



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTION 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Mohamed Tahir

Heard: April 7-8, 2015, in Toronto, Ontario
Reasons for Decision: August 4, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth)	Chair
Guenther W.K. Kleberg)	Industry Representative
Casmir Litwin)	Industry Representative

Appearances:

Francis Roy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Mohamed Tahir)	Not present nor represented by counsel
)	
)	

BACKGROUND

1. By Notice of Hearing (the “Notice of Hearing”) dated the 19th day of December, 2014, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to hear evidence and submissions with respect to the allegations against Mohamed Tahir (the “Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation No. 1: Commencing March 31, 2014, the Respondent failed to cooperate with an investigation concerning client complaints that he may have engaged in unauthorized activity in client accounts and may have misappropriated or failed to account for client monies, by failing to provide a written statement and produce documents and records requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1;

Allegation No. 2: Between June 2003 and December 2011, the Respondent prepared and submitted new account application forms and investment loan applications for client AP and client ML 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 No. 3: Between June 2003 and December 2011, 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 at least client AP and client ML, thereby failing to ensure that his 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 No. 4: Between June 2003 and December 2011, the Respondent failed to ensure that the Leveraged Investment recommendations he made to client AP and client ML were suitable for the clients and in keeping with the clients' investment objectives, having regard to:

- (i) the clients' relevant "Know Your Client" information and personal 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
- (ii) 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.

3. The Respondent attended and participated at the first appearance in this matter held January 26, 2015. During that attendance it was ordered, among other things, that the Respondent serve and file a Reply no later than February 28, 2015. In any event of that order, the Respondent failed to serve a Reply in this matter by February 28, 2015, or at all. The Respondent also failed to attend at the Hearing which proceeded on April 7th and 8th 2015.

4. At the Hearing, Staff of the MFDA ("Staff") called Daniela Capozzolo Senior Investigator with the MFDA. In addition Staff filed Ms. Capozzolo's Affidavit sworn April 1, 2015. Staff also called AP, a former client of Worldsource Financial Management Inc. ("Worldsource") whose accounts were serviced by the Respondent.

5. Relying on Section 20.4 of the MFDA By-law No.1, Staff requested that the Panel simply accept the facts alleged and conclusions contained in the Notice of Hearing as proven. The Panel rejected this approach and Staff proceeded with its evidence.

THE FACTS

6. From the evidence led at the Hearing, the Panel concluded:

- (a) The Respondent was registered in Ontario with Worldsource, a member of the MFDA, as a:
 - (i) Dealing representative (in the category of mutual fund dealer), from January 8, 2003 to December 12, 2011; and;
 - (ii) Dealing representative (in the category of exempt market dealer) from September 28, 2009 to September 22, 2010;
- (b) Prior to that, from November 2001 to December 2002, the Respondent was registered as a mutual fund sales person with Optifund Investments Inc. then a member of the MFDA.
- (c) On December 4, 2002, the Respondent signed an Agreement of Approved Person wherein he agreed, among other things:
 - (i) To be bound by, observe and comply with the MFDA Rules as they are from time to time amended, or supplemented; and
 - (ii) That he was conversant with the MFDA Rules, and that he would keep himself fully informed about the MFDA Rules as they were amended or supplemented;
- (d) Worldsource terminated the Respondent on December 9, 2011. The Respondent is not currently registered in the securities industry in any capacity;

Allegation #1 – The Respondent’s Failure to Cooperate

- (e) Staff commenced its investigation of the Respondent in the Fall of 2011, following client complaints it had received alleging that the Respondent had made unsuitable leveraging recommendations for their accounts;

- (f) On March 22, 2012, February 7, 2013, March 26, 2013 and December 12, 2013, the Respondent attended at interviews with Staff pursuant to section 22.1 of the MFDA By-law No. 1 with respect to, among other matters, his recommendation of Leveraged Investment Strategies to clients AP and AL and ML (the “Interviews”);

- (g) Between March 17, 2014 and October 27, 2014, the MFDA received seven additional client complaints concerning the Respondent (the “2014 Complaints”). The 2014 Complaints alleged, among other things, that the Respondent had, without the knowledge or instructions of the clients:
 - (i) Obtained a loan in the name of two clients, the proceeds of which the Respondent may have misappropriated and applied for his personal use;
 - (ii) Processed redemptions in client accounts using blank signed forms, the proceeds of which the Respondent may have misappropriated and applied for his personal use;
 - (iii) Solicited and accepted cheques from clients payable to the Respondent personally, purportedly to invest the monies on the clients’ behalf, and then failed to invest the monies as instructed by the clients or otherwise account for the monies;
 - (iv) Made unauthorized transfers of cash from one client’s bank account to his own personal bank account and may have misappropriated the monies; and
 - (v) Used monthly contributions provided to him by clients to purchase insurance products for the clients instead of purchasing mutual funds or contributing the monies to the clients mutual fund accounts, contrary to the clients’ instructions;

- (h) Upon receipt of the 2014 Complaints, Staff commenced an additional investigation of the Respondent and in particular, his conduct as it related to the 2014 Complaints. Lindsey Mahoney, the MFDA Case Assessment Officer who

was assigned to assess the 2014 Complaints, sent letters to the Respondent on March 31, 2014, May 21, 2014, June 25, 2014, July 9, 2014, August 6, 2014 and October 16, 2014 requesting that the Respondent provide responses and documents concerning the subject matter of the 2014 Complaints;

- (i) On April 3, 2014 at 11:41 a.m., the Respondent called Lindsay Mahoney, the MFDA Case Assessment Officer who was assigned to assess the 2014 Complaints. During that telephone call, the Respondent requested that Ms. Mahoney tell him the name of the complainants who were the subject of Staff's letter to the Respondent dated March 31, 2014. In response to the Respondent's inquiry, Ms. Mahoney told him that the complainants were clients DH and EH. Upon being told of the complainants' names, the Respondent hung up on Ms. Mahoney.
- (j) After April 3, 2014, Staff never again heard from the Respondent in relation to the 2014 Complaints. He failed to respond to Staff's letters dated March 31, 2014, May 21, 2014, June 25, 2014, July 9, 2014, August 6, 2014 and October 16, 2014 (Exhibits "F" to "K" of the Capozzolo Affidavit) and has never submitted a written response or provided the documents requested by the Staff in respect of the 2014 Complaints. In fact, the only other time Staff heard from the Respondent was during the first appearance held in this matter on January 26, 2015;
- (k) As a result of the Respondent's failure or refusal to cooperate with Staff's investigation relating to the 2014 Complaints, Staff has been unable to determine the full nature and extent of the Respondent's activities and, in particular, whether he may have misappropriated monies from the clients and other individuals;

The Respondent Made Unsuitable Leveraging Recommendations for Client AP

- (l) In December 2002, AP became a Worldsource client whose accounts were serviced by the Respondent;

- (m) The Respondent remained AP's servicing mutual fund sales person until his termination from Worldsource on December 9, 2011;
- (n) When she first met the Respondent, client AP was a 53-year-old widow, retired and receiving long-term disability benefits of \$1700 per month and pension benefits of \$400 per month. She had no reasonable prospect for employment due to her age and health issues. Her only assets consisted of her unencumbered home, valued at between \$149,000 and \$176,000 and \$146,000 in a registered retirement income fund inherited from her deceased husband. Client AP had little to no investment knowledge and no investment experience. She was clearly financially unsophisticated. Additionally, she had suffered from breast cancer.
- (o) In or about June 2003, the Respondent recommended and facilitated the implementation of a leveraged investment strategy in the accounts of client AP (the "Leveraged Investment Strategy");
- (p) According to the Respondent, the Leveraged Investment Strategy was intended to provide client AP with additional assets and sources of income in retirement. The Respondent directed client AP to obtain investment loans and then recommended that she use the loan proceeds to purchase mutual funds and segregated funds. The Leveraged Investment Strategy was based, in part, on the premise that the investments would generate sufficient proceeds each month to at least equal the clients' costs of servicing their investment loans and, if additional proceeds were realized, the client could use the extra amounts to supplement their lifestyle. The Leveraged Investment Strategy was also purportedly structured to eliminate or minimize the tax consequences the client would face when she made monthly withdrawals from her registered account to service her investment loans as part of the strategy;

- (q) In the course of recommending the Leveraged Investment Strategy to client AP, the Respondent made the following representations, among others:
- (i) The Leveraged Investment Strategy would pay for itself such that client AP would not have to incur any out-of-pocket expenses in order to sustain the strategy;
 - (ii) The mutual funds purchased by client AP were low risk investments which would not decrease in value and could be counted on to grow in value 7% to 12% each year;
 - (iii) The mutual funds purchased by AP could be relied upon to pay her monthly or annual proceeds in the form of interest, dividend or capital gain payments;
 - (iv) The cost of servicing the investment loans could be paid using monthly withdrawals from client AP's registered account; and
 - (v) The Leveraged Investment Strategy was low risk, especially if client AP remained invested in the Leveraged Investment Strategy for at least 11 years.
- (r) Between June 2003 and June 2006, client AP, relying on the Respondent's recommendations and with the Respondent's assistance, applied for and obtained six investment loans totaling \$590,000 which she used to purchase mutual funds for her account, all of the mutual funds were purchased on a Deferred Sales Charge ("DSC") basis;
- (s) In addition, client AP relied upon the Respondent's recommendations and assistance to apply for and obtain two investment loans totaling \$150,000 which she used to purchase segregated funds.
- (t) Commencing in or about July 2003, client AP started receiving monthly proceeds from the mutual funds she had purchased with her investment loans and, relying on the respondent's recommendation, used the proceeds to enhance her lifestyle.

Client AP also commenced making monthly withdrawals from her registered account which she used to pay the costs of servicing her investment loans;

- (u) The Respondent did not discuss with client AP how she could or would repay the principal amount of her investment loans;
- (v) The Respondent failed to inform client AP that the \$250,000 loan she obtained from B2B Trust was a margin loan (the “B2B Loan”), which required client AP to ensure that the outstanding amount of the B2B Loan did not exceed 85% of the net asset value of the investments in her account. The Respondent failed to explain the features and inherent risks of a margin loan to client AP, adequately or at all, prior to implementing the Leveraged Investment Strategy in her account;
- (w) At the time the B2B Loan was made, the Respondent knew or ought to have known that client AP did not have income, income-earning ability or financial resources to maintain the required debt to asset ratio in her account in the event the value of the investments declined and B2B Trust made a margin call, or in the event she required additional sources of income to service her investment loans;
- (x) Commencing in 2007, the mutual funds client AP had purchased with her investment loan began to decline in value to an amount below the outstanding principal amount of her investment loans. That same year, relying on the Respondent’s recommendation, client AP sold some of the mutual funds to pay down a portion of her investment loans. DSC fees were deducted from the redemption proceeds, a fact that the Respondent did not disclose to client AP;
- (y) In 2008 and 2009, client AP substantially depleted the remaining monies in her registered account, after which time client AP no longer had a sufficient source of monthly cash flows to pay the costs of servicing her investment loans;

- (z) At or about the same time, the mutual funds client AP had purchased with her investment loans reduced, or stopped paying altogether, the monthly distributions paid to investors;
- (aa) The depletion of her registered account combined with the reduction in the distributions paid by the mutual funds, resulted in client AP no longer having sufficient monies available to her to pay the costs of servicing her investment loans. Further, as a result of the decline in value of her mutual funds to an amount below the outstanding principal of her investment loans, client AP was not in a position to sell her mutual funds and use the sale proceeds to fully pay down her investment loans without incurring a shortfall for which she would be responsible;
- (bb) Commencing in 2008, relying upon the Respondent's recommendation, client AP commenced selling off portions of the mutual funds she had purchased with her investment loans to make the required monthly payments on her investment loans. By December 2011, client AP had sold all of the mutual funds and still owed \$34,334.47 in respect of her investment loans;
- (cc) In 2010, at the Respondent's recommendation, client AP sold the segregated funds she had purchased with investment loans. To finance the shortfall required to pay off those investment loans, client AP, on the Respondent's recommendation, obtained a \$150,000 mortgage from the National Bank;
- (dd) After selling the majority of the mutual funds and segregated funds she had purchased under the Leveraged Investment Strategy, and after receiving some compensation from Worldsource in 2014, client AP is, as of March 28, 2015, still left with an investment loan shortfall of approximately \$53,200, which includes loans and mortgages totalling \$247,800. AP has no realistic possibility of paying down that debt;

Allegations #2 – False, Misleading and Incorrect Account Opening and Loan Documents

- (ee) The Respondent or his assistant completed the documents required to implement the Leveraged Investment Strategy in the accounts of client AP, including the account opening documents and investment loan applications, without discussing or explaining the documents with the client. The Respondent then had the client sign the completed documents without reviewing them with the client adequately or at all. As a consequence, the documents did not accurately reflect the client’s know-your-client information and her true personal and financial circumstances in material respects, as set out below;

- (ff) Commencing with the January 12, 2005 account documents, the Respondent knew or ought to have known that the KYC information recorded and maintained for client AP, as well as investment loan application documents completed for client AP, were false, misleading or incorrect in that:
 - (i) The income recorded for client AP significantly exceeded her actual income;
 - (ii) The net worth for client AP was significantly inflated in that the Respondent:
 - (A) Significantly inflated the value of client AP’s home; and
 - (B) Included the value of the mutual funds client AP purchased with her investment loans without offsetting the value of those assets with the amounts owing on her investment loans;
 - (iii) The Respondent changed client AP’s investment objective from 90% “income” to one in which a combination of “growth” and “speculative” comprised at least 70% of the objective, without any basis for doing so;
 - (iv) The Respondent increased client AP’s level of investment knowledge from “poor” to “fair” without any basis for doing so; and

- (v) The Respondent increased client AP's risk tolerance from 100% "low" to one in which "medium" and "high" together compromised either 70% or 80% of her risk tolerance, without any basis for doing so;

Allegation #3: Failure to Explain the Leveraged Investment Strategy

- (gg) At all material times, client AP relied entirely or substantially on the Respondent's recommendations with respect to the Leveraged Investment Strategy and his explanations of the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy;
- (hh) The Respondent did not take any, or sufficient, steps to ensure that she understood or adequately informed herself of the risks inherent in using borrowed monies to invest;
- (ii) As a consequence, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, features and costs, among others, of the Leveraged Investment Strategy to the client;
- (jj) The Respondent obtained Leverage Disclosure Documents signed by the client prior to implementing Leveraged Investment Strategy in her accounts but failed to adequately review and explain the contents of the documents to the client to ensure that she understood and accepted the risks of using borrowed monies to invest. The Respondent also failed to provide a copy of the Leverage Disclosure Documents to client AP;

Allegation #4: Unsuitable Leveraging Recommendations

- (kk) The Leveraged Investment Strategy recommended and implemented by the Respondent in the accounts of client AP was clearly not suitable for her and in

keeping with her investment objectives, having regard to her background investment sophistication expressed risk tolerance and asset and income position.

CONCLUSION

7. In coming to its conclusion on this matter, the Hearing Panel considered section 21 of MFDA By-law No. 1, which dictates that MFDA has a duty to conduct such examinations and investigations of a member or any other person under its jurisdiction as it considers necessary. The Panel also considered section 22 of MFDA By-law No. 1, which confirms that the MFDA is authorized to require a member or any other person under its jurisdiction to submit a written report concerning any matter under MFDA investigation and/or produce for inspection copies of any relevant documents. In addition, the Hearing Panel considered section 22.1 of MFDA By-law No. 1, which codifies the corresponding obligation of approved persons to cooperate with the MFDA examinations and investigations. The Panel also considered the relevant rules and provisions with respect to misconduct which are MFDA Rule 2.1.1, and MFDA Rule 2.2.1.

8. Further, in coming to its conclusion, the Hearing Panel considered all of the evidence presented by Staff and the Staff's submissions and the case law to which Staff referred the Panel. After doing so, the Hearing Panel is unanimously of the view that allegations 1, 2, 3 and 4 against the Respondent, with the exception of the allegations relating to ML, have been proven. Staff having chosen not to lead evidence relating to ML, the allegations with respect to ML were not proven.

PENALTIES

9. In deciding the appropriate penalty, the Hearing Panel again considered all the evidence, the penalty guidelines of the MFDA, and the submissions and case law to which we were referred by Staff. In particular, the Panel was guided by the principle that the primary goal of securities regulation is the protection of the investor. The Panel was also influenced by the vulnerable nature of the client AP, on whom the Respondent had inflicted his misconduct. It was clear that the Respondent's leveraging practices demonstrated that he ignored or had a total lack of understanding of his obligations as a registrant to ensure that his leveraging recommendations

were reasonable for clients. The Panel also considered that the Respondent did not respond to the disciplinary proceeding. Accordingly, the Respondent either does not recognize the seriousness of his misconduct or is unwilling to take responsibility. The above elements are aggravating factors with respect to penalty.

10. Accordingly, the Panel imposes the following penalties and costs:

- (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(c) of MFDA By-law No. 1;
- (b) The Respondent shall pay \$175,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- (c) The Respondent shall pay costs of the proceeding in the amount of \$10,000 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 4th day of August, 2015.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Casmir Litwin”

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