



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: Jeremy R. Stones

Heard: January 14, 2014, in Toronto, Ontario
Decision and Reasons: February 4, 2014

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Vlasios Kardaras	Industry Representative
Janet Himmeroder	Industry Representative

Appearances:

Charles Toth)	Senior Enforcement Counsel, Mutual Fund
)	Dealers Association of Canada
)	
Jeremy R. Stones)	Respondent, appeared in person
)	
)	

1. By Notice of Hearing dated June 4, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) made the following allegations of violations of the By-laws, Rules, or Policies of the MFDA against the Respondent Jeremy R. Stones.

Allegation #1: Between about July 2010 and April 2012, the Respondent engaged in conduct unbecoming an Approved Person when he:

- (a) without the knowledge or approval of client CS, his former spouse, opened a registered educational savings plan (“RESP”) account for the benefit of their two children in his name alone instead of as a joint account with client CS, contrary to his obligations as an Approved Person to client CS and to the terms of a Separation Agreement between the Respondent and client CS; and
- (b) without the knowledge or approval of client CS, subsequently withdrew a \$3,500 contribution, which he had received from client CS and deposited in the RESP account, to pay personal expenses;

contrary to MFDA Rules 2.1.1 and 2.1.4.

Allegation #2: In August 2011, the Respondent engaged in conduct unbecoming an Approved Person by providing information on a form filed with the Ontario Securities Commission which he knew to be false at the time he provided it, contrary to MFDA Rule 2.1.1.

2. The first appearance in this proceeding took place by telephone conference call on August 20, 2013. At that time the Respondent did not appear. We fixed January 14, 2014 for the hearing of the matter on its merits.

3. The Respondent did not file the Reply required by Rule 8 of the MFDA Rules of Procedure. He did, however, appear in person at the hearing. We adjourned the hearing for an hour so that he could familiarize himself with the affidavits which Enforcement Counsel intended to tender as evidence and to read the written submissions of Staff which Enforcement Counsel intended to present to us.

4. After the adjournment, the Respondent advised us that he had not consulted a lawyer and did not wish to do so. He told us that he recognized that he was at risk of very serious sanctions. Nevertheless, he stated that he did not want a further adjournment and that he wanted the hearing to proceed immediately. He further stated that he did not require the attendance of the deponents of the affidavits to attend for cross-examination. He told us that except for qualifications in respect to three matters, he did not disagree with the evidence which enforcement counsel proposed to tender against him. We will deal with those three matters later in these reasons.

5. We allowed Staff of the MFDA (“Staff”) to file the affidavits of Daniela Capozzolo and CS as exhibits. CS is the former wife of the Respondent. Because the Respondent did not file a reply, in the exercise of our discretion under Rule 8.4(1)(b), we accepted the facts alleged and the conclusions drawn by the MFDA in the Notice of Hearing. The Respondent participated in an extensive interview conducted by Staff pursuant to section 21.1(c) of MFDA By-law No. 1. The transcript of that interview is found at tab 1 of the affidavit of Daniela Capozzolo. We have read that transcript and from it we are aware of the Respondent’s position in regard to the issues in the case.

6. Enforcement Counsel addressed us and made submissions as to both liability and penalty. The Respondent did not testify but he did address us on both issues. He told us that he took full responsibility for his actions, expressed his remorse and said that he recognized that he had to face a severe penalty. He apologized for what he had done. We then reserved our decision and advised the parties that we would make our decision and deliver our reasons for it in due course.

LIABILITY

7. We will address the two allegations separately. For ease of reference we will repeat them. Before doing so, it is appropriate to set out the Respondent’s history in the investment industry.

Registration History

8. From March 17, 2009 to July 19, 2011, the Respondent was registered in Ontario as a mutual fund salesperson with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

9. After resigning from Quadrus, the Respondent became employed at Meridian Credit Union (“Meridian”) effective July 20, 2011. The Respondent subsequently transferred his registration as a dealing representative (in the category of mutual fund dealer) to Credential Asset Management Inc. (“Credential”), a Member of the MFDA. Credential is related to Meridian and offers mutual funds to Meridian’s clients. From September 2, 2011 to April 16, 2012, the Respondent was registered in Ontario as a dealing representative with Credential. Credential terminated the Respondent as a result of the events giving rise to the allegations.

10. At all material times, the Respondent conducted business in Orillia, Ontario.

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

12. **Allegation #1:** Between about July 2010 and April 2012, the Respondent engaged in conduct unbecoming an Approved Person when he:

(a) without the knowledge or approval of client CS, his former spouse, opened a registered educational savings plan (“RESP”) account for the benefit of their two children in his name alone instead of as a joint account with client CS, contrary to his obligations as an Approved Person to client CS and to the terms of a Separation Agreement between the Respondent and client CS; and

(b) without the knowledge or approval of client CS, subsequently withdrew a \$3,500 contribution, which he had received from client CS and deposited in the RESP account, to pay personal expenses;

contrary to MFDA Rules 2.1.1 and 2.1.4.

13. As noted above we have accepted the facts alleged in the Notice of Hearing. We now set out the circumstances out of which Allegation #1 arises as found in the Notice of Hearing.

14. Client CS is the former spouse of the Respondent. The Respondent and client CS separated on January 11, 2009 and subsequently divorced. The Respondent and client CS have two children.

15. In March 2010, the Respondent and client CS entered into a Separation Agreement. The Separation Agreement included a term which required each of them to contribute \$2,500 per year into a jointly held RESP for the benefit of their children (the “RESP Account”). The Separation Agreement specifically provided:

The parties each agree to invest \$2,500 a year into a RESP on behalf of the children. The current value of the RESP is \$13,630 in [client CS'] name. Any future deposits will be made into a new joint account until such time as the account values are equal, then the owner of the account will be responsible for depositing the \$2,500 into their own family RESP account. Any monies not used for education will be transferred to the children in the form of an RRSP. If only one child attends university, the parties will be able to use all the monies available in the account. [Emphasis added.]

16. The Respondent and client CS agreed that the Respondent would be responsible for opening the RESP Account and investing the contributions made by each of them.

17. In about May 2010, client CS provided the Respondent with a cheque in the amount of \$3,500 payable to Quadrus. The cheque represented client CS' contribution of \$2,500 to the RESP Account for the 2010 calendar year, plus an additional contribution of \$1,000.

18. On July 9, 2010, the Respondent, while at Quadrus, completed a Mackenzie Investments Education Savings Plan Application to open the RESP Account in his name alone, despite the fact that the Separation Agreement required the RESP Account to be opened as a joint account (i.e. with the Respondent and client CS as joint subscribers). By opening the RESP in his name alone, the Respondent knew or ought to have known that he was proceeding contrary to his obligations as an Approved Person to client CS and contrary to the terms of the Separation

Agreement.

19. At the time that he opened the RESP Account, the Respondent completed a Quadrus Know-Your-Client form (the “KYC Form”). The KYC Form indicated that client CS had a “financial interest” in the RESP Account. The reference to a “financial interest” in the KYC Form did not entitle client CS to act in any capacity with respect to the RESP Account.

20. Client CS was not aware that the Respondent had opened the RESP Account in his name alone and believed at all material times that it was a joint account in which she had the same interest, rights and entitlements as the Respondent.

21. Instead, the Respondent, as the sole subscriber of the RESP Account and as the mutual fund person responsible for servicing the account, controlled the RESP Account, including access to the monies deposited in the account, and was the only person entitled to receive account statements reporting on the status of the account. By opening the RESP Account in this manner, the Respondent avoided scrutiny of activity within the account by client CS.

22. The Respondent deposited the \$3,500 cheque from client CS in the RESP Account and invested the monies in mutual funds.

23. Unbeknownst to client CS, the Respondent did not contribute any monies to the RESP Account as required by the terms of the Separation Agreement.

24. Also on July 9, 2010, the Respondent completed a Canada Education Savings Grant Application (the “Grant Application”) in which he applied to the federal government, on behalf of his children, for educational grants available under the *Canada Education Savings Act* (S.C. 2004, c. 26). The Respondent identified himself in the Grant Application as the sole subscriber of the RESP Account.

25. The federal government subsequently provided a grant of \$700 (or 20% of the \$3,500 contribution made by client CS) and deposited these monies directly into the RESP Account.

After the grant monies were deposited in the RESP Account, the balance of the RESP Account was approximately \$4,200.

26. Between about September and November 2010, the Respondent made the following redemptions from the RESP Account:

Redemption Date	Gross Redemption	Deductions¹	Net Redemption
September 29, 2010	\$1,500.00	\$299.50	\$1,200.50
November 15, 2010	\$1,700.00	\$361.26	\$1,338.74
November 30, 2010	\$1,000.00	\$212.50	\$787.50
Total	\$4,200.00	\$873.26	\$3,326.74

27. The redemptions depleted the balance of the RESP Account to approximately \$261.22 (this remaining amount consisted of distributions generated by the underlying mutual funds held in the account).

28. The Respondent used the monies that he redeemed from the RESP Account to pay personal expenses.

29. Client CS was not aware that the Respondent had redeemed the monies from the RESP Account and used these monies to pay his personal expenses.

30. The Respondent resigned from Quadrus on July 19, 2011.

31. In August 2011, client CS contacted Quadrus about the status of the RESP Account and was informed that the Respondent had not opened the RESP Account as a joint account. At that time, client CS submitted a complaint to Quadrus regarding the Respondent's handling of the RESP Account and to determine the whereabouts of her \$3,500 contribution.

¹ The deductions consisted of \$207.91 of deferred sales charges and \$665.35 of repayments of the educational grants provided by the federal government.

32. Quadrus commenced an investigation in response to client CS' complaint. Shortly thereafter, Quadrus informed client CS that the Respondent had opened the RESP Account in his name alone and had redeemed monies from the RESP Account as described in paragraph 17 above.

33. Between about December 2011 and March 2012, the Respondent, by then an Approved Person of Credential, repaid client CS approximately \$1,900 in respect of the monies he had withdrawn from the RESP Account.

34. In April 2012, Quadrus reimbursed client CS the additional monies owed to her by the Respondent.

35. On April 16, 2012, Credential terminated the Respondent.

36. In addition, we refer now to two of the qualifications which the Respondent had to his acknowledgement of the evidence against him. As noted above, the Respondent did not open a joint account with the money which he received from CS. He explained to us that at the time he was under the impression, perhaps incorrect, that because he and CS were separated, a joint account in their two names was not permissible. He, therefore, opened the account in his name alone. He then gave CS a fictitious account number for the joint account which he was supposed to have opened. The Respondent acknowledges that when he formed the opinion that a joint account was not permissible, instead of doing what he did, he should have consulted with CS, advised her of the problem and explored with her possible solutions to the problem.

37. The second matter arises out of the evidence of his repayment of the monies wrongly taken. The outline of circumstances above shows that the Respondent paid to CS \$1,900 of the money which he had taken and that Quadrus repaid the balance to her. We now know that the Respondent has fully reimbursed Quadrus for the money which it paid to CS. Thus the Respondent has made full restitution.

38. Allegation #1 has two parts. The two parts deal with different aspects of the

Respondent's business conduct as an Approved Person. The relevant parts of MFDA Rules which apply to his conduct are:

2. RULE NO. 2 - BUSINESS CONDUCT

2.1 GENERAL

2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (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; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

2.1.4 Conflicts of Interest

- (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member
- (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

39. When CS gave the Respondent a cheque for \$3,500 to open a jointly owned RESP account for the benefit of the children she became his client. When he opened the account in his name alone he was obviously in a conflict of interest with his client. As well, that act amounted to a failure to deal fairly, honestly and in good faith with his client.

40. The taking of the \$3,500 from the account for his own use constituted misappropriation. Misappropriation is obviously a breach of the standard of conduct and is as well a serious

conflict of interest.

41. There can be no doubt that the Respondent's conduct amounted to a violation of both MFDA Rules 2.1.1 and 2.1.4. We find that Allegation # 1 has been proven.

42. **Allegation #2:** In August 2011, the Respondent engaged in conduct unbecoming an Approved Person by providing information on a form filed with the Ontario Securities Commission which he knew to be false at the time he provided it, contrary to MFDA Rule 2.1.1.

43. As we did with Allegation #1 we accept that the circumstances were as set out in the Notice of Hearing.

44. In April 2011, the Bank of Montreal obtained a civil judgment against the Respondent in the amount of approximately \$18,000 in respect of unpaid credit card debts (the "Judgment").

45. As stated above, the Respondent resigned from Quadrus in July 2011. In August 2011, the Respondent joined Meridian and subsequently became registered with Credential on September 2, 2011.

46. In August 2011, the Respondent completed a "Transfer of Registration From Another Dealer" form (the "Transfer of Registration") in order to transfer his registration as a dealing representative (in the category of mutual fund dealer) to Credential.

47. On the Transfer of Registration, the Respondent confirmed that, over the past 10 years, he had not failed to meet a financial obligation of \$5,000 or more as it came due.

48. The information provided by the Respondent on the Transfer of Registration was false as the Respondent was aware of, and continued to owe monies in respect of, the Judgment at the time the Respondent completed the Transfer of Registration and provided it to Credential for filing with the Ontario Securities Commission ("OSC").

49. By failing to disclose the Judgment to Credential, the Respondent also prevented Credential from complying with its reporting obligations to the MFDA under MFDA Policy No. 6.

50. Based upon the information in the Transfer of Registration filed by Credential with the OSC, the OSC approved the transfer of the Respondent's registration to Credential effective September 2, 2011.

51. We now refer to the third factual matter which the Respondent brought to our attention. As noted above, when the Respondent completed the Transfer of Registration form in August of 2011 there was an outstanding judgment for \$18,000 against him. The affidavit of Daniela Capozzolo discloses that at that time his employer had been served with a notice of garnishment. Enforcement Counsel advised us that while the Respondent knew of the judgment, he does not dispute the Respondent's assertion to us that he was not aware that garnishment proceedings had been taken in the case.

52. The Transfer of Registration form contained the following question:

Over the last 10 years have you failed to meet a financial obligation of \$5,000 or more as it came due ... ?

53. On the form the Respondent answered "no" to the question. During his interview he was asked why he had done so knowing that there was an outstanding judgment against him in favour of the Bank of Montreal. He gave the following response:

MR. STONES: I didn't see -- in hindsight I realize I was incorrect. I didn't see the seriousness of the Bank of Montreal judgment. I'd never been in that situation before. I'd had brilliant credit up to that. I've never -- I was unaware of the magnitude of what that was. Now, I've since gone from a life insurance/mutual fund advisor to working in the background, helping with loans and stuff, and in hindsight I can exactly see what it is. I had been in conversations with the Bank of Montreal, explaining to them my situation, and as soon as I was able, I stepped up to meet those obligations. So I didn't see the seriousness of what had happened. I therefore answered no to the questions.

54. We are unable to accept that failing to appreciate the “seriousness” of the situation could justify making a wrong answer to an unambiguous question.

55. In *Re Satti*, [2012] MFDA Central Regional Council File No. 201141, an Approved Person made an application for employment which contained false or misleading information. The Hearing Panel held, at paragraph 64:

64. By submitting an application for employment to FundEX containing false or misleading information and thereafter making false or misleading representations to FundEX concerning matters relating to the application, Satti acted contrary to MFDA Rule 2.1.1.

56. We agree that an Approved Person who puts incorrect information in an important document acts in violation of Rule 2.1.1. We think that the obligation to be completely truthful is particularly important when one is completing a form required by an industry regulator.

57. A Transfer of Registration form is required by the OSC to enable it to judge whether a person is fit to be registered to work in the securities industry. The statutory regime requires that the Director determine whether an applicant is suitable to be registered. The process and criteria can be found in *Re Florence* (2004), 27 OSCB 7583 at page 5:

... The question for the Director in reviewing an application for **registration** is whether an applicant is suitable for **registration** or whether registering the applicant would be objectionable.

Fundamental criteria for determining suitability for **registration**

The meanings of ‘suitable’ and ‘objectionable’ for these purposes are not set out in Ontario securities laws. However, the OSC has articulated three fundamental criteria for determining suitability for **registration**:

1. integrity, which includes honesty and good faith, particularly in dealing with clients, and compliance with Ontario securities laws;
2. competence, which includes prescribed proficiency and knowledge of the requirements of Ontario securities laws; and
3. financial **solvency**, which is considered relevant because it is an indicator of a firm’s capacity to fulfil its obligations and can be an

indicator of the risk than an individual will engage in self-interested activities at the expense of clients.

58. The question about whether the Respondent was meeting obligations as they came due was very important because it was directly relevant to the OSC's criteria of financial solvency and it also related to the criteria of integrity. The failure to give a correct answer deprived the OSC of the ability to judge whether the Respondent was suitable for registration. The false answer struck at the very ability of the OSC to perform its statutory obligation.

59. The OSC takes a very serious view of the obligation of an applicant to be completely truthful in documents relating to registration. In *Re Doe* (2010), 32 OSCB 1371 at paragraph 41 the following appears:

41 In my view, one **false** statement is enough to discredit the Applicant's credibility and raise an issue as to his integrity. In other words, one **false** statement is sufficient to result in the Applicant's application for **registration** being denied on the basis that the Applicant lacks the requisite integrity required of a securities industry professional and is, therefore, not suitable for **registration**.

60. What is said at paragraph 47 is also germane to the issues in this case:

47 Moreover, even if the Applicant somehow was honestly mistaken in the chain of inaccurate disclosure he provided to OSC staff (which I doubt) I agree with the statement in *Re Doe* that integrity is broader than dishonesty and encompasses a certain duty of care in one's work product. The Applicant had a duty to carefully complete documents relating to his **registration**, including his initial application for **registration**. ...

[Emphasis added]

61. We have no hesitation in concluding that the Respondent's incorrect answer in the Transfer of Registration form constituted a clear violation of Rule 2.1.1 and accordingly find that Allegation #2 has been proven.

PENALTY

62. In his submission, Enforcement Counsel suggested that the penalties should cover both

allegations. It does not seem practicable to us to attempt to distinguish between them because any prohibition ordered because of Allegation #2 would be subsumed under the prohibition which we must order in relation to the misappropriation which is part of Allegation #1.

63. There is no doubt that these contraventions are very serious ones. The gravest of them is, of course, the misappropriation of funds from the RESP account. MFDA jurisprudence seems constant. In the case of misappropriation the appropriate penalty is permanent prohibition. For example, see *Re: Amundrud*, [2013] MFDA Prairie Regional Council, File No. 201250, Hearing Panel decision dated April 26, 2013; *Re Sandink*, [2006] MFDA Ontario Regional Council, File No. 200602, Hearing Panel Decision dated July 19, 2006; and *Re Coleman*, [2006] MFDA Atlantic Regional Council, File No. 200513, Hearing Panel Decision dated July 13, 2006. Misappropriation is egregious and detracts from the public trust which is essential to the investment industry. A person who has misappropriated a client's money can have no place in the industry.

64. Jurisprudence is constant that a Hearing Panel must, when determining what is an appropriate penalty, consider mitigating circumstances. Apart from the allegations which he is facing, the Respondent has no disciplinary history. His conduct since his violations has been commendable. He has made full restitution. He cooperated fully with Staff during its investigation. He appeared at this hearing. He acknowledged his responsibility. He blamed no one else. He made no excuses. He expressed what we are satisfied was genuine remorse. He fully apologized.

65. In many cases that conduct would call for significant mitigation of what would otherwise be an appropriate penalty. However misappropriation of a client's funds is so serious that we cannot make an exception to what we see as a general rule, namely, that misappropriation must result in permanent prohibition from the industry.

66. We agree with Staff that in addition to prohibition a fine is appropriate for deterrent purposes. Staff suggested that we order that the Respondent pay a fine of \$10,000 and costs of \$5,000. The suggested amounts are reasonable ones. However, insofar as the monetary penalties

are concerned, we think that the Respondent's commendable conduct, to which we have referred, should be recognized as mitigating those amounts. We have decided that, because of mitigation, the fine and costs should be fixed at \$5,000 and \$2,500 respectively.

67. In the result we make the following orders:

- a) The Respondent is permanently prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.
- b) The Respondent shall pay to the MFDA a fine in the amount of \$5,000 and costs in the amount of \$2,500.

DATED this 4th day of February, 2014.

“Patrick T. Galligan”

The Hon. Patrick T. Galligan, Q.C.,
Chair

“Vlasios Kardaras”

Vlasios Kardaras,
Industry Representative

“Janet Himmeroder”

Janet Himmeroder,
Industry Representative