



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: Collin W. Sulkers

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
)	
Collin W. Sulkers)	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 Collin W. Sulkers (“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: In about March 2007, the Respondent prepared and submitted applications for investment loans to a lender for 2 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: In about March 2007, the Respondent failed to ensure that the leveraged investment recommendations he made to 2 clients were suitable for the clients and in keeping with the clients’ investment objectives, having regard to:

- a) 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; and
- b) the Member’s requirements regarding the use of leveraging, as set out in the Member’s policies and procedures;

contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: In about 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 2 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 #4: Between about October 2006 and July 2008, the Respondent relied upon the lender's approval of investment loans for 38 clients, as the determination that the leverage investment recommendations he made for those clients were suitable and in keeping with the clients' investment objectives, without performing his own assessment of the suitability of the leverage investment recommendations, 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 11, 2014, which was admitted into the record as evidence.

Registration History

4. The Respondent was registered from July 2006 to September 2009 as a mutual fund salesperson or branch manager with WFG Securities of Canada Inc. ("WFG") - in Manitoba as a salesperson from July 2006 to November 2008; in Alberta as a salesperson from November 2007 to September 2009; and in Manitoba as branch manager from November 2008 to September 2009, when he resigned.

5. At all material times the Respondent conducted business in Winnipeg and is not currently registered in the securities industry in any capacity.

Allegation #1 - Loan Applications

6. The policies of the Respondent's employer, WFG, required that the Respondent assess and determine whether a leveraged investment recommendation was suitable for a client, recognizing certain criteria. The Respondent completed at least two loan applications to AGF Trust Co. for clients which contained false or misleading information. In particular, for one client, showing a gross income of \$64,716 when the Respondent knew the income to be \$53,780

and for a second client \$26,500 when the gross income was actually \$7,000. Liabilities reported on the loan applications totaled \$28,000 when in fact liabilities were \$92,000. The Respondent reported net worth of the clients using understated liabilities. The misreporting ensured that the loan applications satisfied WFG's requirements. Although the applications were signed, the clients did not notice the incorrect information.

Allegation #2 - Unsuitable Leveraging Recommendations

7. The Respondent recommended and assisted the clients in borrowing \$150,000 to purchase certain "Return of Capital" ("ROC") mutual funds.

8. The Leveraged Investment Strategy recommended was based on the premise that there were sufficient mutual funds proceeds monthly to pay costs associated with the loans and to provide supplementary income.

9. In the course of the recommendations, in addition to the proceeds generated monthly, the Respondent indicated that the mutual funds would retain their initial value and could be sold to repay the loans.

10. The clients had limited investment knowledge and/or experience.

11. In 2008, the mutual funds declines in value by 34% to approximately \$98,000 and the monthly distributions were reduced and were no longer sufficient to cover the cost of borrowing.

12. In 2012, the mutual funds were sold and the clients incurred an investment loss of approximately \$76,000 (more than 50% of their initial investment) and were forced to remortgage their residences.

Allegation #3 - Failure to provide a fair and balanced presentation

13. In the course of recommending the Leverage Investment Strategy the Respondent represented that the mutual funds could be relied upon to generate sufficient monthly proceeds to

pay investment loan costs and provide additional income and that they would retain their initial value and could be used to repay the loan.

14. The Respondent did not explain the risks, benefits and features inherent in the Leverage Investment Strategy.

15. The Respondent misrepresented, failed to fully explain, or omitted to explain that:

- a) the mutual funds could reduce, suspend or cancel payments;
- b) the mutual funds could decline in value;
- c) if the monthly distributions were reduced, the investors might incur costs associated with the loans;
- d) if the mutual funds were sold in order to repay the loans, the investors might not be able to repay the loans in their entirety if the value of the mutual funds declined;
- e) any shortfall would have to be made up from income, savings or additional borrowings; and
- f) a rise in interest rates might increase investors' loan payments.

Allegation #4 – Relying on the Lender to determine suitability of Leverage

16. The Respondent was the salesperson responsible for servicing accounts of 38 clients of WFG, to whom a leverage investment strategy was recommended. Between October 2006 and July 2008, the clients obtained one or more loans to purchase investments relying upon the Respondent's recommendation – the loans totaled \$2,827,349.

17. At all material times, WFG's policies and procedures required its salespersons, including the Respondent, to conduct their own assessment and determination as to whether or not a leverage investment strategy was suitable for the client. The general parameters required that the clients' risk tolerance be medium or higher; that borrowed monies must not exceed 40% of clients' net worth; that investment knowledge be good or excellent; that the client be able to afford to service the debt using own personal income.

18. The Respondent recommended leverages to 38 clients without giving proper consideration to relevant “Know-Your-Client” information, including ability to afford associated costs of any service requirements. The Respondent did not conduct any suitability assessments and relied entirely on the Lender’s approval of loans for 38 clients without performing his own assessment of the suitability of the leverage investment recommendation made by him.

Misconduct Admitted

19. The Respondent admits that he prepared and submitted loan applications which he knew contained false, misleading or incorrect information; failed to ensure that leverage investment recommendations were suitable; misrepresented, failed to fully explain or omitted to explain, risks, benefits and features of the investment recommendations; and relied on Lender’s approval of loan applications without performing his own suitability assessment thereby failing to observe the high standards of ethics and conduct in the transaction of business as an Approved Person, contrary to MFDA Rule 2.1.1.

Penalty and Factors Considered

20. The relevant rules and provisions with respect to penalties are contained in S. 24.1.1 of MFDA Bylaw No. 1.

21. In determining the appropriate penalty, we considered the seriousness of the allegations; past conduct and prior sanctions; whether or not the Respondent recognized the seriousness of the improper activity; the harm suffered; benefits received by the Respondent; risk to the capital markets and investors if the Respondent continued in the business; damage caused to the integrity of the capital markets; the need to deter; and previous decisions in similar circumstances.

22. We considered the nature of the misconduct which in part included providing false information; the failure to comply with the suitability and “Know-Your-Client” obligations; the fact that clients SB and BB incurred investment losses of approximately \$76,000; MFDA Staff’s

representation that the Respondent did not in their opinion constitute a permanent risk to investors; that the Respondent had no previous sanctions; and the fact that the Respondent recognized the seriousness of his misadventures and misconduct. We recognize the precedent established by previous decisions including this Panel's concurrent decisions in *Re Gragasin*, MFDA File No. 201249 and *Re Sobrevilla*, MFDA File No. 201351. We also recognize that the Respondent's training by WFG was limited and clearly lacking. We were told that the leverage investment strategy was developed by Dennis Villarin, a WFG registrant, who himself is the subject of parallel disciplinary proceedings with respect to leveraging procedures.

23. We agree with the penalties proposed by staff and confirm our Order to that effect, namely:

- a) A three (3) year prohibition from conducting securities related business with any MFDA registrant;
- b) A fine of \$20,000;
- c) Costs of \$5,000

24. We believe the penalties are within the guidelines reflecting the circumstances of the 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