



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: Arsenio Sobrevilla

Heard: April 23, 2014 in Winnipeg, Manitoba
Reasons for Decision: July 9, 2014

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Robert Hucal)	Chair
Patricia Kloepfer)	Industry Representative
Greg Wiebe)	Industry Representative

Appearances:

Charles Toth)	Senior Enforcement Counsel, Mutual Fund
)	Dealers Association of Canada
)	
Arsenio Sobrevilla)	In person, not represented by Counsel
)	
)	

Introduction

1. By Notice of Hearing dated July 22, 2013, the Mutual Fund Dealers Association of Canada (“MFDA”) commenced disciplinary proceedings and we were constituted as a Hearing Panel, in the matter of Arsenio Sobrevilla (“Respondent”) pursuant to Sections 20 and 24 of MFDA By-Law No. 1.

2. The Notice alleged that the Respondent had engaged in conduct contrary to the By-Law, Rules and Policies of MFDA:

Allegation #1: Between June 2006 and March 2007, the Respondent prepared and submitted new account application forms and investment loan applications for 6 clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, thereby failing to observe the 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 June 2006 and March 2007, 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 strategy that he recommended to 6 clients, thereby failing to ensure that the leveraged investment recommendations were suitable for the clients and in keeping with the clients’ investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Between June 2006 and March 2007, the Respondent failed to ensure that the leveraged investment recommendations he made to 6 clients were suitable for the clients and in keeping with the clients’ investment objectives, having regard to the client’s relevant “Know Your Client” information and financial circumstances, including but not limited to the clients’ ability to afford the costs associated with the investment loans and withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

3. At the opening of the Hearing, Staff tendered an Agreed Statement of Facts signed by the parties April 7, 2014, which was admitted into the record as evidence.

Admissions and Issues to be determined

Allegation #1 – False and Misleading Loan and New Account Applications

4. The Respondent was the salesperson responsible for servicing the accounts of 6 clients, none of whom had ever purchased mutual funds or borrowed money to invest. The Respondent prepared and submitted new client forms and loan applications for the clients, containing false, incorrect and misleading information, in order to make it appear to WFG’s staff that the clients had satisfied WFG’s requirements, which increased the likelihood that the loans would be approved.

5. The nature of the failure by the Respondent was basically the same in the case of each set of clients – the loan applications inflated asset values, recorded liabilities inaccurately, inflated net worth and indicated “good” investment knowledge when knowledge was “none”.

6. By submitting inaccurate loan applications, the Respondent made it appear to WFG’s staff that requirements had been met regarding leveraging use and increased the likelihood of loan approval.

7. The standard of conduct expected from an Approved Person under MFDA Rule 2.1.1 was clearly contravened.

Allegation #2 – Failure to Explain the Risks and Benefits of Leveraging

8. The Respondent had an obligation to explain all the material risks of the leveraging strategy and recommendation and the risk assessment must be objective and realistic. Additionally, the assessment must take into account the impact of a market downturn and notwithstanding disclosure, the recommendation must have been suitable.

9. In this situation, the Respondent himself did not fully understand the process and as a result was unable to explain the strategy properly.

10. In Re Sarker, MFDA File No. 201327, which closely mirrors this case, the respondent was found to have contravened his duty when he failed to fully understand and explain the leverage investment strategy.

Allegation #3 – Unsuitable Leveraging Recommendations

11. The Respondent admits he failed to consider adequately, or at all, whether the clients could withstand a market downturn without jeopardizing their financial security and satisfy all loan obligations associated with the strategy. The respondent in the Sarker decision also was found to have contravened the suitability obligations under parallel circumstances.

Penalty

12. Subject to our determination, Staff proposed the appropriate penalty to be:

- a) a three-year prohibition on the Respondent's ability to be employed in a securities-related business associated with any MFDA Member;
- b) a fine of \$20,000; and
- c) costs of \$5,000.

13. As the primary goal of securities regulation is the protection of the investor, we have considered, in our penalty determination, the seriousness of the allegations; the Respondent's past conduct; the recognition by the Respondent of the seriousness of his activities; benefits received; risk to investors if the Respondent continued in the business; damage to the integrity of the capital markets; the need for deterrence; the requirement to alert others of the consequences of improper activities; and previous similar circumstance decisions. We have also considered MFDA penalty guidelines.

14. We considered the fact that the Respondent had no experience with respect to use of

borrowed money. When he joined WFG he was trained by Approved Person, Dennis Villarin and at all times the Respondent implemented the leveraged investment strategy relying on Villarin's methodology and approach. Villarin is the subject of disciplinary proceedings commenced by the MFDA with respect to, among other things, the leveraging practices developed while he was employed at WFG.

15. The Respondent himself invested \$100,000 while recommending his clients borrow to invest and, we are advised, continues to owe the full amount of the investment loan, while the mutual funds have reduced in value by approximately 50%.

16. We have considered the above and acknowledged the fact that the Respondent has expressed remorse for his actions and has cooperated with MFDA Staff.

17. We have concurrently issued decisions under similar circumstances involving other Respondents (*Re Gragasin*, MFDA File No. 201249 and *Re Sulkers*, MFDA File No. 201318).

18. Considering the foregoing, we are of the opinion that the proposed penalties are reasonable having regard to the conduct of the Respondent and the circumstances of this case.

DATED this 9th day of July, 2014.

“Robert Hucal”

Robert Hucal
Chair

“Patricia Kloepfer”

Patricia Kloepfer
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

