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: Douglas St. Arnault

Heard: October 14, 2009 in Vancouver, British Columbia
Reasons for Decision: November 27, 2009

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. H. Benjamin Casson, Q.C.	Chair
Martha Kane, CFP	Industry Representative
Wayne L. Brown	Industry Representative

Appearances:

Maria L. Abate	)	For the Mutual Fund Dealers Association
	)	of Canada
Douglas St. Arnault	)	Did Not Attend
	)	

1. By Notice of Settlement Hearing dated August 7, 2009, the Mutual Fund Dealers Association of Canada (the "MFDA") announced that a hearing would be held before a Hearing Panel of the Pacific Regional Council (the "Panel"), in Vancouver, British Columbia, on October 14, 2009. The purpose of the Hearing was to review and consider the terms of a Settlement Agreement which had been entered into by Douglas R. St. Arnault (the "Respondent") and Mark T. Gordon, Executive Vice-President of the MFDA, on July 17, 2009. The Hearing proceeded as scheduled and, after hearing the submissions of Maria L. Abate, Enforcement Counsel for MFDA ("Enforcement Counsel"), the Panel approved the Settlement Agreement.

2. Enforcement Counsel informed the Panel that MFDA Staff ("Staff") had conducted an investigation of the Respondent's activities in the course of a compliance examination which had commenced on March 17, 2008. The investigation disclosed the following set of facts which were agreed to by the Respondent:

- Douglas R. St. Arnault (the "Respondent") has been registered in British Columbia as a mutual fund salesperson with ARTECH Asset Advisory Services Inc. ("ARTECH") since May 10, 1982.

- At all material times, the Respondent was a Director and the Chief Compliance Officer of ARTECH.[1]

- ARTECH is located in Burnaby, British Columbia and has been a Member of the MFDA since February 8, 2002.

- By letter dated February 12, 2008, Staff notified the Respondent that a compliance examination would be conducted at the ARTECH offices beginning on March 17, 2008.

- On March 11, 2008, a teleconference was held between Staff and the Respondent to confirm the dates of the compliance examination and the preparation required to be undertaken by ARTECH prior to Staff's arrival.

[1] The Respondent is also the founder and past president of ARTECH.

- On March 17, 2008, Staff arrived at the ARTECH premises to begin the compliance examination. Staff in attendance was BO, PR and BH. Shortly before the end of the business day on March 17, 2008, the Respondent began using racist and sexist remarks to refer to the Staff conducting the compliance examination.

- On March 18, 2008, Staff returned to the ARTECH premises to continue the compliance examination. Staff in attendance was BO, PR and BH. Shortly after Staff recommenced their work, the Respondent again began using racist and sexist remarks to refer to the Staff conducting the compliance examination.

- At the end of the day, one of the Staff members, BO, advised her supervisor, JM, that the Respondent made numerous racist and sexist remarks to and in the presence of Staff during the compliance examination.

- Shortly thereafter, JM contacted the Respondent by telephone. JM advised the Respondent that he had been made aware of the comments directed towards Staff as they were conducting their compliance examination. JM advised the Respondent that he considered these comments inappropriate and requested that the Respondent refrain from making further comments while Staff attempted to complete the compliance examination.

- On March 19, 2008, Staff returned to the ARTECH premises to continue with the compliance examination. Staff in attendance was JL and PR.

- Shortly after Staff's arrival, the Respondent ordered JL and PR to leave the ARTECH premises. The Respondent indicated that he was upset by the telephone call he had received from JM. The Respondent then left the ARTECH premises.

- After the Respondent's departure, the Respondent's son arrived at the ARTECH premises. The Respondent's son met with Staff and attempted to determine a way in which Staff could complete the compliance examination. Staff advised the Respondent's son that they would need to speak with their supervisor about the events that had transpired.

- As a result of being ejected from the ARTECH premises by the Respondent, Staff was denied free access to the premises and documents of ARTECH required for the field work portion of the compliance examination. Staff was thereby impeded and delayed from completing the compliance examination in accordance with its usual procedures and to its usual standards.

- The field work portion of the compliance examination was eventually completed by Staff working from the MFDA offices and not the ARTECH premises on or about April 18, 2008, approximately one month after it was scheduled to be completed. In order to complete the field work portion of the compliance examination, Staff requested the documents it required through the Respondent's son. As the Respondent's son was not the Chief Compliance Officer and not very familiar with the documents required for the completion of the compliance examination, Staff would identify the required documents for the Respondent's son and he would gather the materials for delivery to the MFDA offices. Documents were also provided to Staff by facsimile or email.

- By letter dated June 26, 2008, Staff required the Respondent attend an interview at the offices of the MFDA concerning his conduct during the compliance examination.

3. As a result of the investigation, Staff concluded that the Respondent had failed to observe high standards of ethics and engaged in conduct unbecoming by making racist and sexist remarks to Staff while they were conducting a sales and financial compliance examination and had, therefore, contravened MFDA Rule 2.1.1(b) and (c) which provides:

> 2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall . . . :
>
> (b) observe high standards of ethics and conduct in the transaction of business;
>
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest….

4. Staff also concluded that the Respondent, on March 19, 2008 and thereafter, denied Staff free access to the premises and documents of the Member and thereby impeded and delayed the completion of a compliance examination in contravention of Section 22.2 of MFDA By-Law No. 1 which provides:

> 22.2 For the purpose of any examination or investigation pursuant to this By-law, the Corporation shall be entitled to free access to, and to make and retain copies of, all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member or person concerned, and no such Member or person shall withhold, destroy or conceal any information, documents or thing reasonably required for the purpose of such examination or investigation.

5. The Panel requested of Enforcement Counsel some additional information to support the allegation that the Respondent had made racist and sexist remarks to Staff during their compliance examination. Enforcement Counsel provided sufficient additional information to satisfy the Panel as provided for by Section 15.3(2) of MFDA Rules of Procedures, i.e.:

> 15.3
>
> (2) If a Respondent is not present at the settlement hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

6. The additional information was extracted from the transcript of an interview of the Respondent by an MFDA investigator on July 21, 2008 [Exhibit 4] and referred to by Enforcement Counsel at pages 25 to 34 of the October 14, 2009 Transcript of Proceedings.

7. The Respondent admitted to the conduct which contravened MFDA Rule 2.1.1(b) and (c) and Section 22.2 of MFDA By-law No. 1.

8. In reviewing and considering the Settlement Agreement, Enforcement Counsel urged the Panel to take into account the following factors:

- Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- Whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
- Whether the Settlement Agreement will foster confidence in the regulatory process itself.

9. In the proposed Settlement Agreement, the Respondent has agreed to the following penalty:

a) a reprimand;

b) a fine in the amount of $5,000;

c) legal costs in the amount of $2,500; and

d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.1.1 and Section 22.2 of MFDA By-law No. 1.

10. As to the appropriateness of the penalty, Enforcement Counsel submitted that the following considerations should apply:

- The seriousness of the allegations proved against the Respondent;
- The Respondent's past conduct, including prior sanctions;
- The Respondent's experience and level of activity in the capital markets;
- Whether the Respondent recognizes the seriousness of the improper activity;
- The harm suffered by investors as a result of the Respondent's activities;
- The benefits received by the Respondent as a result of the improper activity;
- The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- 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;
- The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- Previous decisions made in similar circumstances.

11. The Panel accepts the argument, advanced by Enforcement Counsel, that a Hearing Panel should not interfere lightly in a negotiated settlement so long as the penalties agreed upon are within the reasonable range of appropriateness given the conduct of the Respondent.

12. The Panel also recognizes the importance and usefulness of settlements in achieving MFDA objectives.

13. The Panel has carefully considered the factors as set out in paragraphs 8 and 10 of this Reasons for Decision and finds that the Settlement Agreement is an appropriate and reasonable resolution of this matter between MFDA and the Respondent.

14. The Order is signed, accordingly

DATED at Vancouver, British Columbia this 27th day of November, 2009.

"H. Benjamin Casson"
The Hon. H. Benjamin Casson, Q.C.
Chair

"Martha Kane"
Martha Kane, CFP
Industry Representative

"Wayne L. Brown"
Wayne L. Brown
Industry Representative

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