two individuals who invested in three companies the extent of his interest in the three companies, thereby placing his own interests above those of the clients and individuals and giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients and individuals, contrary to MFDA Rules 2.1.1 and 2.1.4.

8. **Allegation #4:** Between 2002 and 2009, the Respondent solicited and accepted a total amount of approximately \$756,000 from eight clients and two individuals to be invested in three companies that the Respondent owned and/or operated and has failed to return or account for most of the monies, contrary to MFDA Rule 2.1.1.

9. **Allegation #5:** Commencing on or about May 25, 2009, the Respondent has failed to respond to MFDA Staff and provide answers to undertakings given during his MFDA interview, contrary to section 22 of MFDA By-law No. 1.

The Particulars

10. The particulars, as set out in the Amended Notice of Hearing, are as follows:

11. From February 1, 2001 to September 17, 2008, the Respondent was registered in Ontario and British Columbia as a mutual fund salesperson with WFG Securities of Canada Inc. (“WFG Securities”), a Member of the MFDA.

12. From January 31, 2005 to September 17, 2008, the Respondent was also registered as a branch manager with WFG Securities. The Respondent’s branch was located in Toronto, Ontario.

13. The Respondent was previously registered as a mutual fund salesperson from July 1994 to January 2001 with Regal Capital Planners.

14. On September 17, 2008, the Respondent was terminated from WFG Securities as a result of the events described herein.

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

Allegations #1 & #2 - Investments in First Venture and Build Homes

16. First Venture International Inc. (“First Venture”) was incorporated in Ontario on March 12, 2003. The Respondent is the sole director and officer of First Venture.

17. Build Homes Group Inc. (“Build Homes”) was incorporated in Ontario on April 30, 2004. The Respondent is the sole director and officer of Build Homes.

18. Goal Key Inc. was incorporated as “Jana Venture Inc.” in Ontario on May 23, 2002.¹ The Respondent held himself out to investors as the President of Goal Key.

19. First Venture, Build Homes and Goal Key remain incorporated in Ontario.

20. Build Homes purportedly carried on business promoting eco-friendly building materials, as well as building houses in Sri Lanka. Build Homes raised funds, purportedly to be used to finance its operations, by offering individuals the opportunity to invest in Build Homes.

21. First Venture purportedly carried on business raising funds, the proceeds of which First Venture lent to Build Homes, purportedly to finance the latter’s operations.

22. Goal Key purportedly carried on business raising investor funds and making investments in real estate development projects in Toronto and abroad.

¹ Jana Venture Inc. changed its name to Goal Key Inc. on November 9, 2004.

23. The investments in First Venture, Build Homes and Goal Key:

- 1) were personally solicited by the Respondent from eight WFG Securities clients and two individuals;
- 2) were confirmed verbally or through the issuing of documents evidencing the investment, such as a promissory note bearing the names of First Venture, Build Homes or Goal Key as borrower, which in some cases were signed by the Respondent;
- 3) varied in amount from \$6,000 to \$65,000;
- 4) were for terms of six months to six years; and
- 5) promised varying rates of return to a high of 25% for six months.

24. The investments in First Venture, Build Homes and Goal Key were not investment products known to or approved for sale by WFG Securities.

25. Notwithstanding WFG Securities' lack of knowledge or approval of the Respondent's activities described herein, in some instances the Respondent used documents which bore WFG Securities' identifying marks (such as WFG Securities letterhead) when completing the documents for the First Venture, Build Homes and Goal Key investments.

26. As is set out in the chart below, between 2002 and 2009, the Respondent solicited and accepted investments in First Venture, Build Homes and Goal Key in the total amount of \$756,000 from eight clients and two individuals:

	Investor	Investment Date	\$ Invested	\$ Owing	Term	Interest Rate
1.	Client BM	November 2002	\$50,000	\$5,687	--	--
2.	Client SS (#1) ²	April 2003	\$30,000	\$30,000 + interest	5 years	10% per year
	Client SS	April 2004	\$30,000	\$30,000 + interest	5 years	10% per year
	Client SS	June 2004	\$15,000	\$15,000 + interest	5 years	10% per year
	Client SS	September 2005	\$40,000	\$40,000 + interest	3 years	18% per year
	Client SS	January 2007	\$40,000	\$40,000 + interest	3 years	13% per year
	Client SS	January 2007	\$50,000	\$50,000 + interest	3 years	13% per year
	Client SS	June 2007	\$10,000	\$10,000 + interest	3 years	10% per year

² Client SS #1 invested seven times.

3.	Client FB	December 2003	\$30,000	\$25,500 + interest	2 years	10% per year
	Client FB ³	January 2004	\$20,000	\$20,000 + interest	3 years	11.5% per year
	Client FB	October 2005	\$50,000	\$40,000 + interest	18 months	18% per year
4.	Client GP	May 2005	\$50,000	\$50,000 + interest	--	9% per year
5.	Client SS (#2)	June 2005	\$25,000	\$25,000 + interest	3 years	9% per year
6.	Client MP ⁴	November 2007	\$60,000	\$60,000 + interest	1 year	13% per year
	Client MP	April 2008	\$25,000	\$25,000 + interest	1 year	12.5% per year
7.	Client TV	December 2007	\$20,000	\$9,000 + interest (was paid back \$11,000)	6 months	15% per 6 mos.
8.	SS (#3) ⁵	March 2008	\$40,000	Nil (was paid back \$48,000)	--	--
	SS	May 2009	\$50,000	\$49,000 + interest	6 months	22% per 6 mos.
	SS	August 2009	\$65,000	\$65,000 + interest	6 months	25% per 6 mos.
9.	Client IP	--	\$6,000	\$3,000	--	--
10.	JR	Unknown	\$50,000	\$50,000 + interest	--	--
		Total Invested	\$756,000	\$642,187 + interest		

27. Despite demands by some or all of the investors, substantially all of the invested principal and interest owed to the investors remains outstanding.

28. At no time did the Respondent disclose to or seek approval from WFG Securities to engage in the activity described herein.

29. By engaging in the conduct described herein, the Respondent engaged in securities related business that was not carried on for the account of and through the facilities of WFG Securities, contrary to MFDA Rules 1.1.1 and 2.1.1.

30. In the event that the conduct engaged in by Respondent did not constitute securities related business, then the Respondent had and continued in another gainful occupation that was not disclosed to and approved by WFG Securities, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

³ Client FB invested three times.

⁴ Client MP invested two times.

⁵ SS #3 invested three times.

Allegations #3 & #4 – Conflict of Interest / Personal Financial Dealings

31. The Respondent personally recommended, solicited and facilitated the investments in First Venture, Build Homes and Goal Key to each of the eight clients and two individuals.

32. The Respondent failed to disclose to the eight clients and two individuals who invested in First Venture, Build Homes and Goal Key that he was the sole director and officer of First Venture and Build Homes, and additionally, held himself out as the President of Goal Key.

33. By failing to disclose to the clients the nature and extent of his interest in First Venture, Build Homes and Goal Key, the Respondent placed his own interests above those of the clients and individuals, giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients and individuals, contrary to MFDA Rules 2.1.4 and 2.1.1.

34. By failing to return or account for most of the investors' funds, the Respondent has not dealt fairly, honestly and in good faith with the clients and individuals, contrary to MFDA Rule 2.1.1.

Allegation #5 – Failure to Cooperate

35. On May 22, 2009, the Respondent attended an interview at the offices of the MFDA in accordance with a request made by MFDA Staff.

36. During the course of the interview, the Respondent gave undertakings to provide certain documents and information, including:

- 1) a list of, and correspondence with, clients who had invested in First Venture and Build Homes;
- 2) associated documents evidencing the investments; and
- 3) banking documents regarding purported re-payments made to the clients who had invested First Venture and Build Homes.

Letter #1 – May 25, 2009

37. By letter dated May 25, 2009, sent by email, regular mail and registered mail, Staff requested the Respondent provide answers to the undertakings he had given at his interview by June 8, 2009.

38. By June 8, 2009, the Respondent had not replied to Staff or provided any answers to undertakings.

39. On June 8, 2009, the Respondent emailed Staff advising that he had not been successful in obtaining all of the answers to undertakings, and requested an extension of the June 8, 2009 deadline.

40. By reply email dated June 8, 2009, Staff requested that the Respondent provide the documents he had obtained thus far, and requested the Respondent provide answers to the balance of the undertakings by June 15, 2009.

41. By email dated June 8, 2009, in response to Staff's email, the Respondent acknowledged the extended deadline was now June 15, 2009, and advised that he would submit the documents he had in hand.

42. By July 8, 2009, the Respondent had not replied to Staff or provided any answers to undertakings.

Letter #2 – July 8, 2009

43. By letter dated July 8, 2009, sent by email, regular mail and registered mail, Staff requested that the Respondent provide answers to his undertakings.

44. The copy of the letter sent by email was successfully delivered to the Respondent's inbox. The copy of the letter sent by registered mail was returned to the MFDA.

45. The Respondent did not reply to Staff or provide any answers to undertakings.

Letter #3 – July 20, 2009

46. By letter dated July 20, 2009, sent by email, regular mail and registered mail, Staff requested that the Respondent provide answers to his undertakings by July 24, 2009.

47. The copy of the letter sent by email was successfully delivered to the Respondent's inbox. The copy of the letter sent by registered mail was returned to the MFDA.

48. The Respondent did not reply to Staff or provide any answers to undertakings.

Letter #4 – October 5, 2009

49. By letter dated October 5, 2009, sent by process server, Staff requested that the Respondent provide answers to his undertakings by October 16, 2009.

50. The process server was unable to locate the Respondent at the address that he had provided at his MFDA interview.

Letter #5 – November 16, 2009

51. By letter dated November 16, 2009, sent by registered mail and email, Staff advised the Respondent that the matter was being escalated to MFDA Enforcement.

52. The copy of the letter sent by email was successfully delivered to the Respondent's inbox. The registered mail copy of the letter was marked "item refused by recipient" and returned to the MFDA.

Letter #6 – March 15, 2010

53. By letter dated March 15, 2010, sent by process server and email, Staff advised the Respondent that the MFDA was contemplating commencing proceedings.

54. The process server was unable to locate the Respondent at the address that he had

provided at his MFDA interview.

55. By failing to provide the above-described information to Staff, Staff has been unable to determine the full nature and extent of the Respondent's activities as described in Allegations #1 to #4 above.

56. Commencing on or about May 25, 2009, by failing to respond to Staff and provide answers to the undertakings given at his interview, the Respondent has failed to cooperate with an MFDA investigation, contrary to section 22 of MFDA By-law No. 1.

The Hearing

57. The hearing proceeded on April 13 and 14, 2010, in the absence of the Respondent. Although MFDA Rule 8.4(1)(b) provides that a hearing panel may "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", the Panel considered the evidence contained in Daniela Capozzolo's detailed three-volume affidavit, which traces the Respondent's conduct relevant to the five allegations brought against him. The affidavit also includes a 112-page transcript of the investigator's interview of the Respondent, held on May 22, 2009, in the course of which he undertook to provide additional materials to Staff, but which, despite a series of e-mailed reminders, he failed to do.

58. The Panel also heard from two witnesses, TV and SS, who described their dealings with the Respondent and how they were persistently misled by him. TV was more lucky (if one may use that word) than most of the Respondent's victims: his persistent efforts to recoup part of his investment reduced his loss to \$9,000 plus interest (less a further amount paid by way of settlement by the Respondent's employer). SS and her husband were less fortunate. They lost a total of \$212,000 plus interest in a series of 'investments' with the Respondent made over a four-year period. A good portion of the monies advanced to the Respondent (about \$90,000) was obtained by cashing in their RRSP savings which they had accumulated over 17 years. When asked by counsel how the Respondent's conduct affected her, SS replied: "It was my life."

Discussion

59. The evidence, both *viva voce* and by way of the investigator's affidavit, leaves no doubt that the Respondent did, indeed, commit the violations alleged against him by MFDA staff: he engaged in securities related business that was not carried on for the account of and through the facilities of the Member; he had another gainful occupation that was not disclosed to the Member; he failed to notify his clients of his personal interest in investments he recommended; he failed to return or account for most of the monies received from his clients; and finally, he failed to respond to the MFDA staff and provide answers to undertakings given in the course of his interview with the MFDA investigator.

60. In the result, having heard the evidence and deliberated at the conclusion of the hearing, the Panel found the allegations proven and invited counsel to speak to the appropriate penalty.

The Penalty

61. It is fair to say that the Respondent's misconduct, carried out over a period of seven years, was of the most serious kind. As SS said, it was her life, and it surely ill-affected the lives of many others. The evidence shows that the Respondent gained the confidence of members of the Tamil community by way of radio broadcasts. And even though he had other clients as well, the fact that he could communicate with most of his victims in their own language made them feel secure and he took full advantage of that.

62. In the Panel's view, the Respondent's misdeeds were egregious and call for very severe punishment. And while every case must be considered on its own merits, sight must not be lost of the fact that the primary goal of securities regulation is the protection of investors: *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.

63. In the case now before us, the only mitigating factor is that this is the Respondent's first appearance in a disciplinary matter. But stacked against that is his long improper record, the large amounts involved, the enormous impact his manipulations had on the lives of his victims, and his almost total failure to reimburse, in whole or in part, his clients.

64. Past cases suggest that a fine in the approximate amount of the loss incurred by the victims is appropriate in cases of this nature: see, for instance, *In re Cracower*, 2005 LNCMFDA 11. While the amended amount of monies lost by the Respondent is set at \$756,000, counsel submitted (as confirmed by the investigator) that the actual amount is closer to \$900,000. While this may well be correct, the Panel felt it was bound by what was alleged in the Amended Notice. But, as we said while passing sentence at the hearing, we are entitled to impose, within the legal limits, any sanction deemed appropriate by the Panel.

65. Considering the factors set out above, the Panel ordered as follows:

- 1) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- 2) The Respondent shall pay a global fine in the amount of \$1 million regarding Allegations 1 to 5 in the Amended Notice of Hearing, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- 3) The Respondent shall pay costs in the amount of \$25,000, pursuant to s. 24.2 of MFDA By-law No. 1; and
- 4) If a non-party to this proceeding requests production of or access to transcripts or exhibits in this proceeding that contain intimate financial or personal information, 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 intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 4th day of May, 2011.

“Fred Kaufman”

The Hon. Fred Kaufman, C.M., Q.C.,
Chair

“David Kerr”

David W. Kerr,
Industry Representative

“Guenther Kleberg”
Guenther W. K. Kleberg,
Industry Representative

Doc 252911